

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

AB 1448 (Wallis)
Version: May 3, 2023
Hearing Date: July 11, 2023
Fiscal: Yes
Urgency: No
AWM

SUBJECT

Cannabis: enforcement by local jurisdictions

DIGEST

This bill redirects the proceeds of civil penalties recovered against persons who engage in, aid and abet, or knowingly provide property for unlicensed cannabis activity in suits brought by county or city counsel or a city prosecutor, to provide that the county or city obtains half of the penalties recovered, after the prosecuting entity is reimbursed for the costs of bringing the lawsuit.

EXECUTIVE SUMMARY

Although cannabis has been legal in California for medical use since the mid-1990s and for adult recreational use since 2016, an illicit market for cannabis products continues to flourish in the state. Operators engaging in unlicensed cannabis activity have significant economic advantages over their licensed counterparts, as unlicensed operators can avoid the costs of complying with state regulations, paying taxes, and properly testing products. In recent years, the Legislature has approved several measures aimed at strengthening civil enforcement of cannabis laws to prevent the illicit market from overtaking licensed cannabis businesses. Under current law, civil penalties recovered go first to reimburse the prosecuting entity (the Attorney General, city or county counsel, or city prosecutor) for the costs of bringing the suit, and any remaining penalties are deposited in the General Fund.

This bill modifies the allocation of the civil penalties recovered by a city or county counsel or a city prosecutor. Specifically, the bill provides that, after the public prosecutor is reimbursed for their costs of bringing the suit, half of the remaining penalty is deposited in the General Fund; the other half goes to either the treasurer for the county in which the judgment was entered in the action, if the action was brought by a county counsel, or to the treasurer of the city in which the complaining attorney has jurisdiction, if the action was brought by a city counsel or city prosecutor. The

author agreed in the Senate Business, Professions, and Economic Development Committee to amend the bill to remove the intent language in Section 2 of the bill.

This bill is sponsored by Rural County Representatives of California and is supported by the California Cannabis Industry Association, the California State Association of Counties, the County of Monterey, the County of Nevada, the County of Riverside, the County of San Bernardino, the County of Siskiyou, and the League of California Cities. There is no known opposition. The Senate Business, Professions and Economic Development Committee passed this bill with a vote of 13-0.

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 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 Department of Cannabis Control (DCC), which has licensing and regulation authority under MAUCRSA, except where the authority is expressly delegated to another agency or department. (Bus. & Prof. Code, §§ 26010, 26012.)
- 3) Establishes procedures for the enforcement of MAUCRSA, including administrative action by the DCC and civil action for civil penalty that may be sought by, among others, the Attorney General on behalf of the people. (Bus. & Prof. Code, §§ 26030-26039.6.)
- 4) Provides civil penalties for persons engaging in unlicensed commercial cannabis activity, for persons aiding and abetting unlicensed commercial cannabis activity, and persons who knowingly rent or make available property for unlicensed commercial activity, as follows:
 - a) For unlicensed commercial cannabis activity, the penalty is up to three times the license fee for each day of the violation; for aiding and abetting, the penalty is up to \$30,000 for each violation, per day of the violation; for knowingly renting or making property available, the penalty is up to \$10,000 per day of the violation.
 - b) The statute of limitations is three years.
 - c) Actions for aiding and abetting may be brought only by the Attorney General on behalf of the DCC, or by a city or county counsel or city prosecutor in a city or county having a population in excess of 750,000; actions for renting or making available property may be brought only by the Attorney General on behalf of the DCC or by a city or county counsel or city prosecutor.

- d) For aiding and abetting and renting/making available property, the prosecuting entity must establish additional factors regarding the defendant's knowledge and significant role in the unlicensed cannabis operation. (Bus. & Prof. Code, § 26038.)
- 5) Provides that civil penalties imposed and collected under 4) shall first be used to reimburse the Attorney General, county counsel, or city attorney or prosecutor who brought the action for the cost of bringing the action, and the remainder of the penalties shall be deposited in the General Fund. (Bus. & Prof. Code, § 26038(c), (e).)

