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## SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

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**Bill No:** AB 2255                      **Hearing Date:** June 26, 2018  
**Author:** Lackey  
**Version:** April 26, 2018  
**Urgency:** No                                      **Fiscal:** Yes  
**Consultant:** MK

**Subject:** *Cannabis: Distribution: Deliveries: Violations*

### HISTORY

Source: Author

Prior Legislation: None

Support: California Police Chiefs Association; California Statewide Law Enforcement Association; California Peace Officers' Association; Cannabis Distribution Association; Hardcar Security; River Distributing Company; The Werc Shop

Opposition: Blackbird Logistics

Assembly Floor Vote: 78 - 0

### PURPOSE

***The purpose of this bill is to establish administrative fines for violations of the Medicinal and Adult-Use Cannabis Regulation and Safety Act related to transportation violations.***

*Existing law* establishes the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA) to establish a comprehensive system to control and regulate the cultivation, distribution, transport, storage, manufacturing, processing, and sale of both medicinal and adult-use cannabis. (Business and Professions Code (BPC) § 26000)

*Existing law* establishes the Bureau of Cannabis Control (Bureau) within the Department of Consumer Affairs (DCA) as having the sole authority to create, issue, deny, renew, discipline, suspend, or revoke licenses for microbusinesses, transportation, storage unrelated to manufacturing activities, distribution, testing, and sale of cannabis and cannabis products within the state. (BPC §§ 26010, 26012)

*Existing law* establishes grounds for disciplinary action, including failure to comply with the provisions of the Act or any rule or regulation adopted pursuant to this division. (BPC § 26030 (a))

*Existing law* authorizes each licensing authority to suspend, revoke, place on probation with terms and conditions, or otherwise discipline licenses issued by that licensing authority and fine

a licensee, after proper notice and hearing to the licensee, if the licensee is found to have committed any acts or omissions constituting grounds for disciplinary actions. (BPC §26031(a))

*Existing law* authorizes each licensing authority to take disciplinary action against a licensee for any violation of the Act when the violation was committed by the licensee's officers, directors, owners, agents, or employees while acting on behalf of the licensee or engaged in commercial cannabis activity. (BPC §26031(c))

*Existing law* establishes the following license types related to the sale and distribution of cannabis and cannabis products:

- a) "Retailer," for the retail sale and delivery of cannabis or cannabis products to customers. A retailer shall have a licensed premises which is a physical location from which commercial cannabis activities are conducted. A retailer's premises may be closed to the public. A retailer may conduct sales exclusively by delivery.
- b) "Distributor," for the distribution of cannabis and cannabis products. A distributor licensee shall be bonded and insured. (BPC § 26070 (a))

*Existing law* requires a licensed distributor, prior to transporting cannabis or cannabis products, to complete an electronic shipping manifest, which shall include the unique identifier, and securely transmit the manifest to the Bureau and the licensee that will receive the cannabis product. (BPC § 26070 (b))

*Existing law* requires the licensed distributor to maintain a physical copy of the shipping manifest during delivery and make it available upon request to DCA agents and law enforcement officers. The licensee receiving the shipment shall submit to the licensing authority a record verifying receipt of the shipment and the details of the shipment, and maintain each shipping manifest and make it available upon request to DCA agents and any law enforcement. (BPC § 26070)

*Existing law* states that transporting, or arranging for or facilitating the transport of, cannabis or cannabis products in violation of the Act is grounds for disciplinary action against the license. (BPC § 26070 (i))

*Existing law* requires employees of a retailer, microbusiness, or nonprofit delivering cannabis or cannabis products to carry a copy of the licensee's current license and a government-issued identification with a photo of the employee, such as a driver's license. The employee shall present that license and identification upon request to state and local law enforcement, employees of regulatory authorities, and other state and local agencies enforcing this division. (BPC § 26090 (b))

*Existing law* requires the licensee to maintain a copy of the delivery request during delivery and make it available upon request of the licensing authority and law enforcement officers. The delivery request documentation shall comply with state and federal law regarding the protection of confidential medical information. (BPC § 26090 (c))

*Existing law* requires a distributor, prior to transporting cannabis goods, to generate a shipping manifest through the track and trace system for the following activities:

- a) Testing and sampling;
- b) Sale of cannabis goods to a licensee;
- c) Destruction or disposal of cannabis goods;
- d) Any other activity, as required by the Bureau or by any other licensing authority. (Title 16, Code of California Regulations (CCR) § 5314 (a))

*Existing law* authorizes the Bureau to issue a citation containing an assessment of an administrative fine of up to \$5,000, and/or an order of abatement fixing a reasonable time for abatement of the violation. (16 CCR § 5802)

*Existing law* requires the Bureau to consider the “Bureau of Cannabis Control Disciplinary Guidelines November 2017,” in reaching a decision on a disciplinary action under the Act and the Administrative Procedures Act. Deviation from these guidelines and orders, including the standard terms of probation, is appropriate where the Bureau in its sole discretion determines that the facts of the particular case warrant such a deviation, e.g., the presence of mitigating factors, the age of the case, or evidentiary problems. (16 CCR § 5814).

*Existing law* states that, except as otherwise provided by law, every person who transports, imports into this state, sells, furnishes, administers, or gives away, or offers to transport, import into this state, sell, furnish, administer, or give away, or attempts to import into this state or transport any cannabis shall be punished as follows:

- a) Provides that persons under the age of 18 years shall be punished in a different manner, as specified, as those over 18.
- b) Provides that persons 18 years of age or over shall be punished by imprisonment in a county jail for a period of not more than six months or by a fine of not more than five hundred dollars, or by both such fine and imprisonment.
- c) Provides that a person 18 years of age or over may be punished by imprisonment pursuant provisions of the Penal Code for a period of two, three, or four years for specified aggravating circumstances.
- d) Provides that except as authorized by law, every person who gives away, offers to give away, transports, offers to transport, or attempts to transport not more than 28.5 grams of cannabis, other than concentrated cannabis, is guilty of an infraction and shall be punished by a fine of not more than one hundred dollars. In any case in which a person is arrested for a violation of this law and does not demand to be taken before a magistrate, that person shall be released by the arresting officer upon presentation of satisfactory evidence of identity and giving his or her written promise to appear in court, as specified, and shall not be subjected to booking. (Health and Safety Code § 11360)

*This bill* prohibits a law enforcement officer from seizing cannabis for a violation of this bill unless the seizure is otherwise authorized by law and the officer has probable cause to believe a criminal cannabis violation has occurred.

This bill establishes the following disciplinary actions to be taken against a licensee who is found to have committed the following acts or omissions:

- a) Failure during transportation to maintain a physical copy of the shipping manifest and make it available upon request to agents of the DCA and any law enforcement officers is punishable by a fine of five hundred dollars (\$500) for the first violation, a fine of five hundred fifty dollars (\$550) for the second violation, and a fine of six hundred dollars (\$600) for the third violation. Each subsequent violation after the third violation shall be subject to a fine that is incrementally increased by fifty dollars (\$50) from the fine imposed for the previous violation.
- b) Failure to maintain an electronic shipping manifest and make it available upon request to agents of the DCA and any law enforcement officers is punishable by a fine of five hundred dollars (\$500) for the first violation, a fine of five hundred fifty dollars (\$550) for the second violation, and a fine of six hundred dollars (\$600) for the third violation. Each subsequent violation after the third violation shall be subject to a fine that is incrementally increased by fifty dollars (\$50) from the fine imposed for the previous violation.
- c) Failure during delivery to maintain a copy of a compliant delivery request and make it available upon request of the licensing authority and law enforcement officers as required in subdivision (c) of Section 26090 is punishable by a fine of five hundred dollars (\$500) for the first violation, a fine of five hundred fifty dollars (\$550) for the second violation, and a fine of six hundred dollars (\$600) for the third violation. Each subsequent violation after the third violation shall be subject to a fine that is incrementally increased by fifty dollars (\$50) from the fine imposed for the previous violation.
- d) Transportation of an amount of cannabis in excess of the amount stated on the shipping manifest is punishable by a fine of five hundred dollars (\$500) for the first violation, a fine of five hundred fifty dollars (\$550) for the second violation, and a fine of six hundred dollars (\$600) for the third violation. Each subsequent violation after the third violation shall be subject to a fine that is incrementally increased by fifty dollars (\$50) from the fine imposed for the previous violation.

