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CALIFORNIA CANNABIS ADVISORY COMMITTEE

2 0 1 9 A N N U A L R E P O R T

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ACKNOWLEDGMENTS

The Cannabis Advisory Committee (CAC) would like to acknowledge and thank the following individuals for their leadership and commitment to the mission and work of the committee. We are grateful for the valuable support we received from the state cannabis licensing authorities' staff, legal counsel, and the technical and stenographic team throughout the course of the year.

The Cannabis Advisory Committee benefited from the active participation from experts, local officials, business leaders, patient advocates, veteran groups, compassionate use collectives, industry-specific organizations, and members of the community. We would like to thank the individuals who attended the meetings, provided thoughtful public comment, and engaged with the work of the committee. We look forward to your continued participation to improve the industry.

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ACKNOWLEDGMENTS

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EXECUTIVE SUMMARY

In 1996, California was the first state in the union to legalize the use of medicinal cannabis under Proposition 215, the Compassionate Use Act. California established the Medical Marijuana Program (MMP) through Senate Bill (SB) 420 (Vasconcellos) which increased access to medicinal cannabis for qualified patients and primary caregivers and provided defense from prosecution for the possession and cultivation of medicinal 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.

In 2015, nearly 20 years after the passage of the Compassionate Use Act, the California State Legislature established the Medical Cannabis Regulation and Safety Act (MCRSA) through a series of bills—Assembly Bill (AB) 243 (Wood), AB 266 (Bonta, Cooley, Jones-Sawyer, Lackey, and Wood), and SB 643 (McGuire). The MCRSA created a statewide framework to regulate medicinal 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. The Proposition requires all local jurisdictions and commercial cannabis businesses to be compliant with the California Environmental Quality Act (CEQA). Proposition 64 also established two cannabis taxes: 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.

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 AUMA¹ into a consolidated system for the regulation, licensing, taxation, and enforcement of both medicinal and adult-use commercial cannabis activities. During the reconciliation and development of MAUCRSA, local jurisdictions were provided until July 2019 to meet CEQA compliance and allowed to issue discretionary permits to commercial cannabis businesses while managing the CEQA compliance.²

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 nurseries, cultivators, and processors; implementing the Track-and-Trace system; and is the lead agency overseeing the industry's compliance with CEQA. CDFA is also responsible for the development and implementation of the Appellation of Origin, and Comparable to Organic programs which, per statute, must be implemented by January 1, 2021.

¹ http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB94

² Section 26055. (h), SB-94 (2017)

EXECUTIVE SUMMARY

In November 2017, and per MAUCRSA, the California Cannabis Advisory Committee (CAC) was established. Currently comprised of 22 appointed members from different sectors to represent the diverse backgrounds of California and the cannabis industry, the 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.”³

The CAC began its work, as the licensing authorities adopted emergency regulations and prepared to begin issuing temporary and annual licenses. Since the committee’s development, the licensing authorities have: adopted emergency regulations, re-adopted emergency regulations, and adopted permanent regulations resulting in the establishment of temporary licensing, provisional licensing, and annual licensing programs for commercial medicinal and adult-use cannabis activities. Please see the abbreviated timeline below for context:

- ◆ June 2017, SB 94 acts to reconcile Proposition 64 and the MCRSA by extending the timeline local jurisdictions have to meet CEQA requirements until July 2019.
- ◆ December 2017, the licensing authorities adopted emergency regulations for commercial cannabis businesses, establishing pathways for both annual and temporary licensing. Temporary licenses were developed to allow commercial cannabis businesses a pathway to licensure while working on annual license application requirements.
- ◆ January 2018, the licensing authorities began issuing temporary and annual licenses. Additionally, the California Department of Tax and Fee Administration (CDTFA) implemented the two cannabis taxes established under Proposition 64.
- ◆ July 2018, the licensing authorities re-adopted emergency regulations and published draft permanent regulations, triggering a 45-calendar day public comment period on the draft permanent regulations.
- ◆ September 2018, SB 1459 (Cannella) was signed into law, establishing the provisional licensing program to assist temporary licensees in the process of meeting environmental and CEQA compliance.

