

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

AB 1684 (Maienschein)
Version: June 15, 2023
Hearing Date: July 11, 2023
Fiscal: No
Urgency: No
AWM

SUBJECT

Local ordinances: fines and penalties: cannabis

DIGEST

This bill expands the authorization for a local 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, provided that certain conditions are met.

EXECUTIVE SUMMARY

Californians voted to legalize the adult use and sale of recreational cannabis in 2016, and the Legislature subsequently implemented a licensing regime for the cultivation, manufacture, testing, and sale of cannabis products. Despite the state's efforts to permit and regulate cannabis activities, illicit cannabis activities still remain a substantial portion of the cannabis industry. These unlicensed businesses can undercut legal businesses because they do not have to pay licensing, testing, and other state-mandated costs, deny the state millions in tax dollars each year, and put consumers at risk by selling untested cannabis products.

This bill is intended to provide local agencies a broader enforcement mechanism against unlicensed cannabis activities. The bill permits a local agency to adopt an ordinance to declare commercial cannabis activity undertaken without a license to be a public nuisance, and authorizes the local agency to assess these fines and penalties on the property owner and on each owner of the business entity engaging in unlicensed commercial cannabis activity if it results in certain zoning or building violations. The fines or penalties may be imposed jointly and severally upon a property owner and the person engaging in the unlicensed commercial cannabis activity in certain circumstances; the fines shall not exceed \$1,000 per violation and not more than \$10,000 per day. The author has agreed to amendments to clarify that the maximum penalty or

fine that may be imposed per day, in total, is \$10,000. Finally, the bill permits the local agency to refer cases involving unlicensed cannabis activity to the Attorney General, who may undertake any enforcement mechanisms provided by law. The author has agreed to amend the bill to ensure that penalties are not imposed for lawful medical cannabis activity.

This bill is sponsored by the author and is supported by Attorney General Rob Bonta. This bill is opposed by California NORML. The Senate Governance and Finance Committee passed this bill with a vote of 8-0.

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, under the supervision and control of a director, who is tasked with administering and enforcing the provisions of MAUCRSA. (Bus. & Prof. Code, § 26010.)
- 3) Provides that, with specified exceptions for medical cannabis, MAUCRSA does not supersede or limit local authority:
 - a) To adopt and enforce local ordinances to regulate licensed cannabis businesses, including, but not limited to, local zoning and land use requirements, business license requirements, and requirements related to reducing exposure to secondhand smoke, or to completely prohibit the establishment or operation of one or more types of cannabis business types authorized by MAUCRSA.
 - b) To undertake local law enforcement responsibilities, including zoning requirements, or enforce local licensing, permitting, or other authorization requirements. (Bus. & Prof. Code, § 26200.)
- 4) Defines a “local agency” as a county, city, whether general law or chartered, city and county, town, school district, municipal corporation, district, political subdivision, or any board, commission or agency thereof, or other local public agency. (Gov. Code, § 54951.)
- 5) Authorizes the legislative body of a local agency to make any violation of any ordinance enacted by the local agency subject to an administrative fine or penalty, and set forth by ordinance the administrative procedures that govern the imposition,

enforcement, collection, and administrative review by the local agencies of those fines or penalties. The administrative procedures must provide a reasonable period of time for a person to correct or remedy a violation prior to the imposition of fines or penalties, when the violation pertains to building, plumbing, electrical, or other similar structural or zoning issues that do not create an immediate danger to health or safety. (Gov. Code, § 53069.4(a).)

- 6) Provides, notwithstanding 6), that a local ordinance may 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. (Gov. Code, § 53069.4(a)(2)(B).)
- 7) Requires, if a local agency adopts an ordinance for the immediate imposition of penalties for unlicensed cannabis activities under 6), the ordinance must provide a reasonable time for correction or remedy of the violation prior to the imposition of administrative fines or penalties if all of the following are true:
 - a) A tenant is in possession of the property that is the subject of the administrative action.
 - b) The real property owner or agent can provide evidence that the rental or lease agreement prohibits the cultivation of cannabis.
 - c) The rental property owner or agent did not know the tenant was illegally cultivating cannabis and no complaint, property inspection, or other information caused the rental property owner or agent to have actual notice of the illegal cannabis cultivation. (Gov. Code, § 53069.4(a)(2)(C).)

