

Date of Hearing: April 26, 2018

ASSEMBLY COMMITTEE ON GOVERNMENTAL ORGANIZATION

Adam Gray, Chair

AB 2914 (Cooley) – As Introduced February 16, 2018

SUBJECT: Cannabis in alcoholic beverages

SUMMARY: Would prohibit a commercial cannabis licensee from also being licensed as a retailer of alcoholic beverages or tobacco products. Would prohibit a licensee from selling a cannabis product that is an alcoholic beverage, including, but not limited to, an infusion of cannabis into an alcoholic beverage. Would prohibit an alcoholic beverage licensee from selling, offering, or providing cannabis or cannabis products, including an alcoholic beverage that contains cannabis or cannabis products, and would require the Department of Alcoholic Beverage Control (ABC) to take disciplinary action against a licensee who does so, including, but not limited to, suspension or revocation of the license. Specifically, **this bill:**

- 1) Provides an ABC licensee shall not sell, offer, or provide cannabis or cannabis products, as defined, including an alcoholic beverage that contains cannabis or a cannabis product. ABC shall take disciplinary action against a licensee that violates this provision, including, but not limited to, suspension or revocation of the license.
- 2) Provides a commercial cannabis licensee shall not also be licensed as a retailer of alcoholic beverages under the Alcoholic Beverage Control Act (Division 9 - commencing with Section 23000) or of tobacco products.
- 3) Provides a commercial cannabis licensee shall not sell a cannabis product that is an alcoholic beverage, including, but not limited to, an infusion of cannabis into an alcoholic beverage.
- 4) Makes technical and clarifying amendments to current law.

EXISTING LAW:

- 1) Enacts the Medicinal and Adult-Use Cannabis Regulation and Safety Act to provide for a comprehensive regulatory framework for the cultivation, distribution, transport, storage, manufacturing, processing, and sale of medicinal and adult-use cannabis. (Business and Professions Code (BPC) §§ 26000 et al.)
- 2) Defines an “A-license” as a state license issued for cannabis or cannabis products intended for adults 21 years of age and older and “M-license” as a state license for commercial cannabis activity involving medicinal cannabis. (BPC § 26001)
- 3) Provides for twenty total types of cannabis licenses including subtypes for cultivation, manufacturing, testing, retail, distribution, and microbusiness; requires each licensee except for testing laboratories to clearly designate whether their license is for adult-use or medicinal cannabis. (BPC § 26050)
- 4) Establishes the Bureau of Cannabis Control (BCC) within the Department of Consumer Affairs, previously named the Bureau of Marijuana Control, the Bureau of Medical Cannabis Regulation, and the Bureau of Medical Marijuana Regulation, for purposes of regulating

microbusinesses, transportation, storage, distribution, testing, and sale of cannabis and cannabis products within the state. (BPC § 26010)

- 5) Requires the BCC to convene an advisory committee to advise state licensing authorities on the development of standards and regulations for legal cannabis, including best practices and guidelines that protect public health and safety while ensuring a regulated environment for commercial cannabis activity that does not impose such barriers so as to perpetuate, rather than reduce and eliminate, the illicit market for cannabis. (BPC § 26014)
- 6) Provides the Department of Food and Agriculture with responsibility for regulating cannabis cultivators. (BPC § 26060)
- 7) Provides the Department of Public Health with responsibility for regulating cannabis manufacturers. (BPC § 26130)
- 8) Establishes grounds for disciplinary action against cannabis licensees, including failures to comply with state licensing requirements as well as local laws and ordinances. (BPC § 26030)
- 9) Subjects cannabis businesses operating without a license to civil penalties of up to three times the amount of the license fee for each violation in addition to any criminal penalties. (BPC § 26038)
- 10) Prohibits cannabis licensees from selling alcoholic beverages or tobacco products its premises. (BPC § 26054)
- 11) Expresses that state cannabis laws shall not be interpreted to supersede or limit the authority of a local jurisdiction to adopt and enforce local ordinances to regulate cannabis businesses. (BPC § 26200)
- 12) Authorizes a local jurisdiction to allow for cannabis use on the premises of a cannabis retailer or microbusiness that does not sell or allow for the consumption of alcohol or tobacco on the premises, among other restrictions. (BPC § 26200(g))
- 13) Establishes the Department of Alcoholic Beverage Control (ABC) and grants it exclusive authority to administer the provisions of the Act in accordance with laws enacted by the Legislature. This involves licensing individuals and businesses associated with the manufacture, importation, and sale of alcoholic beverages in this state and the collection of license fees for this purpose.
- 14) Separates the alcoholic beverage industry into three component parts, or tiers, of the manufacturer (including breweries, wineries, and distilleries), wholesaler, and retailer (both on-sale and off-sale). This is referred to as the “tied-house” law or “three-tier” system. Generally, other than exceptions granted by the Legislature, the holder of one type of license is not permitted to do business as another type of licensee within the “three-tier” system.
- 15) Authorizes the Legislature to, by majority vote, enact laws to implement the state’s regulatory scheme for cannabis, provided those laws are consistent with the purposes and intent of the Control, Regulate and Tax Adult Use of Marijuana Act (Proposition 64). (BPC § 26000)