³ Business and Profession Code section 26014

EXECUTIVE SUMMARY

- ◆ January 2019, the licensing authorities adopted permanent regulations marking an end to the emergency regulations. The ability to issue temporary licenses ended via statute, and the provisional licensing program began, which was valid through December 31, 2019.
- ◆ July 2019, with the passage of AB 97, the requirements to obtain a provisional license were expanded to allow all applicants access to the licensing program, so long as the applicant could show that environmental and CEQA compliance was in process. AB 97 also extended the deadline for local jurisdictions to meet CEQA compliance until July 1, 2021.
- ◆ November 2019, CDTFA determined that the required markup rate starting January 1, 2020 would be increased from 60 percent to 80 percent, and per MAUCRSA, increased the cultivation taxes to account for inflation.⁴

To date, the CAC has held 37 meetings statewide during which the committee received public comment, discussed issues, and adopted recommendations regarding the ongoing regulatory development and common concerns challenging the regulated industry, and consumers. 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 providing solutions to the greatest extent possible, consistent with its statutory purpose.

We hope this report provides insight into the committee's work within an evolving regulatory environment and serves to document the ongoing challenges facing the industry and consumers, while informing the public, and policymakers about responsible solutions and best practices.

For more information, please visit the Bureau of Cannabis Control website:
https://bcc.ca.gov/about_us/committee.html

⁴ <https://www.cdtfa.ca.gov/news/19-01-Media-Alert.htm>

BACKGROUND

Though cannabis remains illegal under federal law, many states have enacted varying degrees of legalization. According to the National Conference of State Legislatures, 33 states have legalized cannabis for medicinal purposes,⁵ and 11 states plus the District of Columbia have legalized cannabis for adult-use purposes.⁶ Public opinion continues to steadily climb in support of cannabis legalization. In 2019, 67 percent of Americans reported supporting cannabis legalization.⁷ Additionally, 68 percent of Californians say that legalization of cannabis is a “good thing” for the state, showing a marked rise in support since Proposition 64 was approved.⁸

As of June 2019, there were 5,755 licensed cannabis businesses plus an additional 3,552 licenses pending payment, as the California cannabis licensing authorities continue to transition businesses from a temporary or provisional license to an annual license.⁹ Despite the State’s committed efforts to bring cannabis businesses fully into the regulated commercial market, the illicit market continues to pose a significant challenge to the regulated industry. In fact, estimates indicate that as much as 80 percent¹⁰ of the cannabis market in California remains illicit. While California is expected to generate \$3.1 billion in licensed cannabis sales this year, nearly triple that amount — \$8.7 billion - is expected to be spent in the illicit cannabis market.¹¹

The fourth quarter of 2019 only magnified the severity of the need to eliminate the illicit market and to bring those operators and consumers into the regulated market. Challenges facing the licensed market were publicly noted as multiple established licensed cannabis businesses, announced significant employee layoffs. At the same time, 133 Californians suffered e-cigarette, or vaping, product use associated lung injury (EVALI), also called vaping associated pulmonary injury (VAPI), resulting in four deaths that were traced to illicit vaping products.¹²

While some of the regulated industry’s challenges arose from the growing pains of a new regulatory framework, many of the challenges facing the regulated market will require both federal and state statutory changes, regulatory adjustments, possibly revisiting the ballot initiative process, and ultimately for the public to support medicinal and adult-use cannabis before legalization can fully take hold.

California now has the benefit of the stability that permanent regulations provide. To build off this progress, legislators, policymakers, and the general public alike will need to drive forward a multi-pronged, comprehensive approach that includes a balance of incentives and penalties, to create a thriving legal industry that can compete with the illicit market.

⁵ <http://www.ncsl.org/research/health/state-medical-marijuana-laws.aspx>

⁶ <http://www.ncsl.org/research/civil-and-criminal-justice/marijuana-overview.aspx>

⁷ <https://www.pewresearch.org/fact-tank/2019/11/14/americans-support-marijuana-legalization/>

⁸ <https://escholarship.org/uc/item/9z9330q5>

⁹ https://bcc.ca.gov/abot_us/meetings/materials/20190628_stats.pdf

¹⁰ Kapur, Harinder, Senior Assistant Attorney General, Cannabis Control Section; 2:19:37 – 2:18:48; <https://www.youtube.com/watch?v=3zpgiSrTaKQ>

¹¹ California: Lessons from the World’s Largest Cannabis Market, Arcview Market Research and BDS Analytics

¹² <https://www.cdph.ca.gov/Programs/CCDCPHP/Pages/EVALI-Weekly-Public-Report.aspx>

CAC SUBCOMMITTEE WORK

In the CAC's first year, 10 subcommittees were established to address issues related to Cultivation, Distributors, Enforcement, Social Equity, Licensing Applications, Manufacturers, Microbusinesses, Public Health and Youth, Retailers, and Testing Laboratories. Collectively, these subcommittees made a total of 79 recommendations, 47 of which were adopted by the CAC.