This bill:

- 1) Authorizes a local agency to adopt an ordinance declaring unlicensed commercial activity to be a public nuisance, and to provide for the immediate imposition of administrative fines or penalties for the violation of various local zoning restrictions or safety requirements if the violation exists as a result of, or to facilitate, the unlicensed cultivation, manufacturing, processing, distribution, or retail sale of cannabis.
 - a) The ordinance may impose the administrative fines and penalties upon the property owner and upon each owner of the occupant business entity engaging in unlicensed commercial cannabis activity and may hold them jointly and severally liable for the administrative fines and penalties.
 - b) The administrative fines or penalties immediately imposed shall not exceed \$1,000 per violation and \$10,000 per day. This limitation does not apply to fines or penalties that are imposed after notice and a reasonable time to correct the violation.

- 2) Requires a local ordinance adopted pursuant to 1) to provide a reasonable amount of time for the correction or remedy of the violation prior to the imposition of the fines or penalties if all of the following are true:
 - a) A tenant is in possession of the property that is the subject of the action.
 - b) The rental property owner or agent can provide evidence that the rental or lease agreement prohibits commercial cannabis activity.
 - c) The rental property owner or agent did not know that the tenant was engaging in unlicensed commercial cannabis activity and nothing put the rental property owner or agent on notice of the unlicensed activity.
- 3) Authorizes a local agency that passes an ordinance pursuant to 1) to refer cases involving unlicensed commercial cannabis activity to the Attorney General to undertake civil enforcement action.

COMMENTS

1. Author's comment

According to the author:

The overwhelming majority of all cannabis cultivation, manufacturing, and retail sales in the state remains unlicensed. Cannabis goods that make their way to consumers through illegal channels come from businesses that do not comply with applicable cannabis safety and testing requirements, environmental laws, labor and employment laws, building and fire code requirements, or pay applicable taxes and license fees. Unlicensed commercial cannabis activity poses significant danger to the public, to the environment, and to the viability of the legal marketplace.

AB 1684 allows for increased administrative enforcement against unlicensed commercial cannabis activities at the local level and to create opportunities for greater cooperation between local jurisdictions and the Office of the Attorney General in reducing and eliminating unlicensed commercial cannabis activities. Encouraging an administrative enforcement approach will create a more efficient means to discourage and eradicate unlicensed commercial cannabis activities, while avoiding many of the harms inherent in traditional criminal enforcement against illegal cannabis activities.

2. MAUCRSA imposes a legal cannabis regime that provides for both state-level and local-level control

While cannabis remains a Schedule I narcotic under federal law,¹ California has permitted medical cannabis use since 1996.² Adult recreational cannabis use was approved by the voters in 2016,³ and the Legislature subsequently enacted MAUCRSA to streamline and synthesize the licensing and regulatory regimes for medical and recreational cannabis.⁴ Consistent with the ballot measure approved by the voters, MAUCRSA allows local governments to adopt and enforce local ordinances to regulate cannabis businesses licensed by the State, including imposing local zoning and land use requirements or completely prohibiting the establishment or operation of licensed cannabis businesses.⁵

In 2018, the Legislature enacted AB 2164 (Cooley, Ch. 316, Stats. 2018), a measure sponsored by the California State Sheriffs Association that authorized a local agency to adopt an ordinance allowing 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 was the result of, or was to facilitate, the illegal cultivation of cannabis.⁶ The bill created an exception to the general rule that, before a fine could be imposed pursuant to a local agency's administrative procedure, the person responsible for the violation had to be provided with an opportunity to cure the violation if it did not create an immediate danger to health or safety.⁷ The bill also created an exception to the exception: a landlord whose tenant was responsible for the unlicensed cannabis cultivation and violation does have the opportunity to cure the violation, if the rental agreement prohibited the cultivation of cannabis and the landlord was unaware that the cannabis cultivation was occurring.⁸ According to the Senate Governance and Finance Committee's analysis of AB 2164, the bill was needed because, under the current law requiring an opportunity to cure a violation, unlicensed cultivators could evade administrative penalties simply by moving locations.⁹ The fines can range from \$100 to \$2,500, depending on how many

¹ 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.)

² Compassionate Use Act (Prop. 215), as approved by voters, Gen. Elec. (Nov. 5, 1996).

³ The Control, Regulate, and Tax Adult Use of Marijuana Act (Prop. 64), as approved by voters, Gen. Elec. (Nov. 8, 2016).

⁴ SB 94 (Senate Committee on Budget and Fiscal Review, Ch. 27, Stats. 2017).

⁵ Bus. & Prof. Code, § 26200.

⁶ See Gov. Code, § 53069.4(a)(2)(B).

