



BUREAU OF
CANNABIS
CONTROL
CALIFORNIA

CALIFORNIA CANNABIS ADVISORY COMMITTEE

2 0 1 8 A N N U A L R E P O R T

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EXECUTIVE SUMMARY

In 1996, California was the first state in the union to legalize the use of medical cannabis under Proposition 215, the Compassionate Use Act. California established the Medical Marijuana Program (MMP) through Senate Bill 420 (Vasconcellos, 2003) which increased access to medical cannabis for qualified patients and primary caregivers and provided protections from prosecution for the possession and cultivation of medical cannabis. Subsequently, the cannabis industry in California experienced a period of rapid expansion along with the emergence of compassionate use programs to meet the needs of chronically ill patients.

Nearly 20 years after the passage of the Compassionate Use Act, the California State Legislature in 2015 established the Medical Cannabis Regulation and Safety Act (MCRSA) through a series of bills – Assembly Bill 243 (Wood), Assembly Bill 266 (Bonta, Cooley, Jones-Sawyer, Lackey, and Wood), and Senate Bill 643 (McGuire) to create a statewide framework to regulate and tax medical cannabis. In November 2016, California voters approved Proposition 64 which enacted the Control, Regulate and Tax Adult Use of Marijuana Act (AUMA), permitting adults 21 years of age and over to possess and grow specified amounts of marijuana for recreational use.

In June 2017, the California State Legislature passed budget trailer bill, Senate Bill 94, the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA) to integrate MCRSA with AUMA into a consolidated system for the regulation, licensing, taxation, and enforcement for both medicinal and adult-use commercial cannabis activities.

Under MAUCRSA, the Bureau of Cannabis Control (Bureau) is the lead agency. The Bureau is charged with licensing, regulation, and enforcement of the following types of commercial cannabis businesses: distributors, retailers, microbusinesses, temporary cannabis events, and testing laboratories. The Manufactured Cannabis Safety Branch, a division of the California Department of Public Health (CDPH), is responsible for regulating and licensing manufacturers. CalCannabis Cultivation Licensing, a division of the California Department of Food and Agriculture (CDFA), is responsible for licensing cultivators and implementing the Track-and-Trace system.

Currently comprised of 22 appointed members from different sectors to represent the diverse backgrounds of California and the cannabis industry, the Cannabis Advisory Committee (CAC) is charged with advising the licensing authorities in the development of “standards and regulations... including best practices and guidelines that protect public health and safety while ensuring a regulated environment for commercial cannabis activity that does not impose such barriers so as to perpetuate, rather than reduce and eliminate, the illicit market for cannabis.”¹

¹ Business and Profession Code section 26014

EXECUTIVE SUMMARY

The CAC began its work in November 2017, holding 10 meetings statewide in its inaugural year. The CAC is charged with publishing an annual report on its activities, including the recommendations the committee made to the licensing authorities and whether those recommendations were implemented.

Per legislative mandate, on January 1, 2018, the state began issuing licenses for commercial cannabis activity. Additionally, on January 1, 2018, two new cannabis taxes went into effect: a cultivation tax on all harvested cannabis that enters the commercial market and a 15 percent excise tax on the purchase of cannabis and cannabis products. At the January 18, 2018 meeting, the CAC voted to establish 10 subcommittees to discuss and develop recommendations for the state cannabis licensing authorities' regulations on topics within their subcommittee's issue area. The subcommittees were designated as follows: Cultivators, Distributors, Enforcement, Equity, Licensing Application, Manufacturers, Microbusiness, Public Health and Youth, Retailers, and Testing Laboratories.

Given the substantial scope of its charge and given the ongoing need for further action to address a range of cannabis related issues by the state Legislature and Congress, the committee worked to take a meaningful look at pressing industry challenges and develop recommendations for solutions to the greatest extent possible, consistent with its statutory purpose.

We hope this report provides insight into our work within an evolving regulatory environment and serves as a resource to show the range of issues and options to inform the public and policymakers alike.

For more information, please visit the Bureau of Cannabis Control website:
<https://bcc.ca.gov/>

BACKGROUND

Though cannabis remains illegal under U.S. federal law, many states have enacted varying degrees of legalization. In 2018, 62 percent of Americans report supporting cannabis legalization, double what it was in 2000 (31 percent).² According to the National Conference of State Legislatures, more than 31 states—plus the District of Columbia, Guam and Puerto Rico—have legalized cannabis for medical purposes.³ Nine states plus the District of Columbia have legalized cannabis for adult-use purposes.

On October 2018, Canada became the second country in the world to allow for legalized recreational cannabis. Canada's entry into the market will undoubtedly have marked impacts on California's nascent cannabis industry. The total cannabis market in Canada, including medical, illegal, and legal recreational products, is expected to generate up to \$7.17 billion in sales in 2019.⁴ California's overall legal cannabis market projected to grow with retail revenue estimated at \$5 billion. The state's market is projected to produce between 1.55–1.69 million pounds in all segments by 2018.⁵ Many in the industry believe in the need to preserve the rich cultural heritage and unique product branding that is unique a variety of well-known California cultivation regions, akin to other unique to regional products protected under internationally recognized Appellation of Origin programs.

California faces inherent challenges to regulating an industry that has not been federally decriminalized and has only been newly regulated in other states.⁶ The challenge before us is two-fold. First, converting an established industry that had not been comprehensively regulated by the state to a regulatory framework mandated by MAUCRSA. Although MAUCRSA provides guidance on the macro issues, much of the implementation specifics and clarification of terms were left to the discretion of the licensing authorities.

Second, ensuring that the regulations do not create high compliance costs for legitimate California businesses relative to the costs and risks involved in remaining in the illicit drug trade. For perspective, the Bureau's Standardized Regulatory Impact Analysis (SRIA) prepared in April 2018 found that the proposed regulations, compared to no regulation baseline alternative, would add approximately \$408 in compliance costs per pound of marketable dried flower.⁷ Most of the added cost is attributable to cannabis testing with other direct quantifiable costs attributed to general regulatory compliance.

² Pew Research Survey, <http://www.pewresearch.org/fact-tank/2018/10/08/americans-support-marijuana-legalization/>

³ <http://www.ncsl.org/research/health/state-medical-marijuana-laws.aspx>

⁴ <https://www2.deloitte.com/content/dam/Deloitte/ca/Documents/consulting/ca-cannabis-2018-report-en.PDF>

⁵ "Economic Impact Study of the Cannabis Sector in the Greater Sacramento Area" (University of the Pacific 2016)

⁶ BUREAU OF CANNABIS CONTROL CALIFORNIA CODE OF REGULATIONS TITLE 16, DIVISION 42 MEDICAL AND ADULT-USE CANNABIS REGULATION INITIAL STATEMENT OF REASONS

⁷ SRIA, PAGE. 286 OF 567

BACKGROUND

This report covers over 79 subcommittee recommendations, 47 of which were adopted by the CAC. The remaining subcommittee recommendations either failed to be adopted by the CAC or were not brought before the CAC due to a declaration by the licensing authorities that the recommendation would require statutory changes. Within those subcommittee recommendations that were either not adopted or not addressed by the CAC, a portion of these subcommittee recommendations were implemented, either in part or fully by the licensing authorities.

All subcommittee recommendations are summarized below in three clearly defined sections:

- Subcommittee Recommendations Adopted by the CAC.
- Subcommittee Recommendations Tabled by the CAC Due to Requiring Statutory Changes.
- Subcommittee Recommendations That Failed to Be Adopted by the CAC.

