NOTICE OF MEETING & AGENDA

Friday, February 17, 2023
11 a.m. – 12:00 p.m.

via Zoom

https://zoom.us/j/8267160176
Meeting ID: 826 716 0176
Call in Number: +1 (669) 900-9128 Code: 8267160176#

In line with guidelines issued by the Department of Public Health and recent amendments to Gov't Code § 54953(e)(1) intended to minimize face-to-face interactions during the ongoing State of emergency, CCA will conduct this meeting of the Board of Directors entirely by teleconference / video conference call with no physical locations available for participation by either Board Members or the public. Members of the public are encouraged, however, to call in and participate as they have in the past via our teleconferencing system and a time will be made available during the meeting for public questions and comments.

PUBLIC COMMENT:
The Board welcomes and encourages public participation in its meetings. The public may take appropriate opportunities to comment on any issue before the Board. If public comment is not specifically requested, members of the public should feel free to request an opportunity to comment. Each speaker is limited to two minutes. If you are addressing the Board on a non-agenda item, the Board may briefly respond to statements made or questions posed as allowed by the Brown Act (Government Code Section 54954.2). However, the Board's general policy is to refer items to staff for attention, or have a matter placed on a future Board agenda for a more comprehensive action or report.

The Governor's orders (specifically Executive Order N-29-20) regarding the conduct of meetings of legislative bodies during the State of Emergency can be found at http://www.gov.ca.gov/

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AGENDA

I. 11:00 am Opening Remarks & Roll Call
Tom Haynes, President

II. 11:05 am Resolution 2023-01 Teleconference Meetings of the CCA
(See Attached)

III. 11:10 am Approval of Minutes (See Attached)
Tom Haynes, President

IV. 11:15 am Organizational Update
Greg Turner, Executive Director / Counsel CCA

A. Brown Act Requirements after March 1 (See Attached)

B. Fee Structure / Budget Update (See Attached)

C. Outreach Update

- CCA Webinar Series

D. Topics for the Annual Meeting?

V. 11:35 am Legislative Update
Greg Turner, Executive Director / Counsel CCA

A. DCC Letter to Attorney General RE Interstate Sales (See Attached)

B. Legislative Update / CCA Sponsored Legislation (See Attached)

VI. 11:45 am Platform Update / Market Trends
Adam Crabtree, NCS Analytics

VII. 11:55 am Public Comment

Except where noticed for a time certain, all times are approximate and subject to change. The meeting may be canceled or changed without notice. For verification, please contact *gturner@cca.ca.gov*. Action may be taken on any item on the agenda. Items may be taken out of order, tabled or held over to a subsequent meeting, to accommodate speakers, or to maintain a quorum

CALIFORNIA CANNABIS AUTHORITY

Resolution No. 2023-01

TELECONFERENCE MEETINGS OF THE CCA

WHEREAS, on March 4, 2020, Governor Gavin Newsom declared a state of emergency related to COVID-19, pursuant to Government Code Section 8625, and such declaration has not been lifted or rescinded; and

WHEREAS considering the ongoing concerns about public health and safety, on March 17, 2020, Governor Newsom Issued Executive Oder N-29-20, which suspended certain provisions of the Ralph M. Brown Act (the “Brown Act”) to allow local government bodies to conduct open meetings safely during the coronavirus pandemic; and

WHEREAS, on September 10, 2021, the Legislature took additional action to allow local government agencies to forego compliance with the Brown Act teleconferencing requirements under specific circumstances after adopting AB 361, which took effect immediately and amends the Brown Act’s requirements for teleconferencing during a proclaimed state of emergency and when certain other conditions are met, and certain findings are made; and

WHEREAS County health officials as well as the CDC continue to impose conditions or recommend measures to promote social distancing, including limiting the number and circumstances of in-person meetings wherever possible; and

WHEREAS the rates of transmission of COVID-19 and variants among member counties continue to pose imminent risks for the health of attendees at indoor gatherings involving individuals from outside the same household; and

WHEREAS to help protect against the spread of COVID-19 and variants, and to protect the health and safety of the public, the California Cannabis Authority (“CCA”) wishes to take the action necessary to comply with the Brown Act, as amended to continue to hold its meetings via teleconference.

NOW, THEREFORE, BE IT RESOVED that the CCA hereby finds that there is a proclaimed State of Emergency declared by the Governor on March 4, 2020, which has not been rescinded; and

BE IT FURTHER RESOLVED that the CCA hereby finds that the guidance of local, State, and federal officials continues to recommend measures to promote social distancing and limit public gatherings; and

BE IT FURTHER RESOLVED that the CCA approves meeting via teleconference for all Regular and Special Meetings of the Board for the 30 days following this resolution, in accordance with Government Code section 54953(e) and other application provisions of the Brown Act.

Duly adopted this 17th Day of February 2023.

____

Thomas Haynes
Assistant Chief Financial Officer
Yolo County
President, California Cannabis Authority

CCA Board Meeting
Via Video / Teleconference Call
DECEMBER 9, 2022
MINUTES

December 9, via Video / Teleconference Call - Meeting called to order at 11:08 am

1. Roll Call.

√ Rex Bohn , Supervisor Humboldt County
√ Justin Cooley for Jim Hamilton, Treasurer-Tax Collector, San Luis Obispo County
√ Tom Haynes, Assistant Chief Financial Officer, Yolo County
√ Alisha McMurtrie, Treasurer-Tax Collector, Inyo County
√ Jeff Frapwell, Assistant County Executive Officer, Santa Barbara County
√ Joann Iwamoto, Cannabis Program Manager, Monterey County

Others: Greg Turner, Adam Crabtree, Amy Christensen, Mackenzie Slade, Hannah Boyum, Ada Waelder.

2. Resolution 2022-05 – Teleconference Meetings of the CCA – The resolution concerned teleconference meetings in light of the ongoing COVID health crisis. The resolution was motioned by Jeff Frapwell, seconded by Tom Haynes and approved unanimously (attached).

The Board discussed the Governor's announced termination of the State emergency and the expectation to return to prior methods or conducting remote meetings. The Board asked for a memo describing how meetings were to be conducted in 2023.

3. Approval of Minutes - The minutes for June 24, 2022 were presented. Rex Bohn moved approval, seconded by Jeff Frapwell and approved without dissent.

4. Organizational Update – Greg Turner provided an overview of organizational activities since the prior Board meeting, including the addition of Tim Townsend under contract as Communications Director, and Cara Martinson as an outside consultant to assist with County and State capitol engagement. There was also a discussion regarding the External Audit (included in the materials) as well as the upcoming FY 2023/24 Fiscal Year budget.

The Board requested a monthly update summary from Greg Turner.

The Board also requested a summary of the existing membership fee structure be provided to the Board.

4. Legislative Update. – Ada Waelder from CSAC provided a discussion regarding CSAC's draft revised cannabis policy position statement as well as CSAC's anticipated 2023 legislative priorities regarding cannabis and its implications for Counties. Greg Turner provided a short up date on expected 2023 legislative activities for CCA.

5. CPPC – Mackenzie Slade, Director of CPPC, presented a short overview of her organization and the role they will be playing with CCA. Ms. Slade also discussed the recent survey they conducted (included in the materials) regarding the implications of the state reduction in the cultivation tax as it relates to consumption.

6. Platform Update – Adam Crabtree, CEO of NCS Analytics, provided a short platform update, noting in particular that the Transparency Project portal would be transitioning to a weekly, as opposed to monthly, update.

7. Public Comment – There were no public participants.

The Meeting was adjourned at 12:35 pm.

To: Members of the Board

From: Greg Turner
Executive Director / Counsel

Date: February 13, 2023

Re: Teleconference Meetings

As many of you are aware, the process by which local legislative bodies, including Joint Powers Authorities, conduct public meetings is changing. Since the beginning of the pandemic, State law has authorized local legislative bodies to meet remotely and conduct their public meetings on a simplified method. This authorization to conduct meetings entirely remotely, however, is expiring along with the expiration of the state of emergency proclaimed by the Governor. See Gov. Code § 54953(e).

With the expiration of the Governor's emergency proclamation, local legislative bodies will be required to return to in-person meetings, with limited exceptions, beginning March 1, 2023. Essentially, absent subsequent legislative changes to the Brown Act, local legislative bodies will be required to return the method of conducting public meetings that existed prior to the pandemic and the Governor's emergency proclamation, with one exception.

For CCA meetings occurring after March 1, 2023, there will be only two options for Board Members to participate remotely:

(1) the long-standing teleconference procedures of the Brown Act which require the address of location from which remote participation is conducted be identified on the Agenda and the location must accommodate participation by the public and be ADA-compliant; and

(2) pursuant to recently enacted changes to the Brown Act (A.B. 2449 (Stats 2022, ch. 285), which allows remote participation by a Member for "just cause" or in an "emergency circumstance." (See Gov't Code § 54953(f)(2)(A).).