⁷ *Id.*, § 53069.4(a)(2)(A).

⁸ *Id.*, § 53069.3(a)(2)(C).

⁹ Sen. Com. on Gov. & Fin., Analysis of Assem. Bill No. 2164 (2017-2018 Reg. Sess.), as amended May 29, 2018, p. 4.

prior violations the violator has committed and whether the violation poses a threat to public health or safety.¹⁰

3. This bill gives local agencies the authority to impose immediate fines or penalties, of up to \$10,000 daily, for zoning and building violations that arise from unlicensed commercial cannabis activity

This bill expands the provisions of AB 2164 in several ways. First, this bill expands the scope of the cannabis-related activity which, if it gives rise to a zoning or structural violations, may be punishable by the imposition of an immediate fine. Current law allows such immediate penalties only for such violations arising from unlicensed cannabis cultivation; this bill allows a local agency to declare unlicensed cannabis to be a public nuisance and impose immediate fines for local zoning or structural violations arising from any unlicensed cannabis activity. The bill also specifies that its provisions shall not be construed to apply to cannabis cultivation that is lawfully undertaken pursuant to existing law or to commercial cannabis activity undertaken pursuant to a license. The bill retains the existing right to cure for landlords who were unaware of the unlicensed cannabis activity on their property and meet specified criteria, but permits in other cases the fines to be imposed jointly and severally on a property owner and each owner of the occupant unlicensed cannabis activity.

Additionally, this bill increases the amount of the administrative fines or penalties that the local agency may immediately impose for zoning or building-related violations arising from commercial cannabis activity. The bill provides that the fines or penalties shall not exceed \$1,000 per violation and that the aggregate daily fines or penalties max out at \$10,000 per day, even if the combined violations would otherwise exceed \$10,000. These limits do not apply to administrative fines or penalties imposed after notice and a reasonable time to cure.

Finally, the bill clarifies that a local agency that passes an ordinance authorized under the bill may refer cases involving unlicensed commercial cannabis activity to the Attorney General to take undertake civil enforcement actions authorized under MAUCRSA or other applicable law. As explained further below by the Attorney General, the intent of this provision is to allow greater collaboration between local governments and the Office of the Attorney General on enforcement efforts. The author has agreed to amendments to ensure that lawful medical cannabis activities are not inadvertently included within the scope of conduct that may be subject to penalties.

As with other bills that increase penalties for unlicensed cannabis activity,¹¹ this bill some poses some risk that local agencies will impose high penalties on low-level actors who are not meaningfully contributing to the unlicensed cannabis industry. The pre-

¹⁰ Gov. Code, §§ 25132, 36900.

¹¹ E.g., AB 1138 (Blanca Rubio, Ch. 530, Stats. 2021).

legalization era (and, at the federal level, the pre-forbearance era) was marked by harsh punishments for individual dealers and persons in possession of small amounts of cannabis;¹² these penalties were overwhelmingly meted out to people of color, particularly Black people.¹³ While this bill provides for civil penalties or fines, not incarceration, it is worth noting that a \$10,000 penalty would be crushing for many people who are not at the top of the large-scale unlicensed cannabis operations. While the unlicensed cannabis industry is unquestionably harming the State's legal cannabis businesses, not all unlicensed activity is created equal; this bill gives local agencies broad discretion to decide which unlicensed businesses to punish and which to let slide, which may give rise to the same type of inequitable enforcement that characterized drug policy prior to legalization.

4. Amendments

As noted above, the author has agreed to amend the bill to ensure that legal medical cannabis activity authorized under the Compassionate Use Act cannot be the basis for local penalties. The amendments are as follows subject to any nonsubstantive changes the Office of Legislative Counsel may make:

Amendment 1

On page 3, in line 11, after "retail sale of cannabis" add "for which a license is required"

Amendment 2

On page 3, in line 13, make "Section" plural and add "or 11362.5" after "11362.1".

Amendment 3

On page 3, in line 16, after "regulations" add "or to persons exempt from licensure under Section 26033 of the Business and Professions Code"

Amendment 4

On page 4, in lines 4-8, modify clause (iii) to read (additions in bold/underline, deletions in strikethrough):

"The rental property owner or agent did not know the tenant was ~~illegally~~ engaging in **unlicensed** commercial cannabis activity **for which a license was required** and

¹² E.g., King & Mauer, The war on marijuana: The transformation of the war on drugs in the 1990s, Harm Reduction Journal, 3:6 (2006).