SUBCOMMITTEE RECOMMENDATIONS ADOPTED BY THE CAC

Subcommittee recommendations fall into 10 issue areas as summarized below. This section of the report summarizes the purpose of the regulations within each subcommittee's purview, describes subcommittee recommendation(s) adopted by the CAC, and identifies the related regulatory section(s) or Initial Statement of Reason section(s) relevant to the adopted recommendation. At the time of the drafting of this report, proposed regulations refer to the newly modified text released on October 19, 2018, and assumes implementation as drafted.

SUBCOMMITTEE ON CULTIVATORS

Under the proposed regulations, commercial cannabis cultivators may be eligible to license existing cultivation sites and / or establish new cultivation sites as commercial cannabis cultivation licensees. The proposed regulations also provide new protections to commercial California cannabis cultivators from state prosecution while safeguarding the environment through implementation of environmental protection measures and enforcement of existing environmental protection laws.

The Subcommittee on Cultivators made a total of 11 recommendations. Of these, five were adopted by the committee. Of the adopted recommendations, the licensing authorities have: implemented two, partially implemented one, and not implemented two.

Generator Hour Meters (Recommendation #1) — Amend section 8306(d) to allow after-market non-resettable hour meters be installed, if feasible.

Status: Implemented in CDFA's proposed permanent regulations for section 8306.

Outdoor Cultivation Definition (Recommendation #2) — The definition of outdoor cultivation should allow the use of light deprivation techniques, provided that, it does not allow for the increase in the number of crop cycles. Recommendation #2 was amended to the following: "The definition of outdoor cultivation should allow the use of light deprivation techniques."

Status: Not implemented by CDFA.

Transfer Between A and M Licenses (Recommendation #6) — Recognizing that the existing system of keeping Adult Use and Medicinal Use separate place a great financial, planning and efficiency burden on cultivators, potentially affecting the supply chain, recommend allowing cultivated materials to be transferred between A and M license types until the point of sale.

Status: Implemented by CDFA. This recommendation was addressed by allowing cultivators to sell cannabis to adult-use licensees and medical-use licenses without being required to establish separate and distinct cultivation areas. See section 40175. License Constraints. And section 5032 Commercial Cannabis Activity for details.

SUBCOMMITTEE RECOMMENDATIONS ADOPTED BY THE CAC

Compassionate Use Programs (Recommendation #7) — Language should be developed to create a cultivation-based tax incentive for products being set aside for compassionate use programs.

Status: Not implemented by CDFA. CDFA determined that implementation of this recommendation would require statutory changes.

Self-Transport Distribution (Recommendation #11) — Create a mechanism for cultivators to conduct self-transport distribution of their own product to a centralized processing facility, manufacturing facility, distributor or a laboratory for pre-testing, without the same requirements of the existing transportation license—including Bureau regulation sections 5044 and 5047—by either amending the existing transportation distribution license or creating a new license type.

Status: Partially implemented by the Bureau. See section 5315. Distributor Transport Only License (g) for details.

SUBCOMMITTEE ON DISTRIBUTORS

Distributors play a pivotal role in the commercial cannabis supply chain. Ensuring a seamless transition from the cultivation and manufacturing of the cannabis goods through the distribution process is key to a well-regulated market. The subcommittee took into consideration the following goals of the regulations on distribution: (1) ensure that commercial cannabis goods are properly stored, handled, packaged, and tested, (2) ensure commercial cannabis goods are safely and securely transported between licensees, and (3) ensure distributors keep and maintain records that are adequate to effectively track and trace commercial cannabis goods to prevent entry of untested commercial cannabis goods into the legal market.

The Subcommittee on Distributors made a total of five recommendations. Of these, four were adopted by the committee. Of the adopted recommendations, the licensing authorities have: implemented two and not implemented two.

Selling Samples (Recommendation #1) — The Bureau should address how, if at all, licensees may provide samples for a nominal fee, both for B to B (Business to Business) and B to C (Business to Consumer) situations.

Status: Not implemented by the Bureau. Per Bureau comments, the lead agency does not require cannabis goods to be sold at a specific price therefore, no language change occurred.

Additional Label (Recommendation #2) — In addition to all the rights and responsibilities afforded to a licensee regarding packaging and labeling, how a distributor would also be allowed to apply an additional label to the final product, if the final product's test results are inconsistent with the existing printed results. Variations within a 10 percent range excluded.

SUBCOMMITTEE RECOMMENDATIONS ADOPTED BY THE CAC

Status: Implemented by the Bureau. Please see the following regulatory sections for further details: section 5303. Packaging, Labeling, and Rolling, (a); section 5307. Quality-Assurance Review; and section 5307.1. Quality-Assurance Review for Labeling Cannabinoids and Terpenoids.

Storage Only Center License (Recommendation #3) — Create a subcategory license, under the distribution license, designated as storage-only center that's allowed to hold inventory and transport product. The transaction portion would remain under the full distribution license holder.

Status: Not implemented by the Bureau. See section 5301. Storage Services for regulatory details.

Transition Period Extension (Recommendation #4) — Extend the transition period from six months to 12 months to allow transactions between A and M licenses.

Status: Implemented by the Bureau. All three licensing authorities included a provision that allows applicants to conduct both A and M activities at the same licensed premises as well as to conduct business across license types regardless of A or M designation. This provision went into effect on June 6, 2018, with the re-adoption of the emergency regulations. See section 5032. Commercial Cannabis Activity, subsection (c) for language addressing transactions between M-designation or A-designation licenses.

SUBCOMMITTEE ON ENFORCEMENT

Under the MAUCRSA, each licensing authority has the power to create, issue, deny, renew, suspend, revoke, place on probation with terms and conditions, or otherwise discipline a licensee for any acts or omissions constituting grounds for disciplinary action. The subcommittee worked to ensure strong and fair enforcement provisions to improve public safety in our communities and to ensure that there is a balance between allowing for the feasible operation of cannabis businesses while deterring illegal and criminal activities.

The Subcommittee on Enforcement made a total of 15 recommendations. Of these, five were adopted by the committee. Of the adopted recommendations, the licensing authorities have: implemented two, partially implemented one and not implemented two.

Enforcement Authority (Recommendation #1) — The Bureau should: 1) clearly identify the enforcement authority regarding advertisement and placement; 2) clearly communicate who the enforcement authority is and how to contact them with complaints; 3) collect data on enforcement actions; and 4) require all advertisements have information regarding the license holder placing the advertisement.

SUBCOMMITTEE RECOMMENDATIONS ADOPTED BY THE CAC

Status: Not implemented by the Bureau. The Bureau determined that this recommendation does not constitute a regulatory recommendation. However, the Bureau has provided additional clarification in the advertising section regarding the content of licensee advertisements.

Clarify Difference Between Citations and Orders of Abatement and Clarify References (Recommendations #2) — The Bureau should: 1) clarify an order of abatement versus a citation; 2) clean up language and clarify its process and procedural guidelines within the regulations, reference, and citation sections.

Status: Implemented by the Bureau. See section 5802. Citations; Orders of Abatement; Administrative Fines for details.

Advertising (Recommendation #6) — The Bureau should: 1) clarify rules and provide direction regarding what type and where advertising is allowed; 2) collect data on when and where advertising rules were violated and if the violation was targeted to minors.

Status: Implementation of the proposed permanent regulations would result in partial implementation by the Bureau. The first part of the recommendation was adopted via section 5040. Advertising Placement and section 5415.1. Deliveries Facilitated by Technology Platforms.

Public Records Act Requests (Recommendation #8) — The Bureau should include language in regard to sharing information between the Bureau and local government entities that acknowledge the information shared is in accordance with the Public Records Act and protects information that is not discoverable under the Public Records Act.

Status: Not implemented by the Bureau.

Labor Standards (Recommendation #9) — All licensing authorities should explore amending the regulations to include violations of labor standards as part of the licensing process and enforcement, which should include revocation of the license.

