

**SENATE JUDICIARY COMMITTEE**  
**Senator Thomas Umberg, Chair**  
**2021-2022 Regular Session**

AB 287 (Quirk)  
Version: March 25, 2021  
Hearing Date: June 29, 2021  
Fiscal: Yes  
Urgency: No  
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**SUBJECT**

Civil actions: statute of limitations

**DIGEST**

This bill imposes a three-year statute of limitations on actions for civil penalties for unlicensed cannabis activity.

**EXECUTIVE SUMMARY**

In order to establish a comprehensive regulatory scheme for the cultivation, distribution, transport, storage, manufacturing, processing, and sale of *medicinal* cannabis, AB 243 (Wood, Ch. 688, Stats. 2015), AB 266 (Bonta, Ch. 689, Stats. 2015), and SB 643 (McGuire, Ch. 719, Stats. 2015) together created the Medical Marijuana Regulation and Safety Act – subsequently retitled the Medical Cannabis Regulation and Safety Act (MCRSA) – in 2015.

In 2016, voters passed Proposition 64, the Adult Use of Marijuana Act (AUMA), which legalized marijuana for recreational purposes, and authorized the collection of revenues to facilitate the investigation, enforcement, and prosecution of illegal cultivation, production, sale and use of marijuana or marijuana products on public land. It included provisions on regulation, licensing, and taxation of legalized use.

To avoid duplicative costs and inevitable confusion among licensees, regulatory agencies, and the public and ensuring a regulatory structure that prevents access to minors, protects public safety, public health and the environment, as well as maintaining local control, SB 94 (Committee on Budget and Fiscal Review, Ch. 27, Stats. 2017) repealed MCRSA and established a single regulatory and licensing structure for both medicinal and adult-use cannabis. The resulting regulatory scheme is entitled the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA).

MAUCRSA charges several state agencies with licensing various elements of the legal cannabis market. The law provides for civil penalties to be assessed against those

engaging in commercial cannabis activity without a license. This bill extends the current one-year statute of limitations on such actions to three years.

This bill is sponsored by the California District Attorneys Association. It is supported by the California Cannabis Industry Association and the Consortium Management Group/Caliva. There is no known opposition. This bill passed out of the Senate Business, Professions and Economic Development Committee on an 11 to 0 vote.

### **PROPOSED CHANGES TO THE LAW**

Existing law:

- 1) Prescribes the periods for the commencement of civil actions. (Code Civ. Proc. § 335 et seq.) Civil actions, without exception, can only be commenced within those periods prescribed, after the cause of action shall have accrued, unless where, in special cases, a different limitation is prescribed by statute. (Code Civ. Proc. § 312.)
- 2) Requires civil actions brought upon a statute for a forfeiture or penalty to the people of this state be filed within one year. (Code Civ. Proc. § 340(b).)
- 3) Establishes MAUCRSA with the purpose and intent 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 and cannabis products, as provided. (Bus. & Prof. Code § 26000 et seq.)
- 4) Authorizes the Legislature by majority vote to enact laws to implement the state's regulatory scheme for cannabis if those laws are consistent with the purposes and intent of the Control, Regulate and Tax Adult Use of Marijuana Act (Proposition 64, 2016). (Bus. & Prof. Code § 26000(d).)
- 5) Imposes responsibility for controlling and regulating the commercial medicinal and adult-use cannabis on various state agencies, including. (Bus. & Prof. Code § 26000(c).)
- 6) Establishes the Bureau of Cannabis Control in the Department of Consumer Affairs, under the supervision and control of the director. The director shall administer and enforce relevant provisions of MAUCRSA. (Bus. & Prof. Code § 26010.)
- 7) Subjects a person engaging in commercial cannabis activity without a required license to civil penalties of up to three times the amount of the license fee for each violation. Each day of operation shall constitute a separate violation of this section. (Bus. & Prof. Code § 26038(a).)