The remaining subcommittee recommendations either failed to be adopted or were not brought before the CAC due to a declaration by the licensing authorities that the recommendation would require statutory changes.¹³ Amongst the subcommittee recommendations tabled in 2018, common themes emerged highlighting issues that posed significant challenges to all aspects of the supply chain, including consumers.

In an effort to clarify and document these common concerns, the CAC compiled the tabled recommendations into the 2018 Annual Report as a way to communicate the findings with the regulatory agencies, the California State Legislature, and the public. The common concerns expressed during the subcommittee meetings were also echoed by the public during CAC meetings. As such, the committee found it necessary to express these overarching concerns in the Global Issues section of the 2018 Annual Report. This year's Annual Report provides a recap and update of common concerns in the Global Issues section.

This year, the CAC designated six subcommittees to address issues relating to Cultivation, Delivery, Enforcement and Public Safety, Testing Laboratories, Public Health and Youth, and Social Equity. However, due to the unfortunate emergence of EVALI and limited meetings, the Enforcement and Public Safety Subcommittee was not able to meet. The Enforcement and Public Safety Subcommittee meeting will be scheduled for some time in 2020.

This section of the CAC's 2019 Annual Report will cover the subcommittees that met in 2019, the recommendations put forth by those subcommittees, and the recommendations adopted by the CAC over the course of the year.

SUBCOMMITTEE ON CULTIVATION

Under permanent regulations, commercial cannabis cultivators may be eligible to license existing cultivation sites and/or establish new cultivation sites. While CDFA serves as the cultivation licensing authority, it is important to note that all cultivation-type licenses are subject to rigorous environmental regulations implemented by the California Department of Fish and Wildlife (CDFW), and the State Water Resources Control Board (SWRCB). Cultivation license holders are also subject to CEQA requirements.

¹³ https://www.bcc.ca.gov/about_us/documents/cac_annual_report_2018.pdf

CAC SUBCOMMITTEE WORK

The timelines associated with meeting the environmental requirements have significantly limited the number of cultivators that can qualify for annual licensure. These challenges have been exponential for existing open-air cultivators who developed their cultivation sites well before legalization and regulatory implementation and are not eligible for exemptions offered by CDFW and the SWRCB. In an attempt to accommodate cultivators who were unable to complete the environmental compliance components associated with annual licensing as the temporary program ended, the provisional licensing program was implemented on January 1, 2019.

While the implementation of the provisional licensing program has provided a crucial opportunity for cultivators and other cannabis businesses to participate in the regulated market while managing environmental compliance, there remains significant concerns that the provisional licensing program may not provide cultivators and local jurisdictions with the time needed to achieve full environmental compliance.

Discussion of these timelines appeared on the Subcommittee on Cultivation agenda, however, no recommendations were made by the subcommittee due to the overwhelming sentiment that additional information from the agencies regarding CEQA, CDFW, and SWRCB programs would be needed to bring forward meaningful recommendations. As such, the Subcommittee on Cultivation made the following three recommendations, all of which were adopted by the CAC.

City of Origin & Minimum Standards for the Appellation of Origin Program

(Recommendation #1): Recommend that the County of Origin program be expanded to include a City of Origin opportunity and that the Appellations of Origin program include minimum standards for in-ground cultivation, open-air, and without supplemental light. Also, that CDFA have a consumer platform on its website to educate consumers on County of Origin, City of Origin, and appellation standards, including specifics on each approved appellation.

Status: This recommendation was adopted during the October 23, 2019 CAC meeting and is pending consideration by CDFA. Statutory changes may be required to include City of Origin and minimum standards for Appellations of Origin.

Skip Lot Testing for OCal-Certified Companies (Recommendation #2): CAC recommends that a skip-lot testing program be established in conjunction with the OCal Program that allows companies certified under the OCal Program use of a skip-lot testing opportunity. Regulators can decide when a company is eligible for skip testing once certified under OCal.

Status: This recommendation was adopted during the October 23, 2019 CAC meeting and is pending consideration by the licensing authorities. The licensing authorities are not slated to release draft regulations for this program until early 2020.