This recommendation was amended to state: “all licensing authorities are required to include violations of labor standards as part of the licensing process and enforcement, which shall include revocation of the license.”

Status: Implemented by the Bureau via language changes found in section 5002. Annual License Application Requirements, section 5035. Notification of Criminal Acts, Civil Judgments, Violations of Labor Standards, and Revocation of a Local License, Permit, or Other Authorization After Licensure and section 5600. Cannabis Event Organizer License.

SUBCOMMITTEE RECOMMENDATIONS ADOPTED BY THE CAC

SUBCOMMITTEE ON EQUITY

As of July 2018, four California cities have moved to establish equity programs and identify common barriers to entry into the cannabis industry. The equity programs are the result of studies and reports that analyze in part, the disproportionate impacts of cannabis law enforcement on disadvantaged communities.

The equity subcommittee sought to continue to address racial and economic disparities in California's diverse population and redress decades of punitive criminal justice policies through community reinvestment, workforce development, public awareness and education, data collection and accountability, and increasing access to capital for equity applicants.

The Subcommittee on Equity made a total of eight recommendations. Of these, eight were adopted by the committee. Of the adopted recommendations, the licensing authorities have: implemented one, partially implemented one, and not implemented six.

State Level Equity Licensing Program (Recommendation #1) — The Bureau and the state licensing authorities should develop a state-level equity licensing program that supports the local equity licensing programs that have been developed and supports equity applicants from jurisdictions where programs have not been developed.

Status: Not implemented by the Bureau / CDFA / CDPH.

Earmarks, Fee Waivers, and Loans (Recommendation #2) — Consider providing earmarks from tax revenue for equity programs, licensing fee waivers, and possible loans and / or low interest loan programs to allow for the payment of licensing fees at a later date for applicants that have already been approved for extensions at the city level. Use transparent, voluntary information and data collection regarding equity applicants, such as an applicant's race, to drive policy decisions.

Status: Not implemented by the Bureau / CDFA / CDPH. The licensing authorities determined that this recommendation would require statutory changes.

Fee Installments and Deferrals (Recommendation #3) — Include an option to pay fees in installments or defer fees for social equity applicants. Modify the regulations to allow a license to be issued, contingent on continued payment of the fee if in installments.

SUBCOMMITTEE RECOMMENDATIONS ADOPTED BY THE CAC

Status: Not implemented by the Bureau / CDFA / CDPH.

Research Support (Recommendation #4) — All types of funding and bidding processes are considered by the state to acquire funds to cover the cost of research on diversity issues in the cannabis industry.

Status: Implemented by the Bureau. The Bureau's regulations specify the requirements for applying for, and receiving, research funding for public universities. See section 5900 Eligibility.

Access to Property and Premises (Recommendation #5) — As part of a social equity program, the three licensing authorities to the extent allowed by statute, should explore access for equity applicants to property and premises. This could include working with local licensing programs to allow annual licensees to sublease a portion of their licensed premises to an equity applicant; allowing co-location or shared premises by equity applicants; developing pre-licensing programs for equity applicants; and, to the extent possible, creating incentives and protections for property owners to lease to equity applicants.

Status: Partially implemented by CDPH. CDPH MCSB allows cannabis manufacturers to utilize shared-use facilities to provide opportunities for small manufacturing businesses and in response to demand from cities and counties wishing to implement equity programs. Shared-use facilities resemble community kitchens that are cannabis specific or are locations in which a larger manufacturer offers use of space and equipment to a smaller manufacturer. See CDPH regulations Article 6, Shared-Use Facilities.

Data Collection (Recommendation #6) — Strongly urge the state licensing authorities to voluntarily and anonymously collect demographic and other data (e.g. prior convictions, veteran status, etc.) to determine equity in licensing and explore options for making the data available to the public. Create a data use policy that characterizes the quality of the data collected.

Status: Not implemented by the Bureau / CDFA / CDPH.

Funding of a Social Equity Program (Recommendation #7) — The three licensing authorities should develop a social equity program that takes into consideration the work that the local licensing authorities have done in this area and consider developing a mechanism to prioritize the funding and the costs of developing a social equity program.

SUBCOMMITTEE RECOMMENDATIONS ADOPTED BY THE CAC

Status: Not implemented by the Bureau / CDFA / CDPH.

Local Program Models (Recommendation #8) — In the development of a state equity program, information, processes, and models from existing equity programs in Sacramento, Los Angeles, San Francisco, and Oakland should be examined and utilized. This information should be used to support the development of a state-adopted policy statement that embraces a statewide equity program.

Status: Not implemented by the Bureau / CDFA / CDPH.

SUBCOMMITTEE ON RETAILERS

Retailers provide commercial cannabis goods to customers who are the end users of the product in the supply chain. The proposed retailer regulations are designed with three main goals for holding a state license to operate a commercial cannabis retail premises and are necessary as retailers engage directly with the consumer and the public. First, the regulations are designed to ensure that retailers follow the MAUCRSA supply chain requirements. Second, the regulations are designed to protect public health and safety. Third, the proposed regulations are designed to limit the risk of diversion.

The Subcommittee on Retailers made a total of nine recommendations. Of these, one was adopted by the committee and this has been partially implemented by the licensing authorities.

Methods of Delivery (Recommendation #1) — Clarify and simplify methods of delivery. Increase flexibility regarding vehicles and hours, consider increasing the value amounts that can be carried at one time. Clarification on the delivery receipt that eliminates the need for an address and instead uses the state license number on the delivery receipt. Flexibility in allowing local government to allow changes in hours of operation if they so choose.

Status: Partially implemented by the Bureau. This recommendation addressed multiple concerns expressed by the public regarding “methods of delivery.” As such, this recommendation involved language changes in multiple sections of the regulations. Below, is a detailed description regarding the portions of this recommendation implemented by the Bureau:

- “Clarify and simplify methods of delivery...”—Implemented by the Bureau. See section 5415. Delivery Employees, section 5415.1. Deliveries Facilitated by Technology Platforms, section 5416. Delivery to a Physical Address and section 5421. Delivery Route.
- “Increase Flexibility regarding vehicle and hours”—Not implemented by the Bureau.
- “...increasing the value amounts that can be carried”—Implemented by the Bureau. See section 5418. Cannabis Goods Carried During Delivery.

SUBCOMMITTEE RECOMMENDATIONS ADOPTED BY THE CAC

SUBCOMMITTEE ON PUBLIC HEALTH AND YOUTH

The MAUCRSA mandates that the protection of public health be amongst the highest priority for all licensing authorities. As such, the subcommittee worked to limit youth access to cannabis, encouraging education to workers to prevent improper sales to minors and generally ensure the health and safety of the public. The subcommittee also considered the importance of increasing access for compassionate medical cannabis and data collection to inform the public and policymakers going forward.

The Subcommittee on Public Health and Youth made a total of 11 recommendations. Of these, seven were adopted by the committee. Of the adopted recommendations, the licensing authorities have not implemented any and determined that three require legislative changes.

Proper Identification Training (Recommendation #1) — The Bureau should include in its regulations an employee-training requirement on proper identification verification to prevent sales of cannabis and cannabis products to youth at the point of sale or upon the delivery of product.

Status: Not implemented by the Bureau / CDFA / CDPH.

Compassionate Medical Cannabis (Recommendation #2) — All regulatory agencies should create a special state and local licensing processes for those providing free compassionate medical cannabis that is exempt from fees and taxes. This change should be incorporated in the emergency rules and be promulgated as soon as possible to implement this motion. The motion includes all noncommercial cannabis activity.

Status: Not implemented by the Bureau / CDFA / CDPH..

