

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

SB 1109 (Bradford)
Version: April 16, 2024
Hearing Date: April 23, 2024
Fiscal: Yes
Urgency: No
AM

SUBJECT

Cannabis: demographic information of persons with financial interests in license applicants

DIGEST

This bill requires the Department of Cannabis Control (DCC) to collect demographic data about every person with a financial interest in a person applying for a license under the Control, Regulate and Tax Adult Use of Marijuana Act, and specifies that the information is to be maintained as confidential; however, the bill requires the DCC to publish the information in the aggregate on its website.

EXECUTIVE SUMMARY

This bill seeks to give the Department of Cannabis Control (DCC) the authority to request, but not require, demographic data from every person with a financial interest in a person applying for a license. These provisions would only become operable if DCC unifies its licensing system. The bill ensures that the information provided remains confidential and is only released in the aggregate. The idea for this bill comes from a policy recommendation by the Cannabis Policy Lab.¹ This bill is author sponsored. No timely support or opposition was received by the Committee. This bill passed the Senate Business, Professions and Economic Development Committee on a vote of 11 to 0.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Establishes the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), which establishes a comprehensive system to control and regulate the

¹ Cannabis Policy Lab, *How to Improve the State's Cannabis Laws and Regulating Framework*, (Feb, 2024), <https://www.cannabispolicylab.com/research-and-analysis/2024-02/california-cannabis-report-licensing-and-market-access>.

cultivation, distribution, transport, storage, manufacturing, processing, and sale of medical cannabis and recreational cannabis for adults aged 21 years and older. (Bus. & Prof. Code, div. 10, §§ 26000 et seq.)

- 2) Establishes the DCC, which has licensing and regulatory authority under MAUCRSA, except where the authority is expressly delegated to another agency or department. (Bus. & Prof. Code, §§ 26010, 26012.)
- 3) Establishes 20 types of licenses for various commercial cannabis activities, including cultivation, manufacturing, testing, retail, distribution, and microbusiness; a licensee must designate whether the license is for adult-use or medicinal cannabis, except for the testing laboratory license. (Bus. & Prof. Code, § 26050.)
- 4) Prohibits a person from engaging in commercial cannabis license without a valid license issued by the DCC. (Bus. & Prof. Code, § 26037.5.)
- 5) Requires an applicant for licensure to provide a complete list of every person with a financial interest in the person applying for the license as required by the department.
 - a) A “persons with a financial interest” does not include persons whose only interest in a licensee is an interest in a diversified mutual fund, blind trust, or similar instrument. (Bus. & Prof. Code, § 26051.5(d).)
- 6) Provides, pursuant to the California Constitution, that the people have the right of access to information concerning the conduct of the people’s business, and, therefore, the meetings of public bodies and the writings of public officials and agencies are required to be open to public scrutiny. (Cal. const. art. I, § 3(b)(1).)
 - a) Requires a statute to be broadly construed if it furthers the people’s right of access, and narrowly construed if it limits the right of access. (Cal. const. art. I, § 3(b)(1).)
 - b) Requires a statute that limits the public’s right of access to be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest. (Cal. const. art. I, § 3(b)(1).)
- 7) Governs the disclosure of information collected and maintained by public agencies pursuant to the CPRA. (Gov. Code §§ 7920.000 et seq.)
 - a) States that the Legislature, mindful of the individual right to privacy, finds and declares that access to information concerning the conduct of the people’s business is a fundamental and necessary right of every person in this state. (Gov. Code § 7921.000.)
 - b) Defines “public records” as any writing containing information relating to the conduct of the public’s business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. (Gov. Code § 7920.530.)

- c) Provides that all public records are accessible to the public upon request, unless the record requested is exempt from public disclosure. (Gov. Code § 7922.530.)

This bill:

- 1) Requires DCC to collect demographic data about every person with a financial interest in a person applying for a license, as described in subdivision (d) of Section 26051.5 of the Business and Professions Code.
 - a) Provides that “demographic data” includes, but is not limited to, race, ethnicity, gender, sexual orientation, income level, education level, prior convictions, and veteran status.
 - b) Provides that the data may be requested upon initial licensure or at time of license renewal.
- 2) Requires DCC to consolidate the received data and requires them to publish the data, in the aggregate, on the DCC’s website.
- 3) Requires DCC to maintain the confidentiality of the data it receives, and specifies it can only be released in the aggregate and cannot be used to identify an individual.
- 4) Specifies that a licensee or applicant is not required to provide the information as a condition of licensure or license renewal, and a licensee cannot be subject to discipline for not providing the information.
- 5) Provides that the bill is not to become operative unless DCC unifies its licensing system for commercial cannabis activity.