"Emergency circumstance" means a physical or family medical emergency that prevents a member from attending in person. (See §54953(J)(1).).

"Just cause" means any of the following: (a) a childcare or caregiving need that requires remote participation; (b) a contagious illness that prevents attending in person; (c) a need related to physical or mental disability not otherwise alleviated by reasonable accommodation; or (d) travel while on official business of the legislative body or another state or local agency.

Neither exception can be utilized by a Member more than twice in any calendar year (for bodies that meet less than 10 times per year).

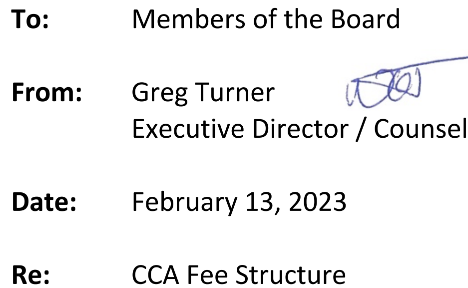
Subject to your direction, CCA will plan on continuing the availability of teleconference participation for the public, as well as for such Member staff and other personnel as may be interested. You may recall at our annual meeting last spring we were able to effectively accommodate several remote participants

in what was otherwise an in-person meeting. However, given the geographic diversity of the Membership, the costs of time and expense of travel, the Board may wish to consider the frequency of our in-person meetings (we are presently on a quarterly schedule) and/or whether to organize the location of our meetings to occur coterminous to larger events such that your travel can accommodate other endeavors in addition to participating in CCA meetings, for example, meetings coterminous to the annual meeting of CSAC Finance Corp and/or the CSAC Annual Meetings.

While there may yet be additional changes to the conduct of meetings by local legislative bodies as I suspect the public and many local bodies found the new teleconference meetings actually fostered public participation, we will have to plan according to the law as it is.

We can discuss any question you may have at our meeting or feel free to reach out to me directly.

To: Members of the Board



From: Greg Turner
Executive Director / Counsel

Date: February 13, 2023

Re: CCA Fee Structure

I was asked to include on the Agenda a discussion of CCA's fee structure. As with any organization lacking taxing authority, CCA relies on fees from members to fund its operations. Pursuant to the terms of the JPA, each member agrees to pay such charges and fees as may be periodically established by the Board of Directors.

As originally constituted, proceeds to support CCA were structurally embedded in the fees charged for use of the technology platform provided by NCS Analytics. Use of the platform is based on a percentage of transactions analyzed, or more commonly known as gross receipts, and billed quarterly in arrears. In the early stages of commercial cannabis regulation and taxation, however, this method of assessment was perceived as placing too great burden to support the organization on those Counties with the greatest cannabis production.

In response, the Board of Directors adopted a revised fee structure that would require each Member to pay a flat charge Membership Fee in support of the organization and a gross receipts type charge for use of the data platform. The gross receipts charge would mostly go towards satisfying CCA's technology provider contract, but also fund the ongoing service support agreement with CSAC Finance Corp. and provide additional organizational support.

The new fee structure consisted of a base Membership Fee ($7,000 / qtr) paid ratably by all members that would include access to the data analytics platform up to a threshold of gross receipts. For use of the platform beyond the base level ($2 million in receipts), a tiered rate fee structure was approved that would reduce the marginal rate based on volume. The new tiered rate structure would also include provision for the inclusion of cities within a member jurisdiction to take advantage of the tiered rate structure.

Quarterly CCA Membership Fees					
County Membership	$7,000	Usage Fee	Tier 0 (First)	2,000,000	0.00%
			Tier 1 (Next)	4,500,000	0.22%
			Tier 2 (Next)	8,500,000	0.21%
			Tier 3 (Next)	10,000,000	0.18%
			Tier 4 (Over)	25,000,000	0.15%
City Membership	$1,000		Ratably based on total county transactions		

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More recently, the Board approved fixing the annual usage charges for each member utilizing the platform. Instead of billing quarterly in arears based on actual usage, CCA would bill based upon an annual estimate of future usage over four quarterly periods. Volatility in the cannabis market necessarily produced volatility in local revenues as well as quarterly usage charges by CCA proving difficult for Member budgeting processes. CCA's current Board policy therefore is to establish each member's fees for the fiscal year based on an estimation of their anticipated cannabis receipts volume and fixing the charges for the fiscal year accordingly based on the current fee structure. Any volatility in actual receipts would therefore be ignored.

While this method produces a stable annual fee for membership and usage of the platform, it requires a level predictive skill as to the condition of the market twelve to eighteen months into the future. What's more, without a "true-up" to actual usage, there remains some level of inherent risk whether to the County paying more than actual usage or CCA and our technology partner NCS Analytics when usage exceeds projections.

Though our contract with NCS Analytics is based on usage of the platform, the manner in which CCA satisfies that obligation and adequately funds the operations of the JPA is open to discussion and ultimately direction from the Board of Directors.

Budget Update

	Codes	FY 2021-22	FYE ACTUAL	FY 2022-23 Budget	1/31/23 FY 2022-23
Sources:					
BEGINNING YEAR FUND BALANCE AVAILABLE		50,468	50,468		1,216
REVENUES:					
Base Membership Dues				244,000	
Platform Usage Charges				977,220	-
Total From Membership Fees		1,110,200	830,000	1,221,220	477,500
Accounts Receivable			125,000		338,500
Accounts/Notes Payable			(187,749)		(379,759)
CSAC FC Contribution					
Interest		1,100	843	1,100	902
TOTAL SOURCES		**1,161,768**	**768,094**	**1,222,320**	**437,143**
Uses:					
EXPENDITURES:	**Codes**				
Professional Services	5050340	135,000	140,800	135,000	134,505
Outside Legal Services	5050320	96,000	96,000	96,000	48,000
Insurance	5050160	2,500	-	2,500	2,429
Audit	5050030	8,500	-	8,500	22,900
Program Marketing	5050010	7,500	5,000	7,500	-
Website Management	5050100	4,500	5,175	4,500	2,695
Sponsorship Fees (Misc Exp)	5050270	125,000	675	137,500	-
Data Platform Fees (Data Communications)	5050100	715,000	509,936	786,500	63,099
Board Travel	5050450	4,500	-	4,500	359
Telephone / Telecommunications	5050440	1,850	-	1,850	-
Board Meetings	5050125	2,500	5,622	3,500	-
Credit Card Fees	5050095	650	835	650	-
Office Expenses	5050280	2,500	2,835	2,500	2,090
TOTAL EXENDITURES:					
Fixed Costs		266,000	256,267	267,000	212,978
Variable Costs		840,000	510,611	924,000	63,099
		1,106,000	**766,878**	**1,191,000**	**276,077**
Exigencies		55,768	1,216	31,320	161,066
TOTAL USES		**1,161,768**	**768,094**	**1,222,320**	**437,143**

To: Members of the Board

From: Greg Turner
Executive Director / Counsel

Date: 2-13-23

Re: Interstate Commerce

Included in the packet for this week's Board meeting is a letter from the Department of Cannabis Control to the California Attorney General. The letter requests a written opinion whether California's legalization of interstate sales of cannabis pursuant to an interstate agreement would "result in significant legal risk to the State of California under the federal Controlled Substances Act."

You may recall last year's passage of Senate Bill 1326 (Caballero)(Stats. 2022, ch. 396) which authorized the Governor to enter into agreements with other states (referred to as 'compacts') to authorize interstate sales of cannabis. That bill conditioned any such agreement or agreements on one of four events, one of which is the Attorney General issuing an opinion that any such agreement will not pose a significant legal risk to the State of California.

The idea of opening new interstate markets for licensed cannabis sales is certainly encouraging for California's beleaguered industry, though as the additional article attached notes there remain practical hurdles to any such interstate agreements in addition to the legal ones.

Nevertheless, one or more agreements entered pursuant to SB 1326 do present some potential opportunities. I thought you might have interest in the following observations:

Maybe Just Medical?
Whatever the status of California law vis-à-vis the sale of cannabis across state lines, without Congress amending the Controlled Substances Act, *individuals* engaged in the transportation of cannabis across state lines remain subject to federal prosecution. That is, with the possible exception of medicinal cannabis. Since 2015, Congress has included provisions in appropriations acts that prohibit the Department of Justice from using appropriated funds to prevent States from "implementing their own law that authorize the use, distribution, possession, or cultivation of medical marijuana." (See Consolidated Appropriates Act, 2022, Pub. L. 117-103, § 530, 136 Stat. 150 (2022). As noted in *U.S. v. McIntosh* (2016) 833 F.3d 1163 (9th. Cir. Ct. App.), "strict" compliance with State *medical* marijuana laws might be necessary to avoid federal prosecution. Though more recent decisions in the First Circuit suggest a less exacting standard. (See *U.S. v. Bilodeau* (2022) 24 F.4th 705 (1st Cir. – the rider "must be read to preclude the DOJ, under most circumstances, from prosecuting persons who possess state licenses to partake in medical marijuana activity.") Consequently, it may be that one or more interstate compacts initially focused on the transportation and sale of *medicinal* cannabis becomes a means of opening up interstate markets, notwithstanding the lack of changes to the Controlled Substances Act.