Branded Vehicles (Recommendation #3) — The Bureau should study whether branded vehicles fall under advertising restrictions.

Status: Not implemented by the Bureau. The Bureau determined that this recommendation is not a regulatory recommendation. The Bureau has and continues to evaluate what constitutes an advertisement and is subject to the advertising restrictions.

Health Claim Advertising (Recommendation #4) — Adult-use cannabis should not be allowed to make health claims in advertising.

Status: Not implemented by the Bureau / CDFA / CDPH. However, statute clearly prohibits a licensee from publishing or disseminating any advertising containing a health-related statement that is untrue or creates a misleading impression as to the effects of cannabis consumption on health conditions. As such, the Bureau has included this in the disciplinary guidelines. CDPH regulations further state that health-related statements must be supported by a totality of publicly-available scientific evidence and be supported by significant scientific agreement. CDPH conducts product label reviews when conducting

SUBCOMMITTEE RECOMMENDATIONS ADOPTED BY THE CAC

inspections of manufacturers to ensure they adhere to the statutory and regulatory requirements. See section 40410 Labeling Restrictions.

Data Collection (Recommendation #5) — The Bureau should collect data and report yearly on youth and adult cannabis use and overuse; ER visits and treatment episodes; DUI and poison control calls related to cannabis.

Status: Not implemented by the Bureau.

Advertising to Age Specific Audience (Recommendation #6) — The Bureau should amend Title 16, California Code of Regulations section 5040(a) to read as follows: Any advertising or marketing placed in broadcast, cable, radio, print, and digital communication shall only be displayed where at least 85 percent of the audience is reasonably expected to be 21 years of age or older, as determined by reliable up-to-date audience composition data.

Status: Not implemented by the Bureau. The Bureau determined that this recommendation would require a statutory change.

Compassionate Care Program (Recommendation #7) — The full advisory committee should recommend to seek a legislative fix for the compassionate care program.

Status: Not implemented by the Bureau / CDFA / CDPH.

SUBCOMMITTEE ON TESTING LABORATORIES

The MAUCRSA mandates that protection of the public be the highest priority for all licensing authorities. Under the Act, the Bureau is required to develop procedures for ensuring that all cannabis goods are tested by a licensed testing laboratory prior to distribution to a retailer. The goal of testing is to ensure that cannabis goods sold to consumers are safe for consumption and that consumers receive accurate information regarding the cannabis goods they consume in the spirit of consumer protection.

Objective information and science should guide the regulation of testing laboratories to achieve these consumer protection goals. The subcommittee recommendations stress the need to rely on objective and consistent available scientific and technical information and flexibility to allow for research and development.

In preparation for the writing of this report, the CAC heard reports from each subcommittee chair. The conversation stemming from the Subcommittee on Testing Laboratories' report led to an additional recommendation and is included below.

The Subcommittee on Testing Laboratories made a total of six recommendations. Of these, five were adopted by the committee. Of the adopted recommendations, the licensing authorities have: partially implemented one and not implemented four.

SUBCOMMITTEE RECOMMENDATIONS ADOPTED BY THE CAC

Testing for Research and Development (Recommendation #1) — Regulations should allow for licensed laboratories to accept materials from any licensed entity that is part of the supply chain for research and development, without a requirement to report the results.

Status: Not implemented by the Bureau. Currently no changes have been made to section 5710. Laboratory Receipt of Samples Obtained from a Distributor or Microbusiness, (a), which clarifies that licensed laboratories may, “...accept and analyze a sample from a licensed distributor or licensed authorized to engage in distribution for the required testing under section 5714 of this division only if there is an accompanying COC form for the sample.”

Expiration Date (Recommendation #2) — Regulations should clarify that the testing results are valid on a finished manufactured cannabis product until the expiration date of the finished product, as determined by the manufacturer. The expiration date must be supported by in-house or third-party data.

Status: Not implemented by the Bureau. See section 5307, subsections (b) and (e). Quality-Assurance Review, as well as section 5406, subsection (b) Cannabis Goods for Sale, for regulatory language regarding expiration dates and the verification by in-house or third-party data.

Standard Testing Analytical Methodology (Recommendation #3) — The Bureau should incorporate standard testing analytical methodology in final regulations. This recommendation was modified to state: “The Bureau should define acceptable reference standards in the final regulations.”

Status: Not implemented by the Bureau. See section 5700. Definitions, subsection (r) “Certified reference material,” for regulatory definition of reference standards. Additional information on this topic can be found in section 5713. Validation of Test Methods, subsection (c) (2).

Waste Disposal (Recommendation #4) — The Bureau should revisit cannabis waste disposal from testing laboratories.

Status: Partially implemented by the Bureau. The Bureau revisited the sections on cannabis waste disposal in the draft proposed permanent regulations. See section 5054. Destruction of Cannabis Goods Prior to Disposal.

Recommendation # 5 — Recommend to the Bureau, in the Committee’s annual report, to require testing labs to use commercially available standardized cannabinoid reference standards.

Status: Not implemented by the Bureau.

SUBCOMMITTEE RECOMMENDATIONS ADOPTED BY THE CAC

SUBCOMMITTEE ON LICENSING APPLICATION

Under Business and Professions Code section 26053, all commercial cannabis activity must be conducted between licensees. In recognizing that many commercial cannabis businesses were already in operation for medicinal cannabis prior to January 1, 2018, the Legislature created a temporary license with fewer requirements than an annual license so that licensing authorities could quickly process an application to allow the businesses in operation to continue operations or allowing them to shut down for a very brief time while the application was processed. Temporary licenses can be issued until December 31, 2018.

The MAUCRSA requires an applicant to provide certain information to the licensing authorities for processing of an annual license. The regulations identify additional required information, clarification on special terms, prohibitions, and conditions for licensure to allow commercial cannabis businesses to legally engage in the marketplace.

The Subcommittee on Licensing Application sought to address the concerns regarding a small number of large consolidated businesses dominating California's cannabis market by increasing transparency in the licensing application, providing financial relief to lower barriers to entry, encouraging market stability, and protecting the health and safety of workers.

The Subcommittee on Licensing Application made a total of six recommendations. Of these, four were adopted by the committee. Of the adopted recommendations, the licensing authorities have: implemented two, partially implemented one, and not implemented two.

Disclosure of Owners (Recommendation #2) — Require an applicant for an annual license who lists any corporation or other entity as an owner, to also disclose the names of the owner(s) of the corporation or other entity.

Status: Implemented by the Bureau / CDFA / CDPH. This recommendation was adopted via regulatory language found in section 5002. Annual License Application Requirements, section 5003. Designation of Owner, section 5600. Cannabis Event Organizer License, and section 40102 Owners and Financial Interest Holders.

Annual Fees (Recommendation #4) — The licensing authorities should evaluate the amount of annual fees, especially fees paid by people with disabilities, military veterans, locally licensed equity applicants, and nonprofit compassion programs.

Status: Partially implemented by the Bureau. This recommendation has been partially addressed via draft language found in section 5014. Fees., of the draft proposed permanent regulations.

⁸ DPH-17-004 Medical Cannabis Manufacturing INITIAL STATE OF REASONS (Rep.). (n.d.).

SUBCOMMITTEE RECOMMENDATIONS ADOPTED BY THE CAC

A and M Licenses and Transition Period (Recommendation #5) — Combine application and annual renewal fees for A and M licensees conducting the same business activities at the same licensed premises and to extend the grace period until January 1, 2020 under section 5029 subdivision (b)(1).