COMMENTS

1. Stated need for the bill

The author writes:

SB 1109 will require the Department of Cannabis Control to collect and report demographic information of every person with a financial interest in an applicant for licensure. Since the passage of Prop 64, entrepreneurs have continued to face difficulty entering and staying in the retail market, especially if they are Black or Brown. California has a responsibility to make sure that our cannabis industry is equitable and fair to all. When their businesses succeed, not only does that help our communities but it also helps combat the illicit market. This measure will provide necessary transparency about California’s cannabis industry.

2. Cannabis legalization and equity

While cannabis remains a Schedule I narcotic under federal law,² California has permitted medical cannabis use since 1996.³ Adult recreational cannabis use was approved by the voters in 2016,⁴ and the Legislature subsequently enacted MAUCRSA to streamline and synthesize the licensing and regulatory regimes for medical and recreational cannabis.⁵ The state's legalization of recreational cannabis comes after decades of harsh penalties for the sale and possession of cannabis under state (and federal) law. Between 2006 and 2015 alone, there were nearly half a million cannabis-related arrests in the state, and while white and Black people in California use cannabis at similar rates, Black people were approximately four times as likely to be arrested for cannabis offenses.⁶ The state has taken some steps to undo the harm of decades of unequal cannabis enforcement: Proposition 64 allowed persons with certain possession, cultivation, and transport convictions to apply for conviction relief,⁷ and the California Cannabis Equity Act of 2018 established equity grants to help reduce barriers to entry into the legal market.⁸ Yet the financial benefits of legal cannabis have overwhelmingly inured to the benefit of white people.⁹ The Cannabis Policy Lab, a nonpartisan organization, released a report in February 2024 on California's cannabis laws and made several policy proposals, one of which is to allow DCC to collect owner demographic information so California can "measure its progress towards achieving an equitable marketplace."¹⁰

3. Limiting disclosure of public records

California generally recognizes that public access to information concerning the conduct of the people's business is a fundamental and necessary right.¹¹ At the same time, the

² 21 U.S.C. § 812. Drugs designated as Schedule I ostensibly have a high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use of the drug or other substance under medical supervision. (*Id.*, § 812(b)(1).) Opium and fentanyl, by contrast, are designated as Schedule II. (*Id.*, § 812, Schedule II.)

³ Compassionate Use Act (Prop. 215), as approved by voters, Gen. Elec. (Nov. 5, 1996).

⁴ The Control, Regulate, and Tax Adult Use of Marijuana Act (Prop. 64), as approved by voters, Gen. Elec. (Nov. 8, 2016).

⁵ SB 94 (Senate Committee on Budget and Fiscal Review, Ch. 27, Stats. 2017).

⁶ Ingraham, California arrested nearly half a million people for pot over the past decade, Washington Post (Aug. 18, 2016), <https://www.washingtonpost.com/news/wonk/wp/2016/08/18/california-arrested-nearly-half-a-million-people-for-pot-over-the-past-decade/> [last visited Jul. 2, 2021].

⁷ The Control, Regulate, and Tax Adult Use of Marijuana Act (Prop. 64), as approved by voters, Gen. Elec. (Nov. 8, 2016).

⁸ SB 1294 (Bradford, Ch. 794, Stats. 2018).

⁹ Yzola, The legal cannabis industry is exploding, but overwhelmingly run by white owners, Insider (Apr. 17, 2020), <https://www.insider.com/how-big-weed-became-rich-white-business-2019-12> [last visited Jul. 2, 2021].

¹⁰ Cannabis Policy Lab, *How to Improve the State's Cannabis Laws and Regulating Framework*, (Feb, 2024), <https://www.cannabispolicylab.com/research-and-analysis/2024-02/california-cannabis-report-licensing-and-market-access> at p. 18.

¹¹ Cal. Const., art. I, § 3; Gov. Code, § 7921.000.

state recognizes that this right must be balanced against the right to privacy.¹² The general right of access to public records may, therefore, be limited where records include personal information. In recognition of this, the bill states that in order to protect the privacy of licensees, while also gathering useful workforce data, it is necessary that some information collected from licensees only be released in aggregate form. In light of the personal nature of the information being collected, the bill's findings appear consistent with the state's right to privacy and limits on disclosure of public records.

SUPPORT

None received

OPPOSITION

None received

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

AB 342 (Valencia, Ch. 200, Stats. 2023) authorized the California Architects Board and the Bureau of Real Estate Appraisers to request a licensee identify their race, ethnicity, gender, or gender identity at initial licensure or at the time of license renewal, and provided that a licensee is not required to provide this information as a condition of licensure or license renewal.

AB 133 (Assembly Budget Committee, Ch. 143, Stats. 2021), among other things, required certain healing arts boards to collect specified workforce data, including gender or gender identify and race or ethnicity, from their respective licensees and registrants for future workforce planning at least biennially.

PRIOR VOTES

Senate Business, Professions and Economic Development Committee (11 Ayes, 0 Noes)

¹² Cal. Const., art. I, § 1; Gov. Code § 7921.000.