- 8) Requires all civil penalties imposed and collected pursuant to the above by a licensing authority shall be deposited into the General Fund except as provided. Penalties shall be distributed as follows:
- a) if the Attorney General on behalf of the people brings an action, the penalties shall be deposited into the General Fund;
  - b) if the action is brought by a district attorney, county counsel, city attorney, or city prosecutor, the penalty shall be used to reimburse that entity for the costs of bringing the action, with the remainder deposited into the General Fund. (Bus. & Prof. Code § 26038(b).)

This bill imposes a three-year statute of limitations on actions for civil penalties for unlicensed cannabis activity and states a finding that the act furthers the purposes and intent of the AUMA.

### COMMENTS

#### 1. Statutes of limitations

A statute of limitations is a requirement to commence legal proceedings (either civil or criminal) within a specific period of time. Statutes of limitations are tailored to the cause of action at issue – for example, cases involving injury must be brought within two years from the date of injury, cases relating to written contracts must be brought four years from the date the contract was broken, and, as commonly referenced in the media, there is no statute of limitations for murder. Although it may appear unfair to bar actions after the statute of limitations has elapsed, that limitations period serves important policy goals that help to preserve both the integrity of the state’s legal system and the due process rights of individuals.

For example, one significant reason that a limitations period is necessary in many cases is that evidence may disappear over time – paperwork gets lost, witnesses forget details or pass away, and physical locations that may be critical to a case change over time. Limitations periods also promote finality by encouraging an individual who has been wronged to bring an action sooner rather than later – timely actions arguably ensure that the greatest amount of evidence is available to all parties. In general, California law requires all civil actions be commenced within applicable statutes of limitations. (Code Civ. Proc. § 312.)

#### 2. Extending the statute of limitations for certain MAUCRSA violations

MAUCRSA vests licensing power in various state agencies based on their respective expertise. The Bureau of Cannabis Control is given primary oversight authority to administer and enforce the relevant provisions of MAUCRSA. It licenses and regulates dispensaries, distributors, and transporters. (Bus. & Prof. Code § 26010 et seq.) Other agencies are given licensing authority over other sectors of the legal cannabis market.

The Department of Food and Agriculture is charged with licensing cannabis cultivators. (Bus. & Prof. Code § 26060.) The Department of Public Health is responsible for promulgating regulations governing the licensing of cannabis manufacturers and standards for the manufacturing, packaging, and labeling of all manufactured cannabis products. (Bus. & Prof. Code § 26130.)

MAUCRSA establishes a comprehensive enforcement scheme. It establishes a host of grounds for disciplinary action including failure to comply with any provision of MAUCRSA or any rule or regulation adopted pursuant thereto. (Bus. & Prof. Code § 26030.) Each licensing authority is authorized to suspend, revoke, place on probation, or fine their licensees, after proper notice and hearing to the licensee, if the licensee is found to have committed any of the acts or omissions constituting grounds for disciplinary action. (Bus. & Prof. Code § 26031.)

MAUCRSA also subjects a person engaging in commercial cannabis activity without the required license to civil penalties of up to three times the amount of the license fee for each violation. (Bus. & Prof. Code § 26038(a).) Each day of unlawful operation constitutes a separate violation and the person in violation can be held liable for the cost of destroying the cannabis associated with their violation. The collected penalties awarded in an action brought by a licensing authority or the Attorney General on behalf of the people shall be deposited into the General Fund. If the action is brought by a district attorney, county counsel, city attorney, or city prosecutor, the penalty collected must first be used to reimburse that entity for the costs of bringing the action, with the remainder deposited into the General Fund. (Bus. & Prof. Code § 26038(b).)

Under existing law, the general statute of limitations in California to bring an action upon a statute for a forfeiture or penalty to the people of this state is one year. (Civ. Proc. Code § 340(b).) Therefore, actions pursuant to Section 26038 must be brought within one year. This bill imposes a three-year statute of limitations on actions for civil penalties for unlicensed cannabis activity.

### 3. Support for the bill

According to the author:

Shutting down the illicit market is critical to the successful implementation of Proposition 64, and imperative for allowing the legal cannabis industry to thrive. This is why Proposition 64 allowed for substantial civil penalties to be levied against bad actors. Portions of Proposition 64 provide for a 5-year statute of limitations while other sections, specifically those pertaining to the authority granted to the Attorney General, district attorneys and county counsel is silent. In this case, the statute of limitations defaults to one-year.