Status: Implemented by the Bureau / CDFA / CDPH. Please see section 5032. Commercial Cannabis Activity, subsection (c) for details. All three licensing authorities included a provision that allows applicants to conduct both A and M activities at the same licensed premises as well as to conduct business across licensing types regardless of A or M designation. This provision went into effect on June 6, 2018 with the re-adoption of the emergency regulations.

Use of Preparers (Recommendation #6) — Allow the use of preparers to assist applicant in preparing applications.

Status: Not implemented by the Bureau / CDFA / CDPH. The Bureau and CDPH determined that the owner must verify the accuracy, attest, and submit the application. Owners are not prohibited from using or seeking the guidance and assistance from experts.

SUBCOMMITTEE ON MANUFACTURERS

“Manufacturing” or “manufacturing operation” means all aspects of the extraction, infusion, and packaging and labeling processes, including processing, preparing, holding, and storing of cannabis products. Manufacturing also includes any processing, preparing, holding, or storing of components and ingredients. Manufacturers produce nearly all non-flower products including edibles, oils, tinctures, etc. The proposed regulations establish the licensing scheme for manufacturers of cannabis products,⁸ set minimum standards for sanitary manufacturing practices; and establish packaging and labeling standards for manufactured cannabis products.

The Subcommittee on Manufacturers made a total of four recommendations. Of these, four were adopted by the committee. Of the adopted recommendations, the licensing authorities have implemented two, partially implemented one, and not implemented one.

Illustrative Guide (Recommendation #1) — Create an illustrative guide for packaging and labeling broken down by the components of packaging and labeling.

Status: Partially Implemented by CDPH. CDPH developed and published three guides in June in response to this recommendation: Packaging Checklist, Cannabis Products Labeling Checklist, and Cannabis Products (Small Containers) Checklist, as well as more than 20 FAQs on packaging and labeling. These materials can be found online at: cdph.ca.gov/mcsb. CDPH will release a revised set of checklists, updated FAQs and an illustrative guide after adoption of the permanent regulations.

SUBCOMMITTEE RECOMMENDATIONS ADOPTED BY THE CAC

Clarification on Packaging (Recommendation #2) — Provide clarification on the concepts of primary packaging, secondary packaging, and child-resistant packaging (with respect to primary versus secondary) and labeling.

Status: Implemented by CDPH. The CDPH issued a Packaging Checklist, which included guidance for child-resistant packaging, as well as FAQs related to this recommendation in June of 2018. These materials can be found online at: cdph.ca.gov/mcsb. CDPH further clarified these concepts in revisions included in the permanent regulations. See section 40403 General Provisions and section 40417 Child-Resistant Packaging Requirements.

Child-Resistant Packaging (Recommendation #3) — Clarify how and where child-resistant packing should be used.

Status: Implemented by CDPH. The questions regarding how and where child-resistant packaging will be required, and the timeline associated with child-resistant packaging is still unclear as of the drafting this report. The licensing authorities have adopted this recommendation as reflected in section 5303 of the Bureau's regulations and section 40417 of CDPH's proposed regulations.

Dosage Limits (Recommendation #4) — Increase the limitation on dosage from 2,000 mg to 4,000 mg for any non-edible medical product that is not restricted by statute; and raise the dosage limitation from 1,000 mg to 2,000 mg for non-edible adult use products.

Status: Not implemented by CDPH.

SUBCOMMITTEE ON MICROBUSINESS

The microbusiness license allows the licensee to engage in multiple types of licensed commercial cannabis activities under a single license. Microbusiness licensees must qualify for, and conduct, a minimum of three out of four allowed commercial cannabis activities including:

- The commercial cultivation of cannabis on an area less than 10,000 square feet.
- The ability to act as a licensed distributor.
- The ability to manufacture commercial cannabis as a Type 6 manufacturer.
- The ability to sell commercial cannabis as a retailer.

Established by the voter initiative, AUMA, the microbusiness license ultimately ended up replacing the 10A license type established by the MCRSA in 2015. During the reconciliation of the MCRSA and AUMA statutes, the 10A license type, which allowed for vertical integration of pre-existing vertically integrated operations, was stricken from statute and the microbusiness license was clarified.

It is important to note that the public commented on the microbusiness license type during every CAC meeting. At the August CAC meeting, the committee

SUBCOMMITTEE RECOMMENDATIONS ADOPTED BY THE CAC

agreed to reconvene the Subcommittee on Microbusiness in September 2018. The recommendations below (1–3) were adopted prior to the September 2018 general meeting. The Subcommittee on Microbusiness made a total of nine recommendations. Of these, four were adopted by the committee. Of the adopted recommendations, the licensing authorities have: partially implemented one and not implemented three.

License Tiers, Incentives for Compassionate Use and Rural Operators, and Fee Schedule Cap (Recommendation #2) — In an effort to create an onramp to legalization, there should be a clarification of microbusiness that includes tiers based on gross receipts and number of employees. The fee schedule should be redefined to include a ceiling that delineates when the business is no longer considered a microbusiness. Incentives should be provided based on equity for compassionate use and rural operators.

Status: Not implemented by the Bureau.

The following recommendations were passed by the subcommittee during the September 20, 2018 meeting. During the November 8, 2018 Cannabis Advisory Committee meeting the committee voted to include all three of the following recommendations in this report.

Recommendation #1 — Provide a “sub-microbusiness” or “microbusiness A” license that allows up to 10,000 square feet of cultivation including nurseries, three out of four activities to be fulfilled by allowing any type of non-volatile solvent manufacturing including shared space manufacturing, retail sales to happen at events in addition to storefront sale and delivery, and distribution to be fulfilled by full distribution or distribution transport only.

Status: Partially implemented by the Bureau. The Bureau has stated that nursery licenses qualify as cultivation so long as the nursery does not exceed 10,000 square feet. The Bureau has also stated that microbusinesses authorized to engage in retail and / or distribution activities may conduct any activities allowable by the corresponding type of license. Additionally, the Bureau has amended language to include licensed infusion as a license type option to fulfill the manufacturing activity requirement.

Recommendation #2 — The Bureau and CDPH should work together to create a document that they could distribute jointly to clarify that local governments may further limit the types of activities that are permitted to occur under a microbusiness authorized to engage in level one manufacturing within their jurisdiction. Even though the state permits multiple activities under the license type, the community could restrict certain types of activities if they so choose.

Status: Not implemented by the Bureau / CDPH.

Recommendation #3 — The Bureau should consider removing the prohibition on activities allowed within the home, so long as the activities that the applicant is choosing to conduct are activities commonly allowed under cottage business.

Status: Not implemented by the Bureau.

TABLED SUBCOMMITTEE RECOMMENDATIONS REQUIRING STATUTORY CHANGES

Several subcommittee recommendations were tabled upon determination by the licensing authorities that the recommendation would require a statutory change to address. To address these recommendations, the CAC agreed to compile the tabled recommendations into a letter to be penned by Chair Rahn and Vice Chair Todd and presented on behalf of the CAC to the California State Legislature.

Within those subcommittee recommendations that were tabled, common themes emerged highlighting issues that pose challenges to all aspects of the supply chain, including consumers. As such, the subcommittees heard repeated public comment, in turn passing subcommittee recommendations, related the following common topics, including but not limited to:

- Remove bifurcation of adult-use and medical-use licenses;
- Urgent need to establish a medical compassion program for patients unable to afford the cost and taxation associated with the newly regulated commercial medical cannabis marketplace;
- Ease the requirement that each license occupy separate contiguous premises;
- Reduce the barriers to entry for all license types, with emphasis on the needs of small businesses to access the microbusiness license;
- Establish a pathway for commercial cannabis licenses to operate in a manner that is analogous to California’s ‘home occupation’ guidelines; and
- Clarify the cannabis waste sections of regulations to allow for the remediation and sale of cannabis waste.