¹³ *Ibid.*

no complaint, property inspection, or other information caused the rental property owner or agent to have actual notice of unlicensed commercial cannabis activity.”

5. Arguments in support

According to Attorney General Rob Bonta:

Existing law allows local jurisdictions, by the adoption of an ordinance, to declare what constitutes a nuisance and to determine what violations of local law may be subject to abatement and administrative fines or penalties. In most jurisdictions, the very existence of an illegal, non-conforming use, including any illegal commercial cannabis operation, is a *per se* public nuisance that may be subject to enforcement action. While existing law authorizes the immediate imposition of fines for illegal cannabis cultivation, AB 1684 would expand the power of local jurisdictions to immediately impose fines against any type of unlicensed commercial cannabis activity. This will have a greater deterrent effect against those who might otherwise use or allow their property to be used for unlicensed cannabis activity. This proposal is designed to encourage local enforcement agencies to undertake more efficient enforcement strategies and to leverage existing administrative enforcement and cost recovery mechanisms to combat illegal cannabis.

AB 1684 also encourages communication between local jurisdictions and the Attorney General’s Office to create additional opportunities for civil enforcement action under Business and Professions Code section 26038 and/or section 17200. It does this by expressly stating that cities and counties can refer cases directly to the Office of the Attorney General for civil enforcement actions, strengthening collaboration as an effective approach towards combatting the illicit cannabis market...

California has the largest safe, legal, and regulated cannabis market in the world, but, unfortunately, illegal and unlicensed cannabis operations continue to proliferate. This important bill will encourage an administrative enforcement approach that will create a more efficient means to discourage and eradicate unlicensed commercial cannabis activities, while avoiding many of the harms inherent in traditional criminal enforcement. For these reasons, Attorney General Bonta respectfully requests your Aye vote on AB 1684.

6. Arguments in opposition

According to California NORML

AB 1684 would continue to allow local governments to fine immediately for cannabis cultivation, while limiting fines to \$1000 or \$10,000 per day. We have

seen numerous instances where such fines are imposed per cannabis plant, so that a 10-plant garden in violation of a local ordinance could be charged \$1000 per plant and \$10,000 per day, starting on the day notice is issued. Although Prop. 64 protected people's right to grow 6-plant cannabis gardens and did not intend to interfere with our state's medical marijuana law, local ordinances throughout the state have severely limited where personal or medical gardens could be grown, leaving people with only a single plant in violation of local ordinances and subject to fines.

AB 1684 is one of numerous bills this year seeing to give law enforcement and local governments more tools to prosecute and fine unlicensed cannabis activities, on top of the many that already exist. I think everyone agrees that the real problem, as described in the press accounts cited in the rationale for these bills, are grows with thousands of plants on acres of property that are breaking environmental and worker protection laws, as well as being in violation of laws requiring licensing of cannabis cultivation. The problem with this bill is that it isn't directed at such large operations, and rather is likely to be applied to personal gardens, small-time operators including equity applicants who can't afford to get licensed in our current overregulated scheme, those who may be growing for their or others' medical use, which local governments have sought to clamp down on despite existing protections in state law for medical gardens.

SUPPORT

Attorney General Rob Bonta

OPPOSITION

California NORML

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 1601 (Alvarez, 2023) authorizes a local jurisdiction to take any disciplinary action authorized by law by the local jurisdiction against a licensee for illegal business activities by the licensee or concealment of such activities, as specified. AB 1601 is pending before the Assembly Business and Professions Committee.

AB 1448 (Wallis, 2023) redirects specified portions of civil penalties collected for unlicensed commercial cannabis activity from the General Fund to the treasurers of localities that brought the action for the penalties. AB 1448 is pending before this Committee and is set to be heard on the same day as this bill.

AB 1171 (Blanca Rubio, 2023) authorizes a cannabis licensee to bring an action against a person engaging in commercial cannabis activity, when the licensee has been damaged by the unlicensed activity, for an injunction and actual and statutory damages as specified. AB 1171 is pending before this Committee and is set to be heard on the same day as this bill.

Prior Legislation:

AB 1138 (Blanca Rubio, Ch. 530, Stats. 2021) created a civil enforcement action for aiding and abetting unlicensed cannabis activity, with a civil penalty of up to \$30,000 per violation.

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 Governance and Finance Committee (Ayes 8, Noes 0)

Assembly Floor (Ayes 71, Noes 0)

Assembly Local Government Committee (Ayes 8, Noes 0)