This bill:

- 1) Redirects the civil penalties imposed for engaging in, or aiding and abetting in, or knowingly leasing property or making property available for, unlicensed commercial cannabis activity in cases where the case was brought by a county counsel, city attorney, or city prosecutor; after reimbursement for the cost of bringing the action, one-half of the remaining civil penalties collected will be paid to the treasurer of the city or county in which the complaining has jurisdiction, and one-half of the remaining penalties will be deposited in the General Fund.
- 2) Rearranges various provisions for clarity and makes nonsubstantive technical and conforming changes.¹

COMMENTS

1. Author's comment

According to the author:

The promise of Proposition 64 was, make marijuana legal and we would have a safer product, we would have a billion dollars annually in tax revenue, and we would protect kids by eliminating the illegal market. Because of illegal cannabis activities, only a portion of these promises have been achieved. Illicit cannabis operators frequently engage in human trafficking, unlawful labor practices, water theft, illegal pesticide use, and environmental degradation as part of their operations. Local law enforcement agencies and code enforcement departments are on the front lines struggling to deal with the growth of illicit cannabis activities. AB 1448 will give local jurisdictions enhanced tools in their effort to end unlicensed cannabis activities.

AB 1448 authorizes local jurisdictions through county counsel or city prosecutor to bring forward statutory penalties (BPC § 26038) through the courts or a local

¹ The author agreed in the Senate Business, Professions and Economic Development Committee to remove Section 2 of the bill; those amendments will be taken in the Senate Appropriations Committee.

administrative process. The statutory penalties consequences are a local tool to deter illegal operators. In addition, the proposed 50/50 state local split, modeled after Medical Cannabis Regulation and Safety Act (MCRSA), would create an incentive for jurisdictions to pursue more of these violations resulting in increased funds to the General Fund and creating addition funds at the local level to reinvest into unlicensed cannabis activity enforcement.

2. Despite legalization, unlicensed cannabis activity in California remains prevalent

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

Although many cannabis operators opted to embrace the newly state-legal framework and obtain licenses, the illicit market for unlicensed products continues to flourish.⁶ The persistence of unlicensed cannabis operations harms licensed operators – unlicensed operators are able to offer lower prices than licensed operators because they do not have to pay licensing fees⁷ – and can also harm the customers, given that unlicensed products do not go through quality testing and can be tainted.⁸

State and local enforcement agencies have taken steps to crack down on unlicensed cannabis, including through the creation of a Unified Cannabis Enforcement Taskforce.⁹ Stakeholders report, however, that these efforts are still insufficient to stem the tide of unlicensed cannabis, and that the prevalence of unlicensed businesses may cause licensed businesses to fail in large numbers.

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).) Fentanyl and other opioids, 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 (Committee on Budget and Fiscal Review, Ch. 27, Stats. 2017).

⁶ See, e.g., Orsmeth, *Killings, robberies, extortion. California can't stop its booming illegal cannabis stores*, L.A. Times (Sept. 13, 2022), available at <https://www.latimes.com/california/story/2022-09-13/illegal-weed-dispensaries-police-raids-crime>. All links in this analysis are current as of July 10, 2023

⁷ *Ibid.*

⁸ E.g., Kenny, *Monterey County reveals contamination in illicit marijuana samples*, The Mercury News (Dec. 15, 2021).

⁹ E.g., DCC, Press Release, California's statewide cannabis enforcement taskforce continues to aggressively combat illegal marijuana by seizing over \$52 million worth of unlicensed cannabis products (May 22, 2023), <https://cannabis.ca.gov/2023/05/californias-statewide-cannabis-enforcement-taskforce-continues-to-aggressively-combat-illegal-market-by-seizing-over-52m-worth-of-unlicensed-cannabis-products-in-q1-2023/>.