This section captures all tabled subcommittee recommendations and provides further insight into the implementation status of each recommendation.

SUBCOMMITTEE ON CULTIVATORS

Composting and Waste (Recommendation #3) — Allow Chair Nevedal to make a recommendation based on public and committee comments to provide clarity on composting, the definition of waste, and the ability to sell unused waste products lacking cannabinoids.

Status: Implemented by CDFA.

Cottage Licenses (Recommendation #4) — Add square footage (“or 2,500 square feet” and “or 5,000 square feet”) to specialty cottage and cottage licenses, respectively, if possible, and if not direct staff to pursue a legislative fix to allow for the change.

Status: Not implemented by CDFA.

TABLED SUBCOMMITTEE RECOMMENDATIONS REQUIRING STATUTORY CHANGES

Transport by Cultivators (Recommendation #5) — Cultivators should be allowed to transport their product to nearby licensed processors without obtaining additional licensure, so long as they account for the net weight of the product.

Status: Not implemented by CDFA.

Harvest Batch (Recommendation #8) — Cultivators should be able to batch per area at the time of harvest for track and trace purposes and that they should not need to identify each harvest back to the individual plant.

Status: Not implemented by CDFA.

Lab Testing System (Recommendation #9) — The CAC should make changes to the lab testing system to address the burdens that may impede a path to legalization, such as the loss of strains, high costs, insufficient accuracy levels, lack of protections to the cultivator among others.

Status: Not implemented by CDFA.

Requirements for Nurseries (Recommendation #10) — Consideration of issues related to scaled licensing tiers for nurseries, packaging seeds in batch count by bulk weight, establishing genetic repositories, providing flexibility to develop genetic diversity, allowing cultivators to transport propagated plant material and seeds, removing the requirement for nurseries to designate seed and / or plant stock as A or M material; allowing cultivators to provide nurseries with genetic stock; and allowing cultivators to provide other cultivators with plant materials in an emergency, provided proper documentation for all of the above.

Status: Not implemented by CDFA.

SUBCOMMITTEE ON ENFORCEMENT

Video Surveillance (Recommendation #3) — All licensing authorities should require that all areas where waste is stored, processed, handled, and properly disposed of, be covered by video surveillance.

Status: Not implemented by the Bureau / CDFA / CDPH. Per Bureau comments, implementing the committee's recommendation would increase the costs for licensees to have additional video surveillance equipment and video storage.

TABLED SUBCOMMITTEE RECOMMENDATIONS REQUIRING STATUTORY CHANGES

SUBCOMMITTEE ON PUBLIC HEALTH AND YOUTH

Youth Education and Prevention Programs (Recommendation #8) — CDPH should designate staff and necessary resources to the education of youth and youth prevention programs relating to cannabis.

Status: Not Implemented by CDPH. This recommendation is outside of the authority of the CDPH cannabis regulatory office, as MCSB regulates and licenses cannabis manufacturers only. Separately from the state regulatory framework, Proposition 64 provided funding to the California Department of Health Care Services for a public education campaign targeting youth, parents and mentors, and pregnant and breastfeeding women. This campaign was executed by CDPH as “Let’s Talk Cannabis” and can be found at www.letstalkcannabisca.com.

Advisory Committee (Recommendation #9) — CDPH should designate / form an advisory committee that would help establish a more comprehensive program including prevention, early intervention and continuing of care.

Status: Not implemented by CDPH. This recommendation is outside of the authority of the CDPH cannabis regulatory office, as MCSB regulates and licenses cannabis manufacturers only.

Local Government Coordination (Recommendation #10) — All licensing authorities should cooperate and coordinate with local agencies and local governments to close unlicensed and unregulated cannabis businesses that make it difficult for licensed cannabis businesses to succeed.

Status: Implemented by the Bureau / CDFA / CDPH. Per Bureau comments, the licensing authorities currently share information with local agencies and local governments as permitted in response to a California Public Records Act requests, as permitted by the Information Practices Act, to another government agency as required by state or federal law, in response to a court or administrative order, a subpoena, or a search warrant. The licensing authorities are working cooperatively with local law enforcement on matters related to licensing and enforcement.

Multilingual Public Information Campaign (Recommendation #11) — The three regulatory agencies should develop a culturally competent multilingual public information campaign about the means for lodging complaints about inaccuracy in advertising, particularly of health claims.

Status: Partially implemented by the Bureau. Per Bureau comments, the licensing authorities have established a process to submit complaints via online, phone hotline (which includes an interpretation service if needed), or email. This process allows for the public to lodge complaints. Additionally, the Bureau will be launching a public awareness and education campaign in 2019.

TABLED SUBCOMMITTEE RECOMMENDATIONS REQUIRING STATUTORY CHANGES

SUBCOMMITTEE ON LABORATORY TESTING

Testing by Individuals (Recommendation #5) — Allow any adult to have a cannabis product tested at a licensed testing lab.

Status: Not implemented by the Bureau.

SUBCOMMITTEE ON DISTRIBUTORS

Multiple Distribution Hubs (Recommendation #5) — The Bureau should consider allowing multiple distribution hubs without requiring separate licenses for each location.

Status: Not implemented by the Bureau.

SUBCOMMITTEE ON MICROBUSINESS

Farm Stand Sales (Recommendation #3) — Microbusiness licensees should be allowed to utilize farm stand sales as well as farm direct sales model (such as CSAs) without a brick and mortar store to satisfy the retail component of the license.

Status: Not implemented by the Bureau.

Single Premise (Recommendation #4) — All microbusiness activities should not have to take place on a single premise.

Status: Not implemented by the Bureau.

Qualifying Activities (Recommendation #5) — Microbusiness licensees should be allowed to conduct offsite processing as one of their qualifying activities and use shared facilities for any of their activities.

Status: Not implemented by the Bureau.

License for Non-Contiguous Premises (Recommendation #6) — Recognizing that microbusinesses frequently cannot operate at one contiguous location in large part because of local land use ordinances, and that it can be cost prohibitive for microbusinesses to obtain multiple licenses, an accessory license should be created to tie premises together beyond the simple geographic locations, while ensuring that flow of the product maintains a single chain of custody.

Status: Not implemented by the Bureau.

SUBCOMMITTEE RECOMMENDATIONS (NOT ADOPTED BY THE COMMITTEE)

During the CAC's review of subcommittee recommendations, several recommendations failed to be adopted by the CAC. However, some of these recommendations were implemented, either in full or partially, by the licensing authorities. Subcommittee recommendations, not adopted by the full committee, are listed below, including details about each recommendation's implementation status.

SUBCOMMITTEE ON ENFORCEMENT

Security Personnel Standards (Recommendation #4) — All licensing authorities should consider establishing standards for security personnel for cultivation, manufacturing and distribution.

Status: Partially implemented by the Bureau / CDFA / CDPH. See section 5045. Security Personnel of the Bureau's proposed regulations for additional security personnel requirements for retail and distribution licensees.

Health-Related Claims (Recommendation #5) — The CDPH should develop enforcement provisions to ensure that the public has the ability to challenge health related claims about cannabis and a means to adjudicate evidence for their claims.

Status: Not implemented by CDPH.

Unlicensed Collectives (Recommendation #7) — The Bureau, before taking any enforcement action on unlicensed collectives should give the business the opportunity to demonstrate an attempted effort for good faith compliance.

Status: Not implemented by the Bureau.

Waste (Recommendation #10) — To be consistent with the protection of health and safety, we recommend to all licensing authorities that they explore differentiating types of waste and explore the possibility of a cannabis-specific licensed waste hauler, and the possibilities of usage of waste beyond destruction.