CAC SUBCOMMITTEE WORK

Shared Premises (Recommendation #3): CAC recommends that a licensee, holding multiple cultivation licenses, be allowed to share propagation and processing areas in addition to the currently shared spaces for secured compost, secured waste, and ag chemical/pesticide storage areas.

Status: This recommendation was adopted during the October 23, 2019 CAC meeting and is pending consideration by CDFA. It is important to note that the need to ease the restriction on independent premises for each license was expressed by the public in multiple 2018 subcommittee meetings as well as CAC meetings. As such, multiple subcommittees brought forward recommendations regarding this restriction. The licensing authorities declared that fixing this issue would require statutory changes. Due to this declaration, this issue was included in the common concerns noted in the 2018 Annual Report.¹⁴

SUBCOMMITTEE ON DELIVERY

Per statute, the Bureau has the authority to license both storefront and non-storefront retail operations. Licensed non-storefront retail operations may sell cannabis goods to customers only through delivery. It is estimated that approximately 76 percent of cities and 69 percent of counties have passed ordinances banning all legal medicinal and adult-use cannabis sales in their jurisdictions.¹⁵ As of June 2019, the Bureau had issued 802 storefront retail licenses, and 385 non-storefront retail licenses, totaling 1,187 licensed retail operations to serve the State's adult population of roughly 26 million adults.¹⁶ By comparison, Colorado has issued 1,012 commercial cannabis retail licenses to serve its adult population of roughly 4.2 million.¹⁷ The lack of access to legal cannabis creates difficulties for Californians who use cannabis for adult-use and medicinal purposes. To put this in perspective, residents in 40 percent of the state have to drive 60 miles or more to find a licensed dispensary to buy safe, legal, tested cannabis.¹⁸

The Bureau's permanent regulations include section 5416(d), which expressly allows licensed retailers the ability to deliver medicinal and adult-use cannabis to customers located in any jurisdiction within California.¹⁹ This regulatory clarification sparked extensive public comment and discussion for the CAC ultimately leading to the formation of the Subcommittee on Delivery. At the time of writing the 2019 Annual Report, 25 California cities and counties had filed a lawsuit with the intent of overturning the regulatory decision to allow delivery of cannabis into local jurisdictions that have banned or restricted cannabis retailers.²⁰

¹⁴ https://www.bcc.ca.gov/about_us/documents/cac_annual_report_2018.pdf

¹⁵ <https://www.latimes.com/california/story/2019-08-14/californias-biggest-legal-marijuana-market>

¹⁶ https://bcc.ca.gov/about_us/meetings/materials/20190628_stats.pdf

¹⁷ <https://www.colorado.gov/pacific/enforcement/med-resources-and-statistics>

¹⁸ https://leginfo.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201920200AB1530

¹⁹ https://bcc.ca.gov/law_regs/cannabis_order_of_adoption.pdf

²⁰ <https://www.kqed.org/news/11738198/25-local-governments-sue-california-over-rule-allowing-marijuana-delivery>

CAC SUBCOMMITTEE WORK

The Subcommittee on Delivery discussed and heard public comment on the following topics:

- ◆ Balancing Local Control and Patient Access.
- ◆ Disclosure of Premises Address on Delivery Receipt.
- ◆ Operating Hours for Delivery Services.

The Subcommittee made the following three recommendations, all of which were adopted by the CAC.

Delivery into Banned Jurisdictions (Recommendation #1): The CAC supports the current regulations on statewide delivery.

Status: This recommendation was adopted during the June 28, 2019 CAC meeting.

Delivery Receipt Information (Recommendation #2): Remove the address from the delivery request receipt for non-storefront retailers, specifically to strike the term “address” from Section 5420(a)(1) of the Bureau’s regulations.

Status: This recommendation was adopted during the June 28, 2019 CAC meeting and is pending Bureau consideration. While this recommendation has not been implemented, it was also a recommendation put forward by the Subcommittee on Retail and adopted by the CAC in 2018.

Clarification Regarding Hours of Operation (Recommendation #3): Support the 10:00 PM cutoff with the active order that sales transactions must be made before the 10:00 PM cutoff.

Status: This recommendation was adopted during the June 28, 2019 CAC meeting and is pending Bureau consideration.

SUBCOMMITTEE ON TESTING LABORATORIES

The MAUCRSA mandates that protection of the public be the highest priority for all licensing authorities. Under MAUCRSA, 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.

To provide the industry with a reasonable timeline to meet all testing requirements, the Bureau implemented the testing requirