
The California Cannabis Report

What You Need To Know About The New Laws

November 4, 2015

In 1996, Californians made their feelings known on medical marijuana by going to the polls and voting for legalizing Cannabis for medical use. On October 9, 2015, nearly 20 years later, Governor Jerry Brown signed three bills that form a statewide regulatory system for the growth, transport, and sale of medical marijuana—a system that advocates hope will pave the way for legal recreational use and commerce of Cannabis in the Golden State if voters agree via a ballot initiative in 2016.

“This new structure will make sure patients have access to medical marijuana, while ensuring a robust tracking system,” Brown’s signing message reads. “This sends a clear and certain signal to our federal counterparts that California is implementing robust controls not only on paper, but in practice.” Although some of the standards, including the licensing system, won’t take effect until January 1, 2018, Brown says, “State agencies will begin working immediately with experts and stakeholders on crafting clear guidelines, so local government, law enforcement, businesses, patients and health providers can prepare and adapt to the new regulated system.”

For the Cannabis industry in California—a state that boasts a gross state product of \$2.2 trillion (in 2013), that is ranked #3 in the nation in the 2014 State New Economy Index, #2 nationally in an index that measures the percentage of firms within a state that experience high revenue growth, #4 in entrepreneurial activity, #1 among states in the total number of patents, and that has an estimated 1,250 medical marijuana dispensaries operating in the state (with sales of about \$1.3 billion, according to industry groups)—this is huge. For other states struggling with the same issues California has for the past 19 years, they finally have an example by which to model similar bills. And, for states that have already legalized and standardized a medical marijuana regulatory system, it’s an opportunity to conduct a compare-and-contrast exercise to see if California’s model may be more beneficial to them than the system they currently have in place.

“California has long been the main example people have used to explain why ‘not’ to allow medical marijuana in their state,” says California Cannabis Industry Association (CCIA) executive director Nate Bradley. “This eliminates that.”

“In turn,” continues Bradley, “this legislation also creates a comprehensive model that can be used in other states that are looking to allow the medical use of marijuana.”

Indeed, for everyone in the United States, California’s new medical marijuana laws—the Medical Marijuana Regulation and Safety Act (MMRSA)—and its subsequent foundation for possible recreational Cannabis legalization next year are a reason to stand up and take notice, as the historically trend-setting state could become the nation’s model for widespread legal use of marijuana, both medicinally and recreationally.

The Three Bills

Divided into three bills, Assembly Bill (AB) 266, AB 243, and State Bill (SB) 643, the MMRSA comprises a bipartisan solution to regulate medical marijuana in California. Additionally, the MMRSA uses already existing state infrastructure to regulate medical marijuana like other products—a much more streamlined approach than placing all authority and operations into a single new agency.

AB 266

According to the California State Assembly Fact Sheet, AB 266 of the MMRSA “establishes comprehensive, statewide licensure and regulations for commercial medical marijuana activity that respect local control, protect patients, promote public safety, and preserve the environment.” The bill was written by lead author Assembly member Rob Bonta (D-Oakland) and co-authors Ken Cooley (D-Rancho Cordova), Reginald Byron Jones-Sawyer (D-Los Angeles), and Tom Lackey (R-Palmdale).

“AB 266 works to fix a system that has been broken for almost two decades,” says Bonta. “California was the first state in the nation to approve medical cannabis with the passage of Prop 215 in 1996, but since then we as a state have stagnated, and it is time that the Legislature takes definitive action on this important issue. As Chair of the Assembly Health Committee I feel it is imperative that we create a viable framework for medical cannabis that preserves our core priorities and provides strong patient protections and access to their medicine.”

In a press release, Americans for Safe Access (ASA) states its research has shown that regulation of dispensaries can reduce crime and community complaints, while preserving essential access for medical Cannabis patients. “Additionally, members of [the] medical cannabis community will benefit from a greater perception of integrity among lawmakers and the public under a more robust state-level regulatory structure,” ASA claims. “AB 266 will help put aside industry issues that distract from the benefits that patients in California get from the medical cannabis program,” says Steph Sherer, ASA executive director.

With the approval of Proposition 215, the California Compassionate Use Act, in 1996, California became the first state in the U.S. to allow the use of medical marijuana. Between then and now, other states and the District of Columbia have passed similar laws. According to the California State Assembly Fact Sheet, “Although our state was an early leader on this issue, California still lacks comprehensive regulations to ensure patient access and protect our environment, public safety, and public health. The federal government has signaled that while marijuana remains a Schedule 1 drug, they are less inclined to intervene in states that have authorized medical marijuana use with strong and effective regulatory and enforcement systems to control the cultivation, distribution, sale, and possession of medical marijuana. The Act [MMRSA] creates thoughtful, effective regulations that fit within our existing regulatory frameworks for other products, comply with federal goals, and create a better system for the entire life cycle of medical marijuana.”

AB 266 creates a licensing structure for different-sized businesses that play various roles within the industry. One main oversight authority, the Bureau of Medical Marijuana Regulation (Bureau) within the Department of Consumer Affairs, includes a multi-agency licensing effort: cultivation licensing by the Department of Food and Agriculture; manufacturing and testing laboratory licensing by the Department of Public Health; and retail dispensary, transportation, and distribution licensing by the Bureau itself.

The California State Assembly states that AB 266:

- Allows limited vertical integration by up to three dispensaries, one manufacturer, and cultivation up to four acres.
- Subjects applicants for licensure to an in-depth investigation, including disqualifying convictions and evidence of rehabilitation.
- Funds self-sustaining and robust state and local enforcement through licensing fees and fines.

Under local control, AB 266:

- Explicitly requires both a state license and a local license or permit to operate, and preserves a municipality's rights and authority to regulate and enforce medical marijuana businesses in its jurisdiction under current law.
- Renewal of state license is contingent upon continued compliance with local ordinances.
- Security, Worker Standards, and Public Safety
- Medical marijuana and medical marijuana products are tracked and traced at each step leading up to sale.
- Regulations limit access to facilities, require secure storage, and comply with state tracking requirements.
- Requires the development of a study that identifies the impact of cannabis on motor skills in order to better assess and identify impairment.
- Directs the Occupational and Safety and Health Administration (OSHA) to establish an advisory committee that will evaluate the need for industry-specific regulations in light of the unique circumstances workers in the medical marijuana industry face.

AB 266 patient access and protections include:

- Protects patients by establishing new product testing standards for mold, pesticides, contaminants, and cannabinoid profile, including levels of tetrahydrocannabinol (THC) and cannabidiol (CBD), by licensed independent third-party laboratories.
- Requires new medical marijuana and medical marijuana product label and packaging standards.
- Allows for delivery by licensed dispensaries, with assistance from a technology platform controlled by the dispensary, unless otherwise prohibited by local ordinance.

AB 243

A companion piece to AB 266 authored by Assembly member Jim Wood (D-Healdsburg), AB 243, also known as the Marijuana Watershed Protection Act, protects California from further damages of illegal marijuana cultivation by establishing the following structures: making the Watershed Enforcement Team (WET) pilot program, created in 2014 (see further information in the paragraph that follows), permanent and statewide to continue the agencies efforts on marijuana cultivation; requiring that all Cannabis plants be tagged with unique identifiers; establishing a fines and penalty account for medical marijuana to pay for environmental cleanup and providing additional resources for law enforcement; requiring all nine Regional Water Quality Control Boards in the State to develop environmental protections to address wastewater discharges from medical marijuana farms; designating Cannabis as an agriculture product under the California Department of Food and Agriculture, which will require cannabis growers to follow all existing environmental laws; and establishing a structure for medical Cannabis growers to be licensed by the California Department of Food and Agriculture.

With few environmental regulations for medical marijuana growers, California's North Coast has endured extreme environmental damage. Last year, Sproul Creek, a once healthy, thriving stream in Humboldt County, dried up for the first time in many years, devastating

the ecosystem, which is home to five endangered salmon species, including Coho. State officials believe the stream went dry from illegal water diversions of marijuana cultivators. The State Water Resources Control Board and the California Department of Fish and Wildlife received funding from the Governor to create WET to address the natural resources damages from marijuana cultivation. As aforementioned, AB 243 makes WET a permanent, statewide program.

In a press release from the CCIA, Wood states, "The medical marijuana industry has expanded rapidly and without check in my district because direction from the State has been absent. This long overdue direction is finally closer than ever. I am thrilled that AB 243, which is focused specifically on the needs of the north coast, will serve as the foundation of the cultivation language in this year's marijuana package."

SB 643

In a press release from his office, SB 643 author Senator Mike McGuire (D-Healdsburg) says that "key to SB 643 are provisions that will track and trace all marijuana products, and a provision that will once and for all make medical marijuana officially an agricultural product in California. Cultivators will have to abide by the same rules and regulations as all other agriculture, including water use, water discharge, pesticide and insecticide use and more. SB 643 also includes robust provisions governing indoor and outdoor cultivation standards for small, medium and large growers to ensure that best practices related to land conversion, grading and electricity usage are instituted. The bill makes sure that the environment is cared for and that the products are safe, while also mandating strict standards for transportation to ensure that no marijuana is diverted out of state for illegal use."

SB 643 sets standards for physicians and surgeons who prescribe medical Cannabis and requires the Medical Board of California to prioritize its investigative and prosecutorial resources to identify and discipline physicians and surgeons that have repeatedly recommended excessive Cannabis to patients for medical purposes or repeatedly recommended Cannabis to patients for medical purposes without a good faith examination. The Bureau of Medical Marijuana (Bureau) requires an applicant to furnish a full set of fingerprints for the purposes of conducting criminal history record checks and prohibits physicians and surgeons who recommend Cannabis to a patient for a medical purpose from accepting, soliciting, or offering any form of remuneration from a facility licensed under the MMRSA. Violation of this prohibition is a misdemeanor.

SB 643 requires the Governor, under the MMRSA, to appoint, subject to confirmation by the Senate, a chief of the Bureau, and requires the Department of Consumer Affairs to have the sole authority to create, issue, renew, discipline, suspend, or revoke licenses for the transportation and storage, unrelated to manufacturing, of medical marijuana, authorizing the department to collect fees for its regulatory activities and impose specified duties on this department in this regard. Additionally, the Department of Food and Agriculture must administer the provisions of the act related to, and associated with, the cultivation, and transportation of, medical Cannabis and imposes specified duties on the department in this regard. The State Department of Public Health is required to administer the provisions of the act related to, and associated with, the manufacturing and testing of medical Cannabis imposing specified duties in this regard.

Additionally, SB 643:

- Authorizes counties to impose a tax upon specified cannabis-related activity.
- Requires an applicant for a state license pursuant to the act to provide a statement signed by the applicant under penalty of perjury, thereby changing the scope of a crime

and imposing a state-mandated local program.

- Sets forth standards for the licensed cultivation of medical cannabis, including, but not limited to, establishing duties relating to the environmental impact of cannabis and cannabis products.
- Establishes state cultivator license types, as specified.
- Provides that its provisions are severable.
- With regard to certain mandates (i.e., the California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement), no reimbursement is required by this Act for a specified reason. With regard to any other mandates, this bill provides that if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.
- Recognizes that existing constitutional provisions require that a statute that limits the right of access to the meeting of public bodies or the writings of public bodies or the writings of public officials and agencies be adopted with finding demonstrating the interest protected by the limitation and the need for protecting that interest.

According to McGuire, "These regulations are long overdue and I'm thrilled that we were able to work together to find common ground on these historic medical marijuana regulations for our state."

Effects on the Existing California Cannabis Industry

So, how will the new laws affect the current California Cannabis industry?

"The goal is as little as possible," says Hezekiah Allen, Executive Director of the California Growers Association and a key figure in getting the laws through legislation and signed. "We would like to mitigate the public safety and environmental impact of unregulated commerce without disrupting the existing community of businesses."

In an article from the *Los Angeles Daily Journal*, Aaron Lachant, who chairs Nelson Hardiman's practice in Regulated Substances, including DEA, FDA, and state law compliance, compliance with licensing, operational, and reimbursement issues affecting pharmacies, pharmaceuticals, and physician dispensing, and issues related to medical marijuana, writes that the MMRSA "implements a producer-distributor model, similar to the alcoholic beverage industry. The goals for this are to ensure consumer safety and to maximize collection of tax revenue."

According to Lachant, with the new model, licensed cultivators will sell their crops to licensed distributors, who will transport raw Cannabis to licensed labs for testing, after which certified Cannabis will be processed and packaged by a distributor, who will sell the Cannabis to a licensed dispensary for resale to qualified consumers. The model also involved manufacturers in the supply chain, who will produce Cannabis products (e.g., concentrated oils and edibles).

Under the MMRSA, a marijuana business can't hold licenses for both cultivation and dispensary unless it falls into one of the two exceptions for vertical integration: marijuana businesses in good standing and in operation prior to July 1, 2015, in a city that mandates

vertical integration, or those who obtain a Type 10A license that allows up to three dispensary locations, one manufacturing location, and up to four acres of cultivation across the state.

With a more traditional business model in place, the Cannabis industry in California may finally be able to shake stigmas that have contributed to its somewhat clandestine image over the past 19 years.

“The industry will be able to expand,” says CCIA’s Bradley. “Now that the state has ‘legitimized’ the industry by regulating it, more cities and counties will be willing to reverse the bans they have in place.”

Nationwide Reverberations

What will the passing of MMRSA (AB 266, AB 243, and SB 643) mean to the rest of the United States? How will it affect current laws in legal states, upcoming laws in medical-only states, and the formation of a structure in states that haven’t yet legalized medical marijuana?

“We’re not expecting any major changes to other marketplaces,” says Allen. “We think there are still larger policy issues dealing with reciprocity, interstate commerce, and, of course, the ultimate end of federal prohibition that are more relevant to those other marketplaces than what we have going on here. We’re expecting this to be a relatively California-focused process for the first few years of the transition to regulation.”

Lingering Questions and Fine-Tuning

What about Proposition 215 and its stipulation that medical marijuana businesses not be allowed to make a profit? The CCIA states that under the MMRSA, “licensees will not be prohibited from operating ‘for profit.’ Section 6 of AB 266 repeals the existing Medical Marijuana Program Act, and the non-profit mandate with it (AB 266 amending Section 11362.775 of the Health and Safety Code). Additionally, the MMRSA defines eligible applicants to include for-profit business entities (AB 266 adding B&PC 19300.5(a)).”

And what of Proposition D? In 2013, a voter referendum known as Proposition D established a framework for Los Angeles dispensaries. Will those medical businesses be able to obtain a state license under the new regulatory model?

Undoubtedly, California ballots in November 2016 will contain at least one marijuana initiative for personal use. Will that initiative set up a structure similar to the state of Washington, where only a recreational program exists? Or will it take a turn toward following the lead of Colorado, allowing medical and recreational use to coexist? And how would a recreational-use law affect the existing California Cannabis laws and market?

“The signing of the Medical Marijuana Regulation & Safety Act (MMRSA) is an important milestone, nearly 20 years in the making,” Bradley states in CRRH HempNews, a public service of Campaign for the Restoration and Regulation of Hemp (CRRH) and affiliated nonprofit organization The Hemp & Cannabis Foundation (THCF). “Today’s signing represents the most significant victory for the industry since Washington and Colorado legalized recreational use in 2012. That said, we believe parts of the bills need fixing. We will pursue clean up legislation—and take part in the rulemaking process—to address these issues.” ■

As the California laws are fine-tuned, look for more white papers from the publishers of Cannabis Product News to inform, encourage, and enlighten you on the ever-changing, fast-growing legal Cannabis industry.