FISCAL EFFECT: Unknown

COMMENTS:

Purpose of the bill. According to the author, "mixing alcohol and cannabis can lead to dangerous interactions, including a compounding impairment effect. This is why states that have legalized adult-use or medical-use cannabis strongly warn against the consumption of alcohol and cannabis at the same time.

AB 2914 codifies existing regulations and prohibitions issued by the Departments of Alcohol Beverage Control and Public Health on consumption and infusion of alcohol products with cannabis by retailers. Additionally, the bill specifies in statute language passed by the voters in Proposition 64 prohibiting a person from obtaining a cannabis license if they already possess an alcohol or tobacco retail license. As we move into this new legalized and regulated market, it is important we do all we can to protect consumer safety and the public at large while we continue to research the risks and side effects of mixing alcohol and cannabis."

Background.

Early History of Cannabis Regulation in California. Consumption of cannabis (or "marijuana") was first made lawful in California when voters approved Proposition 215 in 1996, also known as the Compassionate Use Act. Prop 215 protected qualified patients and primary caregivers from prosecution related to the possession and cultivation of cannabis for medicinal purposes, if recommended by a physician. The initiative prohibited physicians from being punished or denied any right or privilege for making a medicinal cannabis recommendation to a patient. Prop 215 also included findings and declarations, including encouragement of the federal and state government to implement a plan to provide for the safe and affordable distribution of cannabis to patients with medical needs.

The regulatory scheme for medicinal cannabis was further refined by SB 420 (Vasconcellos) in 2003, which established the state's Medical Marijuana Program (MMP.) Under the MMP, qualified patients were eligible to obtain a voluntary medical marijuana patient card, which could be used to verify that the patient or a caregiver had authorization to cultivate, possess, transport, or use medicinal cannabis. Under the MMP, a patient would obtain a recommendation for medicinal cannabis from a physician and submit proof to their county of residence to receive a card. The MMP's identification cards were intended to help law enforcement officers identify and verify that cardholders were allowed to cultivate, possess, and/or transport limited amounts of cannabis without being subject to arrest. The MMP also created protections for qualified patients and primary caregivers from prosecution for the formation of collectives and cooperatives for medicinal cannabis cultivation.

Since the state did not adopt a formal framework to provide for appropriate licensure and regulation of medicinal cannabis until late 2015, a proliferation of informally regulated cannabis collectives and cooperatives were largely left to the enforcement of local governments. As a result, a patchwork of local regulations was created with little statewide involvement. More restrictive laws and ordinances by cities and counties were ultimately upheld by the California Supreme Court in *City of Riverside v. Inland Empire Patients* (2013) 56 Cal. 4th 729, which held that state law did not expressly or implicitly limit the inherent authority of a local jurisdiction, by its own ordinances, to regulate the use of its land, including the authority to provide that facilities for the distribution of medicinal cannabis be prohibited from operating within its borders.

Even after several years of legal cannabis cultivation and consumption under state law, a lack of a uniform regulatory framework led to persistent problems across the state. Cannabis's continued illegality under the federal Controlled Substances Act, which classifies cannabis as a Schedule I drug ineligible for prescription, generated periodic enforcement activities by the United States Department of Justice. The constant threat of action by the federal government created apprehension among California's cannabis community.

A document issued by the United States Attorney General in 2013 known as the "Cole memorandum" indicated that the existence of a strong and effective state regulatory system, and a cannabis operation's compliance with such a system, could allay the threat of federal enforcement interests. Federal prosecutors were urged under the memo to review cannabis cases on a case-by-case basis and consider whether a cannabis operation was in compliance with a strong and effective state regulatory system prior to prosecution. The memo was followed by Congress's passage of the Rohrabacher-Farr amendment, which prohibits the United States Department of Justice from interceding in state efforts to implement medicinal cannabis.