Audentis Fortuna Luvat

Setting a foundation for the interstate sale and presumably regulation of medical cannabis might set the foundation for a more expansive authorization of interstate sales for recreational cannabis. What's more, should Congress act to amend the Controlled Substances Act, it's not inconceivable that to preserve the power of States to continue outright bans or allow limited commercial activity, such authorization is made conditioned on interstate compacts that meet a series of conditions. Though the question of whether Congress has the power under the Commerce Clause to restrict purely intra-State activity is a hot topic of Supreme Court watchers these days (even in light of *Gonzales v. Raich* (2005) 545 U.S. 1 finding personal cultivation and consumption is subject to federal regulation) Congressional power to regulate inter-State sales is without legitimate dispute. California's legislation and any compacts entered into pursuant thereto could give California a head start in opening up interstate markets to legal sales should Congress finally follow through and amend the Controlled Substances Act in a way that facilitates interstate sales of licensed commercial cannabis.

No State Shall…

While DCC's letter posed the question of whether state law authorization of interstate sales pursuant to an interstate agreement would result in significant legal risk to the State of California, it doesn't raise the question of whether such an agreement with another state itself would be permissible. Article I, § 10, cl. 3 of the United States Constitution (a.k.a., the "Compact Clause") provides that "No State shall, without the Consent of Congress… enter into any Agreement or Compact with another State…". In *U.S. Steel Corp. v. Multistate Tax Comm'n* (1978) 434 U.S. 452, the United States Supreme Court validated an interstate compact (of which California was a party) which lacked Congressional consent. The Multistate Tax Compact created the Multistate Tax Commission and established a structure by which states party to the compact agreed to apportion multi-state corporate income (known as 'UDITPA' – the Uniform Division of Income for Tax Purposes Act). In *U.S. Steel*, the Court noted that the Compact Clause forbade only those compacts lacking Congressional authorization that "directed to the formation of any combination tending to increase of political power in the States, which may encroach upon or interfere with the just supremacy of the United States." (Id. at 468, *citing Virginia v. Tennessee* (1893) 148 U.S. 503.). A compact, for example, which facilitates the interstate sale and transportation of goods defined by Congress as illegal might well be viewed as interfering with the "just supremacy of the United States." Again, however, with the possible exception of medicinal cannabis given the present status and directions of the rider.

What's a State to do?

The memo presents what is arguably well understood U.S. Supreme Court precedent that recognizes the limited nature of Congressional power to command State action. Thus, while the Controlled Substances Act proscribes the possession and distribution of marijuana, Congress lacks the authority to *compel* States to enact similar proscriptions. (See *Murphy v. Nat'l Collegiate Athletic Assoc.* (2018) 138 S.Ct. 1461.). What the memo leaves out, however, are potential implications of the "dormant" Commerce Clause, which generally prohibits States from discriminating against interstate commerce. For example, several federal courts have held that *residency* requirements for licensing of commercial cannabis violates the dormant Commerce Clause, notwithstanding the Controlled Substances Act. (See e.g., *Northeast Patients Group, v. United Cannabis Patients & Caregivers of Main* (2022) 45 F.4th 542 (1st Cir.) – Congressional action to regulate an interstate market does not render the dormant Commerce Clause inoperative as to any state regulation of that same market). While certainly raising questions regarding California's residency dependent equity licensing programs, these cases also raise the question

concerning whether California's proscription against interstate cannabis sales is valid (particularly in light of Congress' on-going proscription of federal funds being expended to enforce the Controlled Substances Act in the context of medicinal marijuana in strict compliance with state law).

Interstate sales are certainly no panacea for California's ongoing commercial cannabis struggles. And the Congressional rider as to medicinal cannabis is ultimately of limited value given its ongoing uncertainty and limited scope. If anything, California's struggles with commercial cannabis here may itself impede our ability to successfully negotiate an interstate agreement with another state. And the road to legal interstate sales will introduce its own regulatory and tax hurdles. Nevertheless, the endeavor may provide opportunity and possibly a road map for the conduct of interstate sales that sets a framework for potential Congressional action even if such action remains several years away.

Department of
Cannabis Control
CALIFORNIA

Gavin Newsom
Governor

Nicole Elliott
Director

January 27, 2023

Mollie Lee
Senior Assistant Attorney General, Opinion Unit
Attorney General's Office
455 Golden Gate Ave., Suite 11000
San Francisco, CA 94102
Mollie.Lee@doj.ca.gov

Via electronic mail

Dear Ms. Lee:

Pursuant to Section 12519 of the Government Code, I write on behalf of the Department of Cannabis Control and its Director, Nicole Elliott, to request a written opinion from the Attorney General addressing the following question:

> Whether state law authorization, under an agreement pursuant to Chapter 25 of Division 10 of the Business and Professions Code, for medicinal or adult-use commercial cannabis activity, or both, between out-of-state licensees and California licensees, will result in significant legal risk to the State of California under the federal Controlled Substances Act.

We ask this question against the backdrop of historic legislation recently signed into law by the Governor. Until now (in the absence of that legislation), California state law has flatly prohibited state-licensed cannabis businesses from exporting cannabis outside the state. *See* Bus. & Prof. Code, § 26080, subd. (a). Now, however, new legislation—Senate Bill 1326 (Caballero, Chapter 396, Statutes of 2022), which took effect on January 1, 2023—has created a pathway to allow California cannabis licensees to engage, for the first time, in commercial cannabis activity with cannabis businesses licensed in other states. Under SB 1326 (codified in relevant part at Chapter 25 of Division 10 of the Business and Professions Code), California may work with other states to negotiate agreements allowing, as a matter of state law, for commercial cannabis activity between California cannabis licensees and licensees in those other states. *See* Bus. & Prof. Code, §§ 26300–26308. Such agreements would represent an important step to expand and strengthen California's state-licensed cannabis market.

Importantly, however, SB 1326 limits the circumstances under which such an agreement may take effect. In particular, SB 1326 provides that an agreement may not take effect unless at least one of four specified conditions is satisfied. *See* Bus. & Prof. Code, § 26308, subd. (a). One of those conditions is as follows:

> The Attorney General issues a written opinion, through the process established pursuant to Section 12519 of the Government Code, that

> state law authorization, under an agreement pursuant to this chapter, for medicinal or adult-use commercial cannabis activity, or both, between foreign licensees and state licensees will not result in significant legal risk to the State of California under the federal Controlled Substances Act, based on review of applicable law, including federal judicial decisions and administrative actions.
>
> Bus. & Prof. Code, § 26308, subd. (a)(4).[1]

Accordingly, we request that the Attorney General issue a written opinion addressing this question—that is, whether state-law authorization for medicinal or adult-use commercial cannabis activity, or both, between out-of-state licensees and California licensees, under an agreement pursuant to SB 1326, will result in significant legal risk to the State of California under the federal Controlled Substances Act.

For the reasons that follow, we submit that it will not.

I. The Controlled Substances Act could not constitutionally prohibit California from legalizing and regulating commercial cannabis activity with out-of-state licensees.

The Controlled Substances Act could not constitutionally prohibit California from legalizing and regulating commercial cannabis activity as a matter of state law, including commercial cannabis activity involving out-of-state licensees.

The Controlled Substances Act could not constitutionally prohibit California from legalizing and regulating commercial cannabis activity as a matter of California state law. Under the U.S. Constitution's anti-commandeering principle, federal statutes may not "command[] state legislatures to enact or refrain from enacting state law." *Murphy v. Nat'l Collegiate Athletic Ass'n*, 138 S.Ct. 1461, 1478 (2018). "[E]ven where Congress has the authority under the Constitution to pass laws requiring or prohibiting certain acts, it lacks the power directly to compel the States to require or prohibit those acts." *New York v. United States*, 505 U.S. 144, 166 (1992). This means that "the federal government lacks the power to compel [states] . . . to criminalize possession and use of marijuana under state law." *In re State Question No. 807*, 468 P.3d 383, 391 (Okla. 2020); *accord Conant v. Walters*, 309 F.3d 629, 645–46 (9th Cir. 2002) (Kozinski, J., concurring). Nor, by the same token, could the federal government prohibit states from affirmatively legalizing certain commercial cannabis activity. In *Murphy*, the Supreme Court expressly rejected any distinction, for anti-commandeering purposes, between federal laws that compel states to prohibit activity and those that prohibit states from authorizing them: "[t]he basic principle—that Congress cannot issue direct orders to state legislatures—applies in either event." 138 S.Ct. at 1478. In short, the U.S. Constitution's anti-commandeering rule protects

[1] As used here, "foreign licensee" means the holder of "a commercial cannabis license issued under the laws of another state that has entered into an agreement" under SB 1326. *See* Bus. & Prof. Code, § 26300, subd. (c). For clarity, we use the term "out-of-state licensee."