*This bill* requires fines to be deposited into the Cannabis Fines and Penalties Account.

*This bill* prohibits a licensed distributor from transporting an amount of cannabis in excess, as defined by the Bureau, of the amount stated on the shipping manifest.

*This bill* states that transportation for purposes of sale with a counterfeit shipping manifest is punishable according to existing laws, including civil fines and imprisonment, and is also subject to disciplinary action by the Bureau.

*This bill* specifies that licensees must maintain a physical or electronic copy of the delivery request.

*This bill* makes Legislative declarations that this bill furthers the purposes and intent of the Act.

*This bill* makes technical changes.

## COMMENTS

### 1. Need for This Bill

According to the author:

Currently, there is no clarification of the consequences for a cannabis licensee's failure to present the appropriate documentation to a local or state law enforcement officer. This is problematic because law enforcement officers are unsure of what to do when they encounter a distributor or delivery driver without the appropriate documentation. This bill provides clarification and guidance to officers and will help ensure all licensed distributors and delivery drivers are reporting into the track and trace system and maintaining the appropriate shipping manifests. This bill establishes simple requirements which will assist officers in verifying license distribution and transportation and will help distinguish between legal and illegal activity.

### 2. Cannabis Regulatory Background

Cannabis was first legalized in California for medical consumption by Proposition 215, also known as the Compassionate Use Act, in 1996. Proposition 215 protected qualified patients and primary caregivers from prosecution related to the possession and cultivation of cannabis for medicinal purposes.

The Legislature passed the Medical Cannabis Regulation and Safety Act (MCRSA) in 2015. 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 Bureau 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.

Shortly following the passage of MCRSA in November 2016, California voters passed Proposition 64, the "Control, Regulate and Tax Adult Use of Marijuana Act" (Prop 64), which legalized adult-use cannabis.

Less than a year later in June 2017, the California State Legislature passed a budget trailer bill, SB 94 (Committee on Budget and Fiscal Review, Chapter 27, Statutes of 2017), that integrated MCRSA with Prop 64 to create MAUCRSA.

On May 18, 2018, the Administration readopted emergency regulations implementing MAUCRSA that initially went into effect in December 2017.

### **3. Seizure of Cannabis for a Violation of the Medicinal and Adult-Use Cannabis Regulation Act.**

The Fourth Amendment of the United States Constitution protects the right of people to be secure in their persons, property, and documentation from unreasonable searches and seizures unless permitted by warrants upon probable cause. Article 1, Section 13 of the California Constitution declares that,

The right of the people to be secure in their persons, houses, papers, and effects against unreasonable seizures and searches may not be violated; and a warrant may not issue except on probable cause, supported by oath or affirmation, particularly describing the place to be searched and the persons and things to be seized.<sup>1</sup>

The Supreme Court affirmed in *Agnello v. United States* that searches conducted without warrants have been held unlawful “notwithstanding facts unquestionably showing probable cause” (*Agnello v. U.S.* (1925) 269 U. S. 20, 269 U. S. 33). *Katz v. U.S.* further emphasized that searches and seizures without a warrant issued by a judge or magistrate are considered to be unreasonable (*Katz v. U.S.* (1967) 389 U.S. 347, 357).

This bill provides that a law enforcement officer shall not seize cannabis for a violation of the MAUCRSA unless the seizure is otherwise authorized by law and the officer has probable cause to believe a criminal cannabis violation has occurred. This would not allow seizure merely for a violation of the civil and licensing provisions of MAUCRSA they would need to have additional evidence that a crime has been committed. However, there are criminal penalties for transporting cannabis illegally or for suing a counterfeit shipping manifest so these could be the basis for seizure under this section. Is it appropriate to allow seizure for these offenses?

### **4. Civil Penalties for Licensing Violations**

This bill imposes civil penalties for MAUCRSA violations. The appropriateness of these penalties were discussed in and are the jurisdiction of the Senate Committee on Business Professions and Economic Development.

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<sup>1</sup> “Law Section,” accessed June 11, 2018, [https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=CONS&sectionNum=SEC.%2013.&article=I](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=CONS&sectionNum=SEC.%2013.&article=I).