MCRSA. After several attempts to improve the state's regulation of cannabis, the Legislature passed the Medical Cannabis Regulation and Safety Act (MCRSA) in 2015. MCRSA consisted of a package of legislation: AB 243 (Wood); AB 266 (Bonta, Cooley, Jones-Sawyer, Lackey, and Wood); and SB 643 (McGuire). MCRSA established, for the first time, a comprehensive statewide licensing and regulatory framework for the cultivation, manufacture, transportation, testing, distribution, and sale of medicinal cannabis to be administered by the newly established BCC within Department of Consumer Affairs, the Department of Public Health, and the Department of Food and Agriculture, with implementation relying on each agency's area of expertise.

MCRSA vested authority for:

- The BCC to issue licenses and regulate dispensaries, distributors, and transporters, and to provide oversight for the state's regulatory framework;
- The Department of Public Health to license and regulate testing laboratories and manufacturers; and
- The Department of Food and Agriculture to license and regulate cultivators.

While entrusting state agencies to promulgate extensive regulations governing the implementation of the state's cannabis laws, MCRSA fully preserved local control. Under MCRSA, local governments may establish their own ordinances to regulate medicinal cannabis activity. Local jurisdictions may also choose to ban cannabis altogether.

AUMA. Not long after the Legislature enacted MCRSA, California voters passed Proposition 64, the Adult Use of Marijuana Act (AUMA). The passage of the AUMA legalized cannabis for non-medicinal adult use in a private home or licensed business, allowed adults 21 and over to possess and give away up to approximately one ounce of cannabis and up to eight grams of concentrate, and permitted the personal cultivation of up to six plants. The law sustained prohibitions against smoking in or operating a vehicle while under the effects of cannabis, possessing cannabis at a school or other child oriented facility while kids are present, growing in an unlocked or public place, and providing cannabis to minors.

The proponents of the AUMA sought to make use of much of the regulatory framework and authorities set out by MCRSA while making a few notable changes to the structure still being

implemented. In addition, the AUMA approved by the voters adopted the January 1, 2018 deadline for state implementation of non-medicinal cannabis in addition to the regulations required in MCRSA that are scheduled to take effect on the same date. The same agencies given authority under MCRSA remain responsible for implementing regulations for adult use.

Under the AUMA, the BCC within the Department of Consumer Affairs continues to serve as the lead regulatory agency for all cannabis, both medicinal and non-medicinal. The AUMA includes 19 different license types compared to the 17 in MCRSA and authorizes Department of Consumer Affairs (and the BCC) the exclusive authority to create and regulate a license for transportation of cannabis. The AUMA also allows for vertical integration models that allow the holding of multiple license types previously prohibited under MCRSA. Additionally, while MCRSA requires both a state and local license to operate, the AUMA only stipulates a state license; however, the state is also directed not to issue a license to an applicant if it would “violate the provisions of any local ordinance or regulation.”

The language of the AUMA allows for legislative modifications that “implement” or “give practical effect” to the law by a majority vote. However, the interpretation of what constitutes “implementing” has been interpreted to be very limited. Consequently, proposed changes on the whole, require a two-thirds vote and of those, some may be deemed to require subsequent voter approval.

MAUCRSA. In the spring of 2017, SB 94 (Committee on Budget and Fiscal Review) was introduced to reconcile the distinct systems for the regulation, licensing, and enforcement of legal cannabis that had been established under the respective authorities of MCRSA and the AUMA. The single consolidated system established by the bill—known as the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA)—created a unified series of cannabis laws and deleted redundant code sections no longer necessary due to the combination of the two systems. MAUCRSA also clarified a number of components, including but not limited to licensing, local control, taxation, testing, and edibles.

As of January 1, 2018, the state has begun issuing temporary licenses (adult-use and medicinal) to cannabis businesses as the state’s regulatory agencies worked toward the finalization of their regulations. While an electronic Track-and-Trace system was implemented pursuant to MAUCRSA, it is not currently being used for temporary licensees. The state’s emergency regulations require temporary licensees to document all sales and transfers of cannabis and cannabis products between temporary licensees—or between temporary licensees and annual licensees—by using paper sales invoices or shipping manifests. Other licensing requirements will not be enforced until the completion of a grace period later in the year. Collectives and cooperatives previously authorized to engage in unlicensed cannabis cultivation are allowed to continue operating until January 9, 2019.

Cannabis and Alcohol. Federal prohibition of cannabis has historically stymied scientific research into issues involving the public health effects of cannabis consumption in certain contexts. However, there have long been concerns the implications of combining cannabis use and alcohol use. The American Association for Clinical Chemistry published a study indicating that any amount of alcohol used in conjunction with cannabis significantly increases the presence of THC in the person’s blood. The evolving understanding is that alcohol and cannabis have “multiplier effects” on one another, resulting in higher levels of intoxication when both are ingested simultaneously. As a result, alcoholic beverages infused with cannabis have been

consistently banned in state regulatory schemes authorizing cannabis sale and consumption, including under each iteration of California's legal cannabis laws.

Under the original language of MCRSA, cannabis licensees were prohibited from also being retailers licensed by ABC. AUMA similarly prohibited cannabis licensees from also operating as a retailer of alcoholic beverages and additionally disallowed them from being licensed retailers of tobacco products. When MAUCRSA was passed to combine the two laws, statute was changed to only prohibit the sale of alcohol or tobacco at the same location as a licensed cannabis business. This bill would restore the prior language in Prop 64 that prohibits either an alcohol retailer or tobacco retailer from also having a cannabis license. The bill additionally codifies regulations promulgated by the Department of Public Health prohibiting the sale of edible cannabis products in alcoholic beverages.

Alcoholic Beverage Control Licenses. ABC issues licenses in California for the legal manufacture and sale of alcoholic beverages. There are more than 80 different types of ABC licenses authorized in California. Each license has its own set of privileges and obligations specific to the category of license involved. The privileges of a license are expressly limited to those conferred by the specific type of license involved for the premises and time period covered by the license.

This bill could prohibit more than 70,000 licensed alcohol retailers from being licensed and participating in the commercial cannabis market, regardless of the location of the licenses.

Tobacco Licensing. In 2003, AB 71 (J. Horton, Chapter 890) enacted the Cigarette and Tobacco Products Licensing Act (Licensing Act), which established a statewide licensure program administered by BOE to help stem the tide of untaxed distributions and illegal sales of cigarettes and tobacco products. Prior to the bill, BOE's Investigations Division had been encountering a large number of cigarettes and tobacco product distributors who were unlicensed. The purpose for being unlicensed is to conceal the nature of their business and to evade the tax.

In 2017, the Legislature passed two laws —AB 102 and AB 131— that made major changes to tax administration and appeals in California. Prior to these laws, the Board of Equalization (BOE) had administrative and appeals responsibilities for many taxes and fees. The laws created two new departments—the California Department of Tax and Fee Administration (CDTFA) and the Office of Tax Appeals (OTA)—and transferred most of BOE's duties to these departments. Among the duties transferred to CDTFA, were licensing of tobacco retailers, distributors and wholesalers.

Retailers of cigarettes and tobacco products in California must have a Cigarette and Tobacco Products Retailer's License. Effective January 1, 2017, any retailer that sells any product included in the expanded definition of tobacco products is required to obtain and maintain a Cigarette and Tobacco Products Retailer's License from the CDTFA in order to engage in the retail sale of these products. There are currently more than 38,000 licensed tobacco retailers in California.

This bill could prohibit more than 38,000 licensed tobacco retailers from being licensed and participating in the commercial cannabis market, regardless of the location of the licenses.

In support. The County Health Executives Association of California (CHEAC) supports AB 2914. CHEAC states, "Given the dearth of research on the effects of tetrahydrocannabinol

(THC), the primary psychoactive chemical compound of cannabis, as well as cannabidiol (CBD) one of the other major chemical compounds in cannabis, prohibiting the inclusion of alcohol in cannabis products is prudent.” This argument is echoed by the Health Officers Association of California (HOAC), which states “health officers support a clear separation between alcoholic beverage and cannabis retailers.”

Policy considerations: What is the policy argument for amending Section 26054 of the Business and Professions Code back to the language in Proposition 64 of 2016 after it was deleted in last year's Cannabis Regulation Budget Trailer Bill (SB 94 - Committee on Budget and Fiscal Review)? How does this policy change protect public health and safety from an ownership standpoint, if the different licenses are held in separate cities or counties and/or not held at the same premises or adjacent to the designated retail license (cannabis, alcohol, and tobacco)?