California from liability, under federal law, for choosing to legalize and regulate commercial cannabis activity as a matter of its own state laws.

This remains true where, as here, the activity to be authorized under state law involves interstate commerce—such as commerce between in-state and out-of-state cannabis licensees. The anti-commandeering rule does not rise or fall based on the strength of any underlying federal interest: on the contrary, the anti-commandeering rule means that, "[w]here a federal interest is sufficiently strong to cause Congress to legislate, it must do so directly; it may not conscript state governments as its agents." *Murphy*, 138 S.Ct. at 1477 (quoting *New York*, 505 U.S. at 178). The U.S. Supreme Court has expressly invoked the rule in the context of interstate commerce, observing that the Commerce Clause "authorizes Congress to regulate interstate commerce directly; it does not authorize Congress to regulate state governments' regulation of interstate commerce." *New York*, 505 U.S. at 166. Indeed, the cases in which the Court has articulated the anti-commandeering rule have all concerned invocations of Congress's power over interstate commerce. *See Murphy*, 138 S.Ct. at 1485 (Thomas, J., concurring); *Printz v. United States*, 521 U.S. 898, 923 (1997); *New York*, 505 U.S. at 159–60; *accord Nat'l Collegiate Athletic Ass'n v. Governor of New Jersey*, 730 F.3d 208, 224–26 (3d Cir. 2013) (confirming that the federal statute at issue in *Murphy* invoked Congress's power to regulate interstate commerce).[2] As these cases make clear, nothing about the interstate-commerce context diminishes the anti-commandeering rule—and so that rule continues to protect California's authority to legalize and regulate commercial cannabis activity as a matter of state law, whether or not that activity involves out-of-state licensees.[3]

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[2] This is unsurprising: most federal regulatory statutes, including the Controlled Substances Act, are rooted in Congress's power to regulate interstate commerce. For this reason, as discussed below (*see* Section II, *infra*), the Controlled Substances Act does not distinguish between cannabis activity involving multiple states and wholly intrastate activity. As far as the Act is concerned, *all* cannabis activity reached by the Act must fall under the rubric of interstate commerce—otherwise, Congress could not reach that activity in the first place.

[3] If anything, the U.S. Constitution's Commerce Clause underscores the importance of proceeding with caution when considering whether federal law could be understood to require a state to prohibit interstate commerce. The dormant aspect of the Commerce Clause generally bars states from discriminating against interstate commerce at all. *Dep't of Revenue v. Davis*, 553 U.S. 328, 338 (2008). And while Congress can exercise its own Commerce Clause powers to authorize such discrimination, this generally requires an "unmistakably clear," "unambiguous" display of Congressional intent to do so. *Maine v. Taylor*, 477 U.S. 131, 139 (1986). Congress has made no such clear statement as to cannabis. *Ne. Patients Group v. United Cannabis Patients & Caregivers of Maine*, 45 F.4th 542, 554 (1st Cir. 2022).

This context helps explain the Court's reference, in *Murphy*, to states' "regulation of the conduct of activities occurring within their borders." 138 S.Ct. at 1479. Beyond their borders, states generally have no regulatory authority in the first place: in the absence of affirmative

To be clear, none of the foregoing affects the federal government's own authority to enact and enforce federal law—including federal laws prohibiting commercial cannabis activity, whether or not that same activity is legal as a matter of state law. Just as federal law could not (and, as discussed below, does not—*see* Section II, *infra*) purport to compel states to prohibit commercial cannabis activity as a matter of their own state laws, California law could not and does not purport to shield state cannabis licensees from federal enforcement of federal law. The Supreme Court's anti-commandeering cases have emphasized that, while Congress may not commandeer state lawmaking, Congress remains free to legislate directly. *Murphy*, 138 S.Ct. at 1477 (quoting *New York*, 505 U.S. at 178). Such direct federal legislation—for example, the Controlled Substances Act's direct, federal-law prohibition on individual use, possession, and distribution of Schedule I controlled substances like cannabis—is consistent with the rule that Congress has "the power to regulate individuals, not States." *Murphy*, 138 S.Ct. at 1476 (quoting *New York*, 505 U.S. at 166). But precisely because federal laws like the Controlled Substances Act must act upon "individuals, not States," the Act poses no legal risk to the State of California itself (as opposed to private individuals). Here, consistent with the relevant provision of SB 1326 (*see* Bus. & Prof. Code, § 26308, subd. (a)(4)), we ask only about legal risk to the State, and not about any legal risk to private individuals.[4]

Congressional authorization, "the Commerce Clause precludes the application of a state statute to commerce that takes place wholly outside of the State's borders." *Sam Francis Found. v. Christies, Inc.*, 784 F.3d 1320, 1324–25 (9th Cir. 2015) (en banc) (quoting *Healy v. Beer Inst., Inc.*, 491 U.S. 324, 336 (1989)). And *Murphy* itself cited dormant-Commerce-Clause caselaw in describing constitutional limitations on state sovereignty. 138 S.Ct. at 1475–76 (citing *Dep't of Revenue v. Davis*).

Of course, resolution of the question presented does not require determining whether and how the dormant Commerce Clause applies to interstate commerce in cannabis: even if states were *authorized* to discriminate against interstate cannabis commerce (which is the relevant question for purposes of the dormant Commerce Clause), it would not follow that states are *required* to do so. Thus, we see no need for the Attorney General's opinion to address the dormant Commerce Clause. Consistent with the relevant provision of SB 1326 (*see* Bus. & Prof. Code, § 26308, subd. (a)(4)), we ask only about legal risk under the Controlled Substances Act, and not about any other aspect of federal law.

[4] For similar reasons, the Attorney General's opinion need not address federal preemption. "[E]very form of preemption is based on a federal law that regulates the conduct of private actors, not the States." *Murphy*, 138 S.Ct. at 1481. In other words, federal preemption concerns whether and how state law and federal law may "impose[] restrictions or confer[] rights on private actors." *Id.* at 1480. We thus are not concerned with federal preemption, because we are not concerned with restrictions imposed upon private actors: consistent with the relevant provision of SB 1326, we ask only about legal risk to the State of California itself.

In any event, there is no federal preemption here. The Controlled Substances Act expressly disavows any preemption of state law except to the extent of "a positive conflict"

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In sum, under the U.S. Constitution's anti-commandeering principle, the Controlled Substances Act could not criminalize California's legalization and regulation (as a matter of state law) of commercial cannabis activity—including commercial cannabis activity involving out-of-state licensees.

II. The Controlled Substances Act does not, in fact, criminalize California's legalization and regulation of commercial cannabis activity with out-of-state licensees.

Consistent with the constitutional limits just discussed, the Controlled Substances Act does not, in fact, purport to criminalize a state's legalization and regulation of commercial cannabis activity under state law—including commercial cannabis activity involving out-of-state licensees.

By its terms, the Controlled Substances Act shields state officials from liability in connection with their enforcement of state law. The Act expressly confers immunity upon (as relevant here) "any duly authorized officer of any State . . . who shall be lawfully engaged in the enforcement of any law or municipal ordinance relating to controlled substances." 21 U.S.C. § 885(d). This provision is broad and unqualified: on its face, it would seem to encompass all state laws relating to federal controlled substances, including state laws legalizing and regulating those controlled substances as a matter of state law. And courts have confirmed this straightforward reading, concluding (for example) that this immunity even protects covered officials from liability for conduct (the return of cannabis to an individual allowed to possess it under state law, but not federal law) that could otherwise constitute criminal distribution under the Controlled Substances Act. *City of Garden Grove v. Superior Court*, 157 Cal.App.4th 355, 368–69, 390 (2007); *cf.* 21 U.S.C. § 802(11). More relevant here, courts have confirmed that this immunity protects officials responsible for administering state laws legalizing and regulating cannabis—that is, officials who are engaged in regulatory activities like "processing applications" and "promulgating reasonable regulations" (*White Mountain Health Ctr., Inc. v. Maricopa Cty.*, 386 P.3d 416, 432 (Ariz. Ct. App. 2016)), or who are responsible for collecting cannabis taxes (*Tay v. Green*, 509 P.3d 615, 621 (Okla. 2022)). This broad immunity protects

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between state law and the Act. 21 U.S.C. § 903. As the California Court of Appeal has repeatedly recognized, there is no such conflict between the Controlled Substances Act (which classifies controlled substances like cannabis as a matter of federal law) and state laws that legalize and regulate cannabis as a matter of state law (without purporting to affect the operation of federal law)—and, therefore, no preemption by the former of the latter. *See City of Palm Springs v. Luna Crest Inc.*, 245 Cal.App.4th 879, 884–86 (2016); *Kirby v. Cty. of Fresno*, 242 Cal.App.4th 940, 962–63 (2015); *Qualified Patients Ass'n v. City of Anaheim*, 187 Cal.App.4th 734, 756–63 (2010); *Cty. of San Diego v. San Diego NORML*, 165 Cal.App.4th 798, 818–28 (2008); *City of Garden Grove v. Superior Court*, 157 Cal.App.4th 355, 380–86 (2007); *accord City of San Jose v. MediMarts, Inc.*, 1 Cal.App.5th 842, 849 (2016).