Status: Partially implemented by the Bureau / CDFA / CDPH. All three licensing authorities significantly revised waste requirements in drafting the proposed permanent regulations.

Online Advertising (Recommendation #11) — Look into the possibility of having an unlicensed businesses' online advertising and marketing removed.

Status: Partially implemented by the Bureau. See regulatory section 5415.1. Deliveries Facilitated by Technology Platforms and section 5040. Advertising Placement.

SUBCOMMITTEE RECOMMENDATIONS (NOT ADOPTED BY THE COMMITTEE)

Local Government Communication on Licensees (Recommendation #12)

— The Bureau should clearly identify a path for communication between the Bureau and local governments to share information regarding licensees' application information, criminal or civil judgments or disciplinary action. The communication should happen within a mandated timeframe with protocols in place for communication acknowledgment.

Status: Partially implemented by the Bureau. See section 5002. Annual License Application Requirements, subsection (20) (M) and section 5035. Notification of Criminal Acts, Civil Judgments, Violations of Labor Standards, and Revocation of a Local License, Permit, or Other Authorization After Licensure of the draft proposed permanent regulations for details.

Local Government Communication on Violations (Recommendation #13) —

The Bureau should clearly identify a path for communication between the bureau and local governments regarding labor code violations, OSHA violations, fire code violations and any other local violations.

Status: Not implemented by the Bureau.

Hazard Identification Standards (Recommendation #14) — All regulatory agencies should standardize how hazards that are unique to the cannabis industry are identified and how fire agencies statewide are notified of such hazards.

Status: Not implemented by the Bureau / CDFA / CDPH.

Education for First Responders (Recommendation #15) — Licensing agencies should quickly start to address the educational needs of first responders related to cannabis.

Status: Not implemented by the Bureau / CDFA / CDPH.

SUBCOMMITTEE ON LICENSING APPLICATION

Labor Standards (Recommendation #1) — Applicants should be required to submit a plan for compliance with labor standards and disclose previous labor law violations.

Status: Partially implemented by the Bureau. While the regulations do not require an applicant to submit a plan for compliance with labor standards, the draft proposed permanent regulations do require disclosure of previous labor law violations. See section 5002. Annual License Application Requirements, subsection (c) (20) (M) and section 5035. Notification of Criminal Acts, Civil Judgments, Violations of Labor Standards, and Revocation of a Local License, Permit, or Other Authorization After Licensure for more details.

SUBCOMMITTEE RECOMMENDATIONS (NOT ADOPTED BY THE COMMITTEE)

Information from Corporation Owners (Recommendation #3) — Require any corporation or other entity listed on the annual license application who has a financial interest, to disclose the name, birth date, and copy of government-issued identification for all individuals who are the owner(s) of the corporation or other entity. These individuals shall not be required to submit the information required of owners under section 5002, subsection (c) (20).

Status: Implemented by the Bureau / CDPH. The draft proposed permanent regulations address this recommendation via language changes to section 5002. Annual License Application Requirements, section 5004. Financial Interest in a Commercial Cannabis Business and section 5600. Cannabis Event Organizer License. CDPH only requires the first, last name, and Driver License for Financial Interested holders or tax ID number for business section 40102.

SUBCOMMITTEE ON RETAILERS

Hours of Operation (Recommendation #2) — Restore local control over hours of operation. The state can establish suggested operating hours however, local government can waive those hours.

Status: Not implemented by the Bureau.

Barriers to Entry (Recommendation #3) — Reduce barriers to entry into the industry, including issues with taxation, insurance and other fees.

Status: Partially implemented by the Bureau. Please see section 5014. Fees for details.

Waste (Recommendation #4) — Retailer should be allowed to haul or destroy waste that's generated on their property.

Status: Partially implemented by the Bureau, via elimination of section 5055. Cannabis Waste Management.

California Code of Regulations, Title 16, section 5411 (Recommendation #5) — Regarding section 5411 subsection B-1, strike language starting from “in possession of valid ID card” through the end of the sentence.

Status: Not implemented by the Bureau.

SUBCOMMITTEE RECOMMENDATIONS (NOT ADOPTED BY THE COMMITTEE)

A and M Licenses (Recommendation #6)—Retailers should be allowed to purchase product and not have to differentiate between A and M licenses.

Status: Partially implemented by the Bureau. Only cannabis goods that can only be sold by medicinal retailers are restricted to sale to and by M licensees.

Sampling (Recommendation #7) — Establish greater flexibility on sampling within statute and regulations.

Status: Not implemented by the Bureau.

Product Liability Insurance (Recommendation #8) — Product liability insurance should be applied to the manufacturer not the retailer within context of statute.

Status: Not implemented by the Bureau.

Banking System (Recommendation #9) — The state should continue to explore establishing a banking system for the California cannabis industry.

Status: Not implemented by the Bureau.

SUBCOMMITTEE ON MICROBUSINESS

Security Requirements (Recommendation #1) — Security requirements for microbusinesses should be determined by the local jurisdiction and the regulations should not be unduly burdensome to small businesses and microbusinesses.

Status: Not implemented by the Bureau. While this recommendation passed unanimously at the subcommittee level, it failed to pass adoption by the CAC.

INFORMATIONAL PRESENTATIONS

In addition to establishing the subcommittees referenced earlier in this report, the CAC was fortunate to receive several educational presentations designed to provide the committee and the public with additional information on specific topics as requested by the CAC.

Over the course of the 2018 CAC meetings, the following educational presentations were provided to the committee:

“CALIFORNIA ENVIRONMENTAL QUALITY ACT PROCESS OVERVIEW” —

Presented by Michael Stevenson, Horizon Water and Environment, LLC

“CANNABIS ENFORCEMENT FROM THE LOCAL PERSPECTIVE” —

Presented by Joe Devlin, Chief of Cannabis Policy and Enforcement, City of Sacramento and Jonathan Feldman, Legislative Advocate, California Police Chiefs Association

“OVERVIEW OF CALIFORNIA’S CANNABIS TAXES” —

Presented by Nicolas Maduros, Director, California Department of Tax and Fee Administration

“CALIFORNIA CANNABIS TRACK-AND-TRACE SYSTEM: OVERVIEW and IMPLEMENTATION UPDATE” —

Presented by John Halligan, Branch Chief, Compliance and Enforcement Branch, CalCannabis

GLOBAL ISSUES

The purpose of this section is to highlight for the licensing authorities the overarching concerns of the Cannabis Advisory Committee. This authority is granted by Business and Professions Code section 26014(a), which states:

- *“The bureau shall convene an advisory committee to advise the licensing authorities on the development of standards and regulations pursuant to this division, **including best practices and guidelines** that protect public health and safety while ensuring a regulated environment for commercial cannabis activity that does not impose such barriers as to perpetuate, rather than reduce and eliminate, the illicit market for cannabis.”*

Toward the goals outlined above, the Cannabis Advisory Committee deems it necessary to include in its first Annual Report a brief statement regarding global issues repeatedly identified during the past year that have created cause for concern. **Because the following concerns often cannot be remedied by regulatory agents without legislative action and because the Cannabis Advisory Committee has determined that each concern contributes in its own way to difficulties, we are communicating our findings not only to the regulatory agencies, but also to the California State Legislature and general public.**

The overarching reality after one year of legal cannabis sales is that the regulatory process to licensure insufficiently incentivizes unlicensed businesses to seek licensure and insufficiently de-incentivizes the illegal unlicensed underground market in order to effectively “protect public health and safety while ensuring a regulated environment for commercial cannabis activity.” The variety of issues contributing to this include, but are not limited to, the following:

- **Equity Issues** — Efforts to promote participation in the new legal cannabis industry by members of communities disproportionately impacted by enforcement of the War on Drugs have by most measures been unsuccessful for several reasons, including:
 - “Social Equity” means different things for different parts of the state. As such, a single equity program does not properly address the different communities impacted.
 - Lack of funding for social equity programs.
 - Lack of guidance, support, and general tools for equity qualified businesses to survive let alone be successful.