The intent of last year's budget trailer bill (SB 94 - Committee on Budget and Fiscal Review) was to clarify and enhance both MCRSA and AUMA by allowing for a clear regulatory structure and eliminating ambiguity. The intent of the amendment to B & P Code Section 26054 in SB 94 was clearly to promote public safety by limiting cross consumption of alcohol and cannabis at the same location. How does the amendment proposed in this bill relating to ownership further that cause, considering that on January 18, 2018, the California Department of Alcoholic Beverage Control released an advisory that outlined the agency's policies about legalized cannabis and marijuana relative to licensees that sell alcohol beverages. The advisory, titled “*Cannabis and Alcoholic Beverages*”, used a FAQ format to answer questions about what is permissible for alcohol licensees under MAUCRSA.

Key points from the California ABC's advisory included the following:

- **Individuals can hold alcohol beverage licenses with the ABC and cannabis licenses with California's Bureau of Cannabis Control (BCC) simultaneously.**
- **Cannabis and alcohol cannot be sold at the same location.**
- Cannabis cannot be consumed at restaurants and bars; it cannot be sold by the licensee, nor can consumers bring their own.
- Alcohol beverage products cannot be infused or mixed with cannabis.

What will happen if an alcohol retailer has already been licensed for both licenses (commercial cannabis and alcohol), under current law and this bill were to pass? What would be the next step? Would the licensee have to forfeit one of the licenses? Would the application/licenses fees be credited back to the affected parties? How would the licensee recoup the investment in their business that would now need to cease operations because of this bill?

If marijuana products are not sold on the same premises, why is it necessary to ban an individual from holding both an ABC license and commercial cannabis license at separate locations in the state? For instance, in current law, an individual can hold both an alcohol and tobacco retail license at different locations (grocery store and smoke shop).

Considering that, most tribal casinos sell alcohol on the premises for consumption, would this bill prohibit tribal entities that have an ABC retail license from also being licensed as a commercial cannabis licensee in the future? In addition, would it prohibit non-gaming tribes who also hold an ABC retail license from holding a commercial cannabis license?

Would this bill further insulate the retail marijuana industry from cross ownership by the alcohol and/or tobacco industry that maintains a well-defined network of ownership and distribution?

It should be noted that Oregon and Washington that also regulate the in-state purchase and use of recreational marijuana, cannabis retailers are allowed to hold alcohol retail licenses, if they are at different locations.

Suggested Amendment. Based on the discussion and issues raised in the “Policy Considerations”, the author and committee may wish to consider removing the change to BPC Sec. 26054 that prohibits a person from holding an alcohol/tobacco license and a commercial cannabis license, regardless if the licenses are in completely different locations. This amendment would revert BPC Sec. 26054 back to current law, as enacted in 2017 by SB 94, which allows a person to hold both an alcohol/tobacco license and a commercial cannabis license as long as the licenses are located on different premises.

Sec. 26054 (a) A licensee shall not sell alcoholic beverages or tobacco products on or at any premises licensed under this division. also be licensed as a retailer of alcoholic beverages under Division 9 (commencing with Section 23000) or of tobacco products.

Related legislation. AB 2555 (Cooley) of 2018, specifies the definition of “plant,” immature plant,” and “mature cannabis plant” in relation to cannabis cultivation. Clarifies that identification numbers on plant tags must be unique and non-repeating.

AB 3261 (Committee on Business and Professions) of 2018, would make various clarifying and technical changes to the state’s cannabis laws.

Prior legislation. SB 94 (Committee on Budget and Fiscal Review, Chapter 27, Statutes of 2017) of the current legislative session, combined AUMA and MCRSA into one system for the regulation of cannabis, resulting in MAUCRSA.

AB 266 (Bonta, et al.), Chapter 689, Statutes of 2015. Established a comprehensive licensing and regulatory framework for the cultivation, manufacture, transportation, storage, distribution, and sale of medical marijuana to be administered by the Department of Consumer Affairs (DCA), Department of Food and Agriculture (CDFA), and Department of Public Health (CDPH), as specified.

AB 243 (Wood), Chapter 688, Statutes of 2015. Establishes a regulatory program for the cultivation of medical cannabis, as part of the MMRSA.

SB 643 (McGuire), Chapter 719, Statutes of 2015. Establishes a comprehensive licensing and regulatory framework for the cultivation, manufacture, transportation, storage, distribution, and sale of medical cannabis to be administered by DCA, CDFA, and CDPH, as specified.

Double-referral. This bill was heard by the Assembly Committee on Business and Professions on April 17, 2018, and passed with a 16-0 vote.

REGISTERED SUPPORT / OPPOSITION:

Support

Alcohol Justice

California Alcohol Policy Alliance
County Health Executives Association of California
Health Officers Association of California
Rural County Representatives of California

Opposition

None on file

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