California and its officials from liability under the Controlled Substances Act for administering state laws related to the legalization and regulation of cannabis.

Even in the absence of such immunity, it is doubtful that the Controlled Substances Act would impose liability on state officials for administering state cannabis laws. At least in the absence of activities that could constitute outright possession or distribution, any such liability would presumably be incurred under conspiracy or aiding-and-abetting theories. But even a doctor's recommendation that a patient use medicinal cannabis—a necessary precondition for that patient's use of medicinal cannabis under state law—does not, without more, "translate into aiding and abetting, or conspiracy." *Conant v. Walters*, 309 F.3d 629, 635–36 (9th Cir. 2002). In this light, it is perhaps unsurprising that courts have concluded that "governmental entities do not incur aider and abettor liability by complying with their obligations under" state laws legalizing and regulating cannabis. *Cty. of San Diego v. San Diego NORML*, 165 Cal.App.4th 798, 825 n.13 (2008); *see also Qualified Patients Ass'n v. City of Anaheim*, 187 Cal.App.4th 734, 759–60 (2010); *City of Garden Grove*, 157 Cal.App.4th at 368; *White Mountain Health Ctr.*, 386 P.3d at 432. Indeed, at least one respected federal jurist has found it trivially obvious, in the context of a local government's state-law permitting scheme regulating cannabis activity, that "the permit scheme *itself* does not violate the Controlled Substances Act but rather regulates certain entities that do." *Joe Hemp's First Hemp Bank v. City of Oakland*, No. 15-cv-5053, 2016 WL 375082, at *3 (N.D. Cal. Feb. 1, 2016) (Alsup, J.) (emphasis in original). Consistent with these cases, the Controlled Substances Act should not be read to criminalize state officials' enforcement of state cannabis laws—even before considering the fact that, as discussed above, the Act's immunity provision removes any doubt on this point.[5]

And once again, this conclusion holds whether or not the state cannabis laws at issue authorize commercial activity with licensees in other states. The operative provisions of the Controlled Substances Act make no distinction between activity involving multiple states and

[5] This reading of the Controlled Substances Act is further bolstered by the rule (sometimes called the "federalism canon") that "it is appropriate to refer to basic principles of federalism embodied in the Constitution to resolve ambiguity in a federal statute." *Bond v. United States*, 572 U.S. 844, 859 (2014). "[B]efore construing a federal statute in a way that 'would upset the usual constitutional balance of federal and state powers,' courts must search for a clear statement indicating that such a result represents Congress's intent." *Ryan v. U.S. Immigration and Customs Enforcement*, 974 F.3d 9, 29 (1st Cir. 2020) (quoting *Gregory v. Ashcroft*, 501 U.S. 452, 460 (1991)). Thus, even if the Controlled Substances Act otherwise remained ambiguous as to whether it reached state officials' administration of state law, it would be appropriate to conclude that it does not.

Of course, as discussed above, the Act does *not* remain ambiguous on this point. On the contrary, the Act itself—consistent with the concerns that animate the federalism canon—repeatedly evinces a concern for the preservation of state sovereignty. *See* 21 U.S.C. § 885(d) (conferring immunity upon state officials, as discussed); *id.* § 903 (disavowing preemption of state law except to the extent of "a positive conflict").

wholly intrastate activity: under the Controlled Substances Act, both kinds of activity are equally illegal. *See, e.g.*, 21 U.S.C. § 841; *Standing Akimbo, LLC v. United States*, 141 S.Ct. 2236, 2237 (2021) (Thomas, J., respecting the denial of certiorari) (noting that the Controlled Substances Act "flatly forbids the intrastate possession, cultivation, or distribution of marijuana"). Indeed, the Act's findings take pains to reject the feasibility of a distinction between interstate and intrastate commerce in controlled substances. 21 U.S.C. § 801(5), (6). After all, the entire Controlled Substances Act is an exercise of Congress's power under the Commerce Clause—which is to say that the entire Act is, at minimum, an exercise of Congress's "power to regulate activities that substantially affect interstate commerce." *Gonzales v. Raich*, 545 U.S. 1, 17 (2005). Simply put, the Controlled Substances Act does not distinguish between interstate and wholly intrastate activity. There is, therefore, no reason to conclude that the Act subjects a state to greater liability for legalizing and regulating commercial cannabis activity involving out-of-state licensees, as compared to legalizing and regulating wholly in-state commercial cannabis activity.

In sum, by its terms, the Controlled Substances Act does not criminalize a state's legalization and regulation of commercial cannabis activity under state law—including commercial cannabis activity involving out-of-state licensees.

III. Federal law further insulates California from significant risk as to agreements concerning medicinal cannabis.

Although it is unnecessary to reach this issue (because either or both of the reasons set forth in Section I and Section II of this letter are sufficient to establish that the answer to the question presented is "no" as to both medicinal and adult-use cannabis), federal law further insulates California from "significant" risk as to agreements concerning medicinal cannabis.

Federal law—in the form of an appropriations rider attached to federal spending bills since December 2014—expressly forbids the U.S. Department of Justice from expending funds to interfere with states' implementation of their medicinal-cannabis laws. *See United States v. Bilodeau*, 24 F.4th 705, 709 (1st Cir. 2022); *United States v. McIntosh*, 833 F.3d 1163, 1169–70 (9th Cir. 2016). That rider (often called the "Rohrabacher-Farr Amendment" or the "Rohrabacher-Blumenauer Amendment," *see Bilodeau*, 24 F.4th at 709) "prohibits [the U.S. Department of Justice] from spending money on actions that prevent [states'] giving practical effect to their state laws that authorize the use, distribution, possession, or cultivation of medical marijuana." *McIntosh*, 833 F.3d at 1176. This protection extends even to private parties using, distributing, possessing, or cultivating medicinal cannabis in compliance with state law (though courts disagree as to how strictly private parties must comply with state law to avail themselves of that protection). *See Bilodeau*, 24 F.4th at 713–15; *McIntosh*, 833 F.3d at 1176–78. It is undisputed that, at its core, the rider prevents the U.S. Department of Justice from "taking legal action against the state." *McIntosh*, 833 F.3d at 1176. Thus, the Rohrabacher-Farr/Blumenauer Amendment further insulates the State of California from "significant" legal risk as to agreements concerning medicinal cannabis.

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To be sure, the impact of the Rohrabacher-Farr/Blumenauer Amendment should not be overstated. The Amendment does not change the fact that cannabis remains a Schedule I controlled substance under the Controlled Substances Act. *See McIntosh*, 833 F.3d at 1179 & n.5. Nor, as the Ninth Circuit noted in *McIntosh*, is there any guarantee that Congress will continue to add the same appropriations rider to future federal spending bills—though Congress has, in fact, consistently attached the rider to federal spending bills in the six years since *McIntosh* was decided. We do not rely on the existence of the Rohrabacher-Farr/Blumenauer Amendment as dispositive: in our view, an agreement under SB 1326 would not result in significant legal risk to the State under the Controlled Substances Act even if the Amendment did not exist, for reasons we have already explained. Nevertheless, the existence of the Rohrabacher-Farr/Blumenauer Amendment further insulates the State from any hypothetical legal risk as to agreements involving medicinal cannabis, and thus further supports the conclusion that such an agreement presents no "significant" risk to the State.

* * *

For the foregoing reasons, we submit that the answer to our question is "no": state law authorization, under an agreement pursuant to Chapter 25 of Division 10 of the Business and Professions Code, for medicinal or adult-use commercial cannabis activity, or both, between out-of-state licensees and California licensees, will *not* result in significant legal risk to the State of California under the federal Controlled Substances Act. Under the U.S. Constitution's anti-commandeering principle, the Controlled Substances Act *could not* criminalize the State's legalization and regulation of commercial cannabis activity (as a matter of state law), including commercial cannabis activity with out-of-state licensees. By its terms, the Controlled Substances Act *does not* criminalize the State's legalization and regulation of commercial cannabis activity, including commercial cannabis activity with out-of-state licensees. And other federal law—the Rohrabacher-Farr/Blumenauer Amendment—would only further insulate the State from (and thus only further reduces the significance of) any hypothetical risk under the Controlled Substances Act.

We thank you for considering our request for an opinion on the question presented above. We are happy to work with you as you further analyze the legal issues that question might raise, and we look forward to reading your response.

Sincerely,

Matthew Lee
General Counsel
Department of Cannabis Control

Opinion request approved by,

Nicole Elliott
Director
Department of Cannabis Control

Could California bring the US closer to interstate marijuana commerce?