Cannabis investigations are complex and often involve multiple local and state agencies that investigate not only the cultivation or manufacturing aspect of the cannabis industry, but also environmental crimes associated with the grow. Concurrently, a host of consumer protection violations related to the advertisement or ingestion of cannabis products can also be a part of each investigation. By the time each of these agencies have completed their respective investigations, the one-year clock may have already run, preventing cases from being fully prosecuted.

The California District Attorneys Association, the sponsor of this bill, writes in support: “Extending the statute of limitations on these cases will allow for a more thorough investigation, increasing consumer and environmental protection.”

Writing in support, the California Cannabis Industry Association explains the need for the bill:

The illicit cannabis market in California, which has seen more revenue than ever before in recent years, is our legal industry’s biggest competitor and most significant challenge. Illicit operations have no guarantee of age verification, do not pay any state taxes, and sell products without any of the rigorous safety or quality assurance requirements imposed on legal cannabis. Without ensuring regulators have the proper tools to enforce against illicit operations, success of our legal cannabis industry will continue to be stymied and the intent of Proposition 64 cannot fully be met.

4. Furthering the purposes of Proposition 64

Current law authorizes the Legislature by majority vote to enact laws to implement the state’s regulatory scheme for cannabis only if those laws are consistent with the purposes and intent of the Control, Regulate and Tax Adult Use of Marijuana Act (Proposition 64, 2016). (Bus. & Prof. Code § 26000(d).) The bill provides: “The Legislature finds and declares that this act furthers the purposes and intent of the Control, Regulate and Tax Adult Use of Marijuana Act.” Given the clear purpose of the act was to effectively regulate and control the market for cannabis, this bill so effectuates and furthers that intent.

**SUPPORT**

California District Attorneys Association (sponsor)

California Cannabis Industry Association

Consortium Management Group/Caliva

## OPPOSITION

None known

## RELATED LEGISLATION

### Pending Legislation:

SB 311 (Hueso, 2021) requires a health care facility to permit a terminally ill patient, defined as a prognosis of one year or less to live, to use medical cannabis within the health care facility. This bill is currently on the Assembly Floor.

AB 1034 (Bloom, 2021) authorizes a local jurisdiction to allow for the preparation or sale of noncannabis food or beverage products by a licensed cannabis retailer or microbusiness in an area where the consumption of cannabis is allowed. The bill is currently in the Senate Business, Professions and Economic Development Committee.

AB 1138 (Rubio, 2021) also amends Section 26038 to extend the statute of limitations to three years. The bill provides for liability against those aiding and abetting unlicensed commercial cannabis activity. This bill is currently in the Senate Judiciary Committee.

AB 1222 (Chen, 2021) authorizes cannabis beverages to be packaged in glass containers that are clear or any color. This bill is currently in the Senate Business, Professions and Economic Development Committee.

AB 1305 (Lackey, 2021) exempts from the licensure and regulatory requirements of MAUCRSA activity authorized under the federal Controlled Substances Act. This bill is currently on the Senate Floor.

### Prior Legislation:

AB 2437 (Quirk, 2020) would have made the same changes as the current bill. It would have further provided that the relevant cause of action is not deemed to have accrued until discovery by the agency bringing the action of the facts constituting the grounds for commencing the action. The bill died in the Assembly Judiciary Committee.

SB 94 (Committee on Budget and Fiscal Review, Ch. 27, Stats. 2017) *See Executive Summary.*

SB 643 (McGuire, Ch. 719, Stats. 2015) *See Executive Summary.*

AB 243 (Wood, Ch. 688, Stats. 2015) *See Executive Summary.*

AB 266 (Bonta, Ch. 689, Stats. 2015) *See Executive Summary.*

**PRIOR VOTES:**

Senate Business, Professions and Economic Development Committee (Ayes 11, Noes 0)  
Assembly Floor (Ayes 78, Noes 0)  
Assembly Appropriations Committee (Ayes 16, Noes 0)  
Assembly Business and Professions Committee (Ayes 19, Noes 0)  
Assembly Judiciary Committee (Ayes 11, Noes 0)

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