3. This bill allows county and city attorneys who bring lawsuits for civil penalties for engaging in unlicensed commercial business activity to retain a portion of the penalties recovered

MAUCRSA authorizes civil penalties to be recovered in a civil action by the Attorney General, and in certain circumstances, a county or city counsel or a public prosecutor for: (1) engaging in unlicensed commercial cannabis activity; (2) aiding and abetting unlicensed commercial cannabis activity, provided that the person was a high-level operator or participant in the business; and (3) knowingly renting or making property available for the purpose of unlicensed commercial cannabis activity.¹⁰ Under current law, amounts recovered first go to reimburse the public prosecutor for the costs of bringing the action, and the remainder is deposited in the General Fund.¹¹

This bill redirects the proceeds of civil penalties recovered against persons who engage in, aid and abet, or knowingly provide property for unlicensed cannabis activity in suits brought by county or city counsel or a public prosecutor. Specifically, the bill provides that, after the public prosecutor is reimbursed for their costs of bringing the suit, half of the remaining penalty is deposited in the General Fund. The other half, if the prosecuting attorney was a county counsel, goes to the treasurer of the county in which the judgment was entered; if the prosecuting attorney was a city counsel or city prosecutor, it goes to the city treasurer for the city in which the attorney that brought the action has jurisdiction.

Although not reflected in the bill in print, the author agreed in the Senate Business, Professions and Economic Development Committee to remove Section 2 of the bill. If this Committee passes this bill, those amendments will be taken in the Senate Appropriations Committee.

SUPPORT

Rural County Representatives of California (sponsor)
California Cannabis Industry Association
California State Association of Counties
County of Monterey
County of Nevada
County of Riverside
County of San Bernardino
County of Siskiyou
League of California Cities

¹⁰ Bus. & Prof. Code, § 26038.

¹¹ *Id.*, § 26039(c), (e).

OPPOSITION

None received

RELATED LEGISLATION

Pending Legislation:

SB 820 (Alvarado-Gil, 2023) allows the DCC or a local jurisdiction to seize specified property where unlicensed commercial cannabis activity is being conducted and vehicles used to conduct unlicensed cannabis activity, as specified. SB 820 is pending before the Senate Appropriations Committee.

AB 1684 (Maienschein, 2023) expand the authorization for an ordinance providing for the immediate imposition of administrative fines or penalties to include all unlicensed commercial cannabis activity, including cultivation, manufacturing, processing, distribution, or retail sale and would authorize the ordinance to declare unlicensed commercial cannabis activity a public nuisance. AB 1684 is pending before this Committee and is set to be heard on the same date as this bill.

AB 1601 (Alvarez, 2023) authorizes a local jurisdiction to take disciplinary action against a cannabis licensee for illegal business activities by the licensee, or for concealment of illegal business activities, by a licensee, or by an officer, director, owner, or authorized agent acting on behalf of the licensee. AB 1601 is pending before the Assembly Business & Professions Committee.

AB 1117 (Blanca Rubio, 2023) creates a private right of action allowing a licensed commercial cannabis operator who has been harmed by an unlicensed cannabis operator to seek actual damages, statutory damages, and an injunction against the unlicensed cannabis operator. AB 1171 is pending before this Committee and is set to be heard on the same date as this bill.

Prior Legislation:

AB 1530 (Cooley, 2019) would have authorized a local jurisdiction to adopt an ordinance or resolution that permits, restricts, limits, or bans the delivery of cannabis or cannabis products to a location within its jurisdictional boundaries. AB 1530 failed passage in the Assembly Business and Professions Committee.

SB 2164 (Cooley, Ch. 316, Stats. 2018) added the provisions authorizing a local agency to adopt an ordinance to provide for the immediate imposition of administrative fines or penalties for the violation of building, plumbing, electrical, or other similar structural, health and safety, or zoning requirements if the violation exists as a result of, or to facilitate, the illegal cultivation of cannabis, except as specified.

SB 1302 (Lara, 2018) would have prohibited a local government from adopting or enforcing any ordinance that would prohibit a licensee from delivering cannabis within or outside of the jurisdictional boundaries of the local jurisdiction. SB 1203 died on the Senate Floor.

PRIOR VOTES:

Senate Business, Professions and Economic Development Committee (Ayes 13, Noes 0)

Assembly Floor (Ayes 78, Noes 0)

Assembly Appropriations Committee (Ayes 15, Noes 0)

Assembly Judiciary Committee (Ayes 11, Noes 0)

Assembly Business and Professions Committee (Ayes 18, Noes 0)