By **Bart Schaneman**, Editor

MJBiz Daily – https://mjbizdaily.com/could-california-bring-the-us-closer-to-interstate-marijuana-commerce/

February 7, 2023

A much-hyped letter from California cannabis regulators to the state's attorney general raises an intriguing question: Is the Golden State teeing up interstate trade in marijuana?

Top officials from the state's Department of Cannabis Control (DCC) on Jan. 27 sent an eight-page letter to the office of California Attorney General Rob Bonta, laying out the legal argument for how California could sidestep federal obstacles if state officials decide to green light exports of cannabis across state lines.

The letter raised eyebrows among marijuana executives and legal experts, with industry players calling it a major development – but one that would take time, if it ever does come to fruition.

One key sticking point: California would need to find another state willing to take its marijuana, said Hirsh Jain, a California-based cannabis consultant.

"I know that there's a lot of excitement," he added. "But if you really think through the mechanics here, it's unlikely anything will happen this year.

"California needs a dance partner."

In their letter to the attorney general, the DCC's executive director, Nicole Elliott, and general counsel, Matthew Lee, asked Bonta to issue an opinion on whether exporting marijuana to another state would "result in significant legal risk to California" under the federal Controlled Substances Act.

Elliott and Lee, for their part, argued "it will not."

They noted the Commerce Clause of the U.S. Constitution bars Congress from restricting how states regulate their own interstate commerce.

Marc Hauser, principal of Hauser Advisory, a California-based consulting firm, sees this as another step in normalizing marijuana commerce across the country.

"It's a big deal and important for the industry," he said.

This comes after California Gov. Gavin Newsom in September signed Senate Bill 1326, which would create interstate commerce pacts if only one of the following criteria are met:

- Federal legalization, which is not imminent.

- A U.S. law is enacted that bars the federal government from spending money to prevent interstate marijuana shipments.
- The U. S. Department of Justice issues an opinion or memo allowing interstate marijuana commerce.
- The U.S. attorney general issues a written opinion that state law pursuant to medical or adult-use commercial marijuana activity will not result in "significant legal risk to the State of California under the federal Controlled Substances Act, based on review of applicable law, including federal judicial decisions and administrative actions."

'Bull by the horns'

Other states have taken steps to permit interstate commerce, though most depend on changes to federal cannabis law:

- In Oregon, a recently filed lawsuit challenging state law could help move the needle to allow state-to-state sales.
- New Jersey Senate President Nicholas Scutari filed a bill in August that would permit the governor to authorize interstate marijuana trade.
- Washington state lawmakers approved a bill in January that would allow interstate marijuana commerce if federal law changes.

For large-scale growers such as vertically integrated California cannabis company Glass House Brands, the move could prove profitable.

"This makes all the sense in the world," said Graham Farrar, president of the Santa Barbara-based business.

"The fact that California – the fifth-largest economy on the planet and the largest cannabis economy in the world – is taking the bull by the horns and saying, 'We want to make progress to get consumers what they want by growing plants in the right environmental place.' … This is awesome," he added.

Farrar noted that the states – versus Uncle Sam – have spearheaded major developments in marijuana reform, from medical cannabis legalization to adult-use markets.

"Literally 0% has been led by the federal government," he added.

"So there's no reason to think that interstate commerce is going to be any different."

Not so easy

However, while California's move signals another step toward allowing cannabis companies to sell marijuana beyond state borders, the logistics of how it could work are unclear.

California's Emerald Triangle region has long supplied the country's illicit market with outdoor-grown cannabis, and some of those growers have gone legit and operate in the legal market.

Those cannabis growers would like to see the entire country opened up to legal trade to help ease overproduction.

And they would also like to establish an appellations program where California cannabis is treated and marketed much like France's famed bubbly, Champagne.

But right now, if California could find a willing commerce partner, it would have to be a bordering state since marijuana air travel is regulated at the federal level.

But that, too, could prove problematic.

Oregon's market is glutted. And there no signs that Arizona or Nevada need additional cannabis.

Another key wrinkle: Why would any state forgo the tax revenue and jobs and economic benefit of growing and manufacturing marijuana within its own state?

"The states are going to very strongly oppose this, whether it's done politically or it's done through the courts," Hauser said. "Because they want to retain those tax dollars."

He pointed out the states with mandatory vertical integration wouldn't want this because it would disrupt the entire business-licensing structure.

"It becomes a lot more competition for the cultivators and manufacturers within the state," Hauser said. "It can create a race to the bottom."

That's a problem the industry is already experiencing, as mature recreational cannabis markets across the country report falling prices and oversaturated flower sectors.

Could take time

Although a few other states with legal marijuana markets have taken steps to set up interstate trade, most have not.

Even if California does get that partner to dance, that state must agree to all the terms in SB 1326.

Among other things, the new law stipulates that the partnering state must meet all the same standards as California's cannabis market, including testing, packaging and labeling.

"That'll be a real obstacle," Jain said.

"Just imagine a world in which California imposes really rigorous sustainability requirements on its cultivators, then it will have to impose those requirements on cultivators in other states or it will get a lot of flak right from its own cultivators."

And if California's cannabis market is known for anything, it's for being the most heavily regulated market in the country.

"There's going to be many diverse interests in both states that have different takes on these questions," Jain said.

"And that will slow down the process of establishing agreements."

Jain added that even after the governor comes to an agreement, he must submit it to a legislative committee that has 60 days to look at it and provide feedback.

Then the agreement must be posted on the state website for 30 days.

"This will take a really long time," Jain said. "This is a signaling of the trickle that is to come that will take many years to actually build into a river."

Bart Schaneman can be reached at bart.schaneman@mjbizdaily.com.

CALIFORNIA CANNABIS AUTHORITY
DATA ANALYTICS DRIVING EFFICIENT AND EFFECTIVE COMMERCIAL CANNABIS OVERSIGHT FOR LOCAL GOVERNMENT

Legislation of Interest
2023-2024 Session

Bill No.	Author			Topic	Bill Digest	Location	Last 5 History Actions	Flags
AB 221	Ting	AB 221	Bill Link	Budget Act of 2023.	An act making appropriations for the support of the government of the State of California and for several public purposes in accordance with the provisions of Section 12 of Article IV of the Constitution of the State of California, relating to the state budget, to take effect immediately, budget bill.	Assembly	01/26/23 Referred to Com. on BUDGET. 01/11/23 From printer. May be heard in committee February 10. 01/10/23 Read first time. To print.	Active Bill - In Committee Process Majority Vote Required Appropriation Fiscal Committee Non-State-Mandated Local Program Urgency Non-Tax levy
AB 351	Chen	AB 351	Bill Link	Cannabis: license transfers.	Existing law, the Control, Regulate and Tax Adult Use of Marijuana Act (AUMA), approved by the voters at the November 8, 2016, statewide general election, regulates the cultivation, distribution, transport, storage, manufacturing, testing, processing, sale, and use of cannabis for nonmedical purposes by people 21 years of age and older. The existing Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), among other things, consolidates the licensure and regulation of commercial medicinal and adult-use cannabis activities. This bill would state the intent of the Legislature to enact legislation that would authorize the Department of Cannabis Control to transfer licenses for commercial cannabis activity from a licensee to another person, subject to the requirements of the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA).	Assembly	02/01/23 From printer. May be heard in committee March 3. 01/31/23 Read first time. To print.	Active Bill - Pending Referral Majority Vote Required Non-Appropriation Non-Fiscal Committee Non-State-Mandated Local Program Non-Urgency Non-Tax levy
AB 374	Haney	AB 374	Bill Link	Cannabis: local control: cannabis consumption.	The Control, Regulate and Tax Adult Use of Marijuana Act (AUMA), an initiative measure approved as Proposition 64 at the November 8, 2016, statewide general election, authorizes a person who obtains a state license under AUMA to engage in commercial adult-use cannabis activity pursuant to that license and applicable local ordinances. Existing law, the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), among other things, consolidates the licensure and regulation of commercial medicinal and adult-use cannabis activities. MAUCRSA establishes the Department of Cannabis Control (department) within the Business, Consumer Services, and Housing Agency to administer the act, and requires the department to be under the supervision and control of a director. Existing law provides that a local jurisdiction may allow for the smoking, vaporizing, and ingesting of cannabis or cannabis products on the premises of a retailer or microbusiness licensed under this division if certain conditions are met. This bill would specify that a local jurisdiction exercising the authority described above may allow the retailer or microbusiness to conduct business activities on the premises other than the smoking, vaporizing, and ingesting of cannabis or cannabis products, including, but not limited to, selling non-cannabis-infused food, selling nonalcoholic beverages, and allowing, and selling tickets for, live musical or other performances.	Assembly	02/02/23 From printer. May be heard in committee March 4. 02/01/23 Read first time. To print.	Active Bill - Pending Referral Majority Vote Required Non-Appropriation Fiscal Committee Non-State-Mandated Local Program Non-Urgency Non-Tax levy
AB 420	Aguiar-Curry	AB 420	Bill Link	Cannabis: industrial hemp.	The Control, Regulate and Tax Adult Use of Marijuana Act of 2016 (AUMA), an initiative measure approved as Proposition 64 at the November 8, 2016, statewide general election, authorizes a person who obtains a state license under AUMA to engage in commercial adult-use cannabis activity pursuant to that license and applicable local ordinances. The Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), among other things, consolidates the licensure and regulation of commercial medicinal and adult-use cannabis activities and requires the Department of Cannabis Control to administer its provisions. Existing law governs the cultivation of industrial hemp in this state and establishes a registration program administered by county agricultural commissioners and the Department of Food and Agriculture for growers of industrial hemp, hemp breeders, and established agricultural research institutions, as defined. Existing law also requires hemp manufacturers who produce specified products that include industrial hemp or who produce raw hemp extract, as defined, to complete a registration process, under the State Department of Public Health, and to meet various requirements for testing and labeling on products. Existing law exempts industrial hemp, as defined, from the definition of cannabis and from MAUCRSA, but requires the Department of Cannabis Control to prepare a report, on or before July 1, 2022, to the Governor and the Legislature outlining the steps necessary to allow for the incorporation of hemp cannabinoids into the cannabis supply chain. This bill would state that MAUCRSA does not prohibit a licensee from manufacturing, distributing, or selling products that contain industrial hemp or cannabinoids, extracts, or derivatives from industrial hemp, if the product complies with all applicable state laws and regulations.	Assembly	02/09/23 Referred to Com. on B. & P. 02/03/23 From printer. May be heard in committee March 5. 02/02/23 Introduced. To print.	Active Bill - In Committee Process Majority Vote Required Non-Appropriation Non-Fiscal Committee Non-State-Mandated Local Program Non-Urgency Non-Tax levy

CALIFORNIA CANNABIS AUTHORITY
CCA
DATA ANALYTICS DRIVING EFFICIENT AND EFFECTIVE COMMERCIAL CANNABIS OVERSIGHT FOR LOCAL GOVERNMENT

Legislation of Interest
2023-2024 Session

Bill No.	Author			Topic	Bill Digest	Location	Last 5 History Actions	Flags
AB 471	Kalra	AB 471	Bill Link	Cannabis catering.	Existing law, the Control, Regulate and Tax Adult Use of Marijuana Act (AUMA), an initiative measure approved as Proposition 64 at the November 8, 2016, statewide general election, authorizes a person who obtains a state license under AUMA to engage in commercial adult-use cannabis activity pursuant to that license and applicable local ordinances. Existing law, the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), among other things, consolidates the licensure and regulation of commercial medicinal and adult-use cannabis activities. Under MAUCRSA, the Department of Cannabis Control has sole authority to license and regulate commercial cannabis activity, which MAUCRSA defines to include, among other activities, the delivery and sale of cannabis and cannabis products as provided for therein, and acting as a cannabis event organizer for temporary cannabis events. This bill would add acting as a cannabis caterer for a private event to the definition of commercial cannabis activity. MAUCRSA does not supersede or limit the authority of a local jurisdiction to adopt and enforce local ordinances to regulate commercial cannabis businesses within that local jurisdiction. MAUCRSA authorizes the department to issue a state temporary event license to a licensee authorizing onsite cannabis sales and consumption at a county fair event, district agricultural association event, or at another venue expressly approved by a local jurisdiction if, among other requirements, (1) access to the area where cannabis consumption is allowed is restricted to persons 21 years of age or older; (2) cannabis consumption is not visible from any public place or nonage-restricted area; and (3) sale or consumption of alcohol or tobacco is not allowed on the premises. This bill would authorize the department to issue a state caterer license authorizing the licensee to serve cannabis or cannabis products at a private event approved by a local jurisdiction for the purpose of allowing event attendees 21 years of age or older to consume the cannabis or cannabis products that is not hosted, sponsored, or advertised by the caterer. Under the bill, consumption of alcohol or tobacco would be authorized on the premises of that event, as specified. The bill would prohibit a caterer licensee from serving cannabis or cannabis products at any one premises for more than 36 events in one calendar year, except as specified, and would authorize a caterer licensee to reuse cannabis at a subsequent event, as provided. MAUCRSA requires a cannabis license applicant to provide certain information relating to the proposed premises where the license privileges would be exercised. This bill would exempt a caterer license application from those requirements. AUMA authorizes the Legislature to amend its provisions with a 2/3 vote of both houses to further its purposes and intent. This bill would state that the bill furthers the purposes and intent of AUMA.	Assembly	02/07/23 From printer. May be heard in committee March 9. 02/06/23 Read first time. To print.	Active Bill - Pending Referral Two Thirds Vote Required Non-Appropriation Fiscal Committee Non-State-Mandated Local Program Non-Urgency Non-Tax levy
AB 599	Ward	AB 599	Bill Link	Loading...	Existing law prohibits a pupil from being suspended from school or recommended for expulsion, unless the superintendent of the school district or the principal of the school in which the pupil is enrolled determines that the pupil has committed a specified act, including, among other acts, that the pupil (1) unlawfully possessed, used, sold, or otherwise furnished, or had been under the influence of, a controlled substance, an alcoholic beverage, or an intoxicant of any kind, or (2) possessed or used tobacco, or products containing tobacco or nicotine products, including, but not limited to, cigarettes, cigars, miniature cigars, clove cigarettes, smokeless tobacco, snuff, chew packets, and betel. This bill would, commencing July 1, 2025, remove unlawfully possessing, using, or being under the influence of a controlled substance, an alcoholic beverage, or an intoxicant of any kind from the list of acts for which a pupil, regardless of their grade of enrollment, may be suspended or recommended for expulsion for. The bill would, commencing July 1, 2025, prohibit a charter school pupil in kindergarten or any of grades 1 to 12, inclusive, from being suspended or recommended for expulsion solely on the basis of those acts. This bill would, commencing July 1, 2025, remove having possessed or used tobacco, or products containing tobacco or nicotine products, including, but not limited to, cigarettes, cigars, miniature cigars, clove cigarettes, smokeless tobacco, snuff, chew packets, and betel from the list of acts for which a pupil, regardless of their grade of enrollment, may be suspended or recommended for expulsion for. The bill would, commencing July 1, 2025, prohibit a charter school pupil in kindergarten or any of grades 1 to 12, inclusive, from being suspended or recommended for expulsion solely on the basis of those acts. This bill would require the State Department of Education, on or before July 1, 2025, to develop and make available a model policy for a public health approach to addressing pupil possession and use of illicit drugs on school property, as specified. The bill would require the department to collaborate with stakeholders, including treatment providers, local educational agencies, and community-based organizations in the development of the model policy. The bill would require local educational agencies, as defined, to adopt, on or before July 1, 2025, a plan to address pupils who possess or use drugs on school property. The bill would require the plan to be youth informed and to include specific information on where on campus and in the community pupils can receive education, treatment, or support for substance use. By imposing additional duties on local educational agencies, the bill would impose a state-mandated local program. This bill would also make Legislative findings and declarations relating to these provisions, make conforming changes, and delete obsolete provisions. The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement. This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.	Assembly	02/10/23 From printer. May be heard in committee March 12. 02/09/23 Read first time. To print.	Active Bill - Pending Referral Majority Vote Required Non-Appropriation Fiscal Committee State-Mandated Local Program Non-Urgency Non-Tax levy