GLOBAL ISSUES

The Bureau's efforts to remedy some of the shortcomings of this is not unnoticed. Senate Bill 1294 intends to address some of the aforementioned issues by allocating a \$10 million fund to assist eligible local equity applicants to operate in a regulated marketplace.

- **Small Business Issues** — The intention of Proposition 64 to favor small businesses / farmers over big money operations, at least initially, has not yet reached the success anticipated by the Bureau.
 - The continued layering of additional regulations on top of stringent statutory requirements favor larger business organizations and goes against the spirit of Proposition 64.
 - High costs to entry do not favor the small business.
 - Lack of clarity on compliance requirements make compliance for the smaller businesses near impossible.
- **Microbusiness Issues** — The intended purpose of the microbusiness license is being subverted, in part because the definition of a microbusiness is insufficiently clear and detailed.
 - The initial spirit of the microbusiness license was to provide an opportunity for the small cultivator to be vertically integrated and have an opportunity to control margin compression and have an opportunity to survive. The current nature of the microbusiness license does not do this and offers no added value to the small cultivator.
 - The current status of the microbusiness license is simply a vertically integrated license no different than acquiring four individual licenses in retail, cultivation, manufacturing, and distribution. In actuality, the additional restrictions placed on the microbusiness license creates a handicap for the microbusiness license holder.
- **Excessive Regulatory Burden** — Small businesses are having difficulty emerging from their historically underground status due to the inability to modify regulations to meet local conditions, the fragmentation of regulations among the different agencies and local jurisdictions, and the amount of upfront capital required to comply with all regulations.
 - The dual nature of the licensing process (i.e., state and local) has created a bottleneck in licensing at the local municipal level where unless a local municipality actually issues a license, permit, or other authorization, businesses are not able to apply for a state license. Therefore, as willing and able as the state agencies are to issue licenses, unless a qualified applicant has successfully navigated the licensing process at the local level, the state agencies are left out of the process.

GLOBAL ISSUES

- The majority of local municipalities are either not issuing licenses or are slow in rolling out their cannabis programs. Of the municipalities issuing licenses, most are not issuing retail licenses.
- Patchwork ordinances at the local level is creating a patchwork system that is not always in line with state requirements and is lacking in uniformity on a statewide level.
- **Banking Issues** — Continued lack of access to normal business banking services remains an unnecessary burden on businesses, complicates tax collection and presents public safety issues due to having to rely on a cash economy.
 - Though not strictly a state issue, federal banking issues have created public safety issues.
 - Where banking is mostly a federal issue that would need to be addressed by federal regulators, certain state banking options should be explored.
- **Enforcement Issues** — The unlicensed market continues to flourish, due in part to the competitive financial advantage such operations have over legal cannabis businesses, which are committed to paying license fees and collecting taxes. Until recently, there were insufficient enforcement efforts by both state and local authorities to support licensed businesses. It should be acknowledged that the state agencies initially took a slower than expected approach to enforcement in an effort to provide opportunity for businesses to come into compliance with licensing regulations. That said, some of the enforcement issues businesses continue to face are:
 - Lack of enforcement is creating a thriving environment for the unregulated “underground market.”
 - Lack of enforcement is creating unfair competition for the businesses that go through the stringent licensing process and receive their licenses by having to compete with businesses not licensed and not paying taxes.
 - Enforcement is fragmented and uncoordinated.
- **Compassionate Use Issues** — Nonprofit programs are being devastated by the inability to receive free, compliant cannabis donations that are tested and in the legal marketplace from growers who must pay taxes on their product.
 - The importance of patient needs has been outweighed and replaced by business interests that are better able to navigate the generally complex regulatory process required to obtain licensure, as well as ongoing compliance requirements to ensure safe, tested, and compliant cannabis products.

GLOBAL ISSUES

- Not all businesses are seeking to profit and a regulatory or licensing scheme is needed to address businesses serving compassionate use needs, particularly for patients unable to afford medical cannabis.
- **Public Education Issues** — Efforts to inform and educate the public regarding the new laws legalizing cannabis for those 21 and older, the need to support legal cannabis businesses in order to ensure safe products, and the potential side effects of cannabis use have been insufficient. While the Bureau is expected to launch an education program in 2019, the following issues currently persist in the legal marketplace:
 - Public education on safe cannabis use is severely lacking.
 - The general public is not sufficiently being helped to differentiate the difference between licensed and unlicensed businesses.
- **Taxation Issues** — There does not appear to be an objective method for determining the contribution of current tax rates to maintaining the underground market.
 - The cumulative tax burden is in excess of 35 percent and may not be sustainable.
 - Excessive tax burdens can de-incentivize licensure.
- **Regulatory Fragmentation Issues** — The need for licensees to interact with three separate regulatory agencies (Bureau, CDPH and CDFA) is burdensome. Increasing coherence by providing one single point of contact would be advantageous for business operators.
 - Current regulatory agency structure and oversight is overcomplicating licensing processes without clear enough direction and authority.

CONCLUSION

The regulated cannabis industry is off the ground and many are deeply and personally invested. The CAC, along with the cannabis licensing authorities, share the vision to ensure the long-term sustainability and stability for the industry. California is in a unique position to finalize regulations that meet the needs of different communities.

Each of the 10 subcommittees adopted recommendations seeking to balance an existing industry without making it too burdensome as to perpetuate the illicit market. The committee took a meaningful look at the 84 recommendations that came forward, adopting 47 of the recommendations, in an effort to address pressing Industry challenges. To date the Bureau, CDFA, and CDPH have implemented 11 recommendations, partially implemented eight recommendations, and have not implemented 28 recommendations.

After the adoption of recommendations, the committee heard a number of informational presentations and continued to hear public comment regarding unaddressed regulatory concerns. The committee heard comments from businesses, including operators that have traditionally operated within their homes and are seeking a pathway to licensure. The committee also heard the need for Compassionate Use Programs that facilitate access to safe medicine for veterans, chronically ill patients, and low-income communities. In addition, the committee heard the need to better promote health and public safety especially for youth and workers in the industry. Due to the passage of the Compassionate Use Act in 1996, California's commercial medical cannabis marketplace developed and has flourished for over two decades in an unregulated climate. As these businesses transition into the regulated marketplace, it would be a disservice not to learn from this industry experience.

While the committee has accomplished a great deal over the course of the past year, there remain issues that have not yet been addressed, including but not limited to, the needs of tribal businesses, the development of a state equity program, comprehensive banking, and reducing the barriers associated with onerous taxation. To this end, the committee has questioned the scope and function of its work. Many committee members have publicly expressed concern about having enough impact on policymaking and the need to elevate issues to comprehensively consider their impacts on a broader level. The global issues section affirms that while the committee has affected positive progress, the issues facing the developing industry are complex and continue to pose significant challenges, many of which cannot be remedied by the licensing authorities without legislative action. It may be helpful for the CAC to consider these issues in future work.

The CAC would like to acknowledge the remarkable amount of effort the Bureau, CDFA, and CDPH have invested during this critical time of development. The policies implemented by the state for this industry should reflect our state's values, environmental policies, and the economic needs of small businesses. The CAC looks forward to continuing to work with the state's licensing authorities along with every involved individual to build a healthy market for cannabis in California. This will take continued engagement between the legislative, regulatory, and budget process, at both the state and federal level. As a committee, we recognize that our work remains unfinished and hope this report serves as an important marker in this long-term project.



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