Legislation of Interest
2023-2024 Session

Bill No.	Author			Topic	Bill Digest	Location	Last 5 History Actions	Flags
AB 623	Chen	AB 623	Bill Link	Cannabis: lawful acts.	Existing law, the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), provides that the actions of a licensee, its employees, and its agents are not unlawful under state law and shall not be an offense subject to arrest, prosecution, or other sanction under state law, or be subject to a civil fine or be a basis for seizure or forfeiture of assets when those actions are permitted pursuant to a state license, permitted pursuant to a local authorization, license, or permit issued by a local jurisdiction, if any, and conducted in accordance with the requirements of the MAUCRSA and regulations adopted pursuant to that act. Existing law also provides that the actions of a person who allows their property to be used by a licensee, its employees, and its agents, as specified, are not unlawful under state law and shall not be an offense subject to arrest, prosecution, or other sanction under state law, or be subject to a civil fine or be a basis for seizure or forfeiture of assets. This bill would make a nonsubstantive change to this provision.	Loading...	02/10/23 From printer. May be heard in committee March 12. 02/09/23 Read first time. To print.	Active Bill - Pending Referral Majority Vote Required Non-Appropriation Non-Fiscal Committee Non-State-Mandated Local Program Non-Urgency Non-Tax levy
AB 741	Jones-Sawyer	AB 741	Bill Link	The California FAIR Plan Association: cannabis.	Under existing law, the California FAIR Plan Association is a joint reinsurance association in which all insurers licensed to write basic property insurance participate in administering a program for the equitable apportionment of basic property insurance for persons who are unable to obtain that coverage through normal channels. Existing law authorizes an individual 21 years of age or older to possess not more than 28.5 grams of cannabis, not more than 8 grams of concentrated cannabis, and not more than 6 living cannabis plants plus the cannabis produced by those plants. Existing law provides for the licensure of commercial cannabis activity by the Department of Cannabis Control. This bill would prohibit the California FAIR Plan Association from refusing to issue, canceling, or refusing to renew coverage because the applicant or policyholder possesses or has previously possessed a legal amount of cannabis, concentrated cannabis, or living cannabis plants, or the applicant or policyholder is or has been a commercial cannabis licensee.	Assembly	02/13/23 Read first time. To print.	Active Bill - Pending Referral Majority Vote Required Non-Appropriation Fiscal Committee Non-State-Mandated Local Program Non-Urgency Non-Tax levy
AB 766	Ting	AB 766	Bill Link	Cannabis.	Existing law, the Control, Regulate and Tax Adult Use of Marijuana Act (AUMA), approved by the voters at the November 8, 2016, statewide general election, regulates the cultivation, distribution, transport, storage, manufacturing, testing, processing, sale, and use of cannabis for nonmedical purposes by people 21 years of age and older. The existing Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), among other things, consolidates the licensure and regulation of commercial medicinal and adult-use cannabis activities. This bill would state the intent of the Legislature to enact legislation relating to the sale of cannabis, including establishing maximum terms by which cannabis licensees may sell goods on credit.	Assembly	02/13/23 Read first time. To print.	Active Bill - Pending Referral Majority Vote Required Non-Appropriation Non-Fiscal Committee Non-State-Mandated Local Program Non-Urgency Non-Tax levy
AB 794	Flora	AB 794	Bill Link	Cannabis: advertising and marketing restrictions.	Existing law, the Control, Regulate and Tax Adult Use of Marijuana Act (AUMA), an initiative measure approved as Proposition 64 at the November 8, 2016, statewide general election, authorizes a person who obtains a state license under AUMA to engage in commercial adult-use cannabis activity pursuant to that license and applicable local ordinances. Existing law, the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), among other things, consolidates the licensure and regulation of commercial medicinal and adult-use cannabis activities. MAUCRSA requires all cannabis advertisements and marketing to accurately and legibly identify the licensee responsible for that content by adding the licensee's license number, and prohibits a technology platform or an outdoor advertising company from displaying an advertisement unless the advertisement displays that licensee's license number. This bill would require all cannabis advertisements and marketing include the licensee's name in addition to the licensee number, and would prohibit a technology platform or an outdoor advertising company from displaying an advertisement unless the advertisement displays that licensee's name and license number.	Assembly	02/13/23 Read first time. To print.	Active Bill - Pending Referral Majority Vote Required Non-Appropriation Fiscal Committee Non-State-Mandated Local Program Non-Urgency Non-Tax levy
SB 51	Bradford	SB 51	Bill Link	Cannabis provisional licenses: local equity applicants.	(1) Existing law, the Control, Regulate and Tax Adult Use of Marijuana Act (AUMA), an initiative measure, authorizes a person who obtains a state license under AUMA to engage in commercial adult-use cannabis activity pursuant to that license and applicable local ordinances. AUMA authorizes legislative amendment of its provisions with a 2/3 vote of both houses, without submission to the voters, to further its purposes and intent. Existing law, the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), for purposes of the California Cannabis Equity Act, defines local equity program as a program adopted or operated by a local jurisdiction that focuses on inclusion and support of individuals and communities in California's cannabis industry who are linked to populations or neighborhoods that were negatively or disproportionately impacted by cannabis criminalization, as specified. MAUCRSA requires the Governor's Office of Business and Economic Development (GO-Biz) to administer a grant program to assist a local jurisdiction with the development of a local equity program or to assist local equity applicants and local equity licensees through a local equity program, as specified. MAUCRSA, until June 30, 2023, authorizes the Department of Cannabis Control, in its sole discretion, to issue a provisional license for a local equity license application if the applicant meets specified requirements. MAUCRSA prohibits the Department of Cannabis Control from renewing a provisional license after January 1, 2025, and provides that no provisional license is effective after January 1, 2026. This bill would additionally authorize the Department of Cannabis Control, in its sole discretion, to issue a provisional license for a local equity applicant for retailer activities, indefinitely, if the applicant meets specified requirements. This bill would authorize the department, in its sole discretion, to renew a provisional license until it issues or denies the provisional licensee's annual license, subject to specified requirements, or until 5 years from the date the provisional license was issued, whichever is earlier. By extending provisional licensure, the applications for which are required to be signed under penalty of perjury, the bill would expand the scope of the crime of perjury, and would thereby impose a state-mandated local program. (2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement. This bill would provide that no reimbursement is required by this act for a specified reason. (3) This bill would declare that its provisions further the purposes and intent of AUMA. (4) This bill would declare that it is to take effect immediately as an urgency statute.	Senate	01/18/23 Referred to Com. on B., P. & E. D. 12/06/22 From printer. May be acted upon on or after January 5. 12/05/22 Introduced. Read first time. To Com. on RLS. for assignment. To print.	Active Bill - In Committee Process Two Thirds Vote Required Non-Appropriation Fiscal Committee State-Mandated Local Program Urgency Non-Tax levy

Legislation of Interest
2023-2024 Session

Bill No.	Author			Topic	Bill Digest	Location	Last 5 History Actions	Flags
SB 72	Skinner	SB 72	Bill Link	Budget Act of 2023.	An act making appropriations for the support of the government of the State of California and for several public purposes in accordance with the provisions of Section 12 of Article IV of the Constitution of the State of California, relating to the state budget, to take effect immediately, budget bill.	Senate	01/11/23 From printer. 01/10/23 To print. 01/10/23 Introduced. Read first time. Referred to Com. on B. & F.R.	Active Bill - In Committee Process Majority Vote Required Appropriation Fiscal Committee Non-State-Mandated Local Program Urgency Non-Tax levy
SB 285	Allen	SB 285	Bill Link	Cannabis: retail preparation, sale, and consumption of noncannabis food and beverage products.	Existing law, the Control, Regulate and Tax Adult Use of Marijuana Act (AUMA), an initiative measure, authorizes a person who obtains a state license under AUMA to engage in commercial adult-use cannabis activity pursuant to that license and applicable local ordinances. The Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), among other things, consolidates the licensure and regulation of commercial medicinal and adult-use cannabis activities, including retail commercial cannabis activity. MAUCRSA establishes the Department of Cannabis Control within the Business, Consumer Services, and Housing Agency to administer the act. MAUCRSA does not supersede or limit the authority of a local jurisdiction to adopt and enforce local ordinances to regulate commercial cannabis businesses within that local jurisdiction. Existing law authorizes a local jurisdiction to allow for the smoking, vaporizing, and ingesting of cannabis or cannabis products on the premises of a licensed retailer or microbusiness, subject to specified restrictions. Existing administrative law specifies that a licensed retailer or licensed microbusiness authorized for retail sales who operates a consumption area on the licensed premises in accordance with this provision may also sell prepackaged, noncannabis-infused, nonalcoholic food and beverages if the applicable local jurisdiction allows. This bill, subject to the specified restrictions referenced above, would authorize a local jurisdiction to allow for the preparation or sale of noncannabis food or beverage products, as specified, by a licensed retailer or microbusiness in the area where the consumption of cannabis is allowed.	Senate	02/09/23 Referred to Com. on B., P. & E. D. 02/02/23 From printer. May be acted upon on or after March 4. 02/01/23 Introduced. Read first time. To Com. on RLS. for assignment. To print.	Active Bill - In Committee Process Majority Vote Required Non-Appropriation Non-Fiscal Committee Non-State-Mandated Local Program Non-Urgency Non-Tax levy
SB 302	Stern	SB 302	Bill Link	Compassionate Access to Medical Cannabis Act or Ryan's Law.	Existing law, the Compassionate Access to Medical Cannabis Act or Ryan's Law, requires specified types of health care facilities to allow a terminally ill patient's use of medicinal cannabis within the health care facility, subject to certain restrictions. Existing law requires that health care facilities permitting patient use of medical cannabis comply with other drug and medication requirements, as specified, and makes those facilities subject to enforcement actions by the State Department of Public Health. This bill would expand those provisions to a patient who is over 65 years of age with a chronic disease, as defined.	Senate	02/03/23 From printer. May be acted upon on or after March 5. 02/02/23 Introduced. Read first time. To Com. on RLS. for assignment. To print.	Active Bill - Pending Referral Majority Vote Required Non-Appropriation Fiscal Committee Non-State-Mandated Local Program Non-Urgency Non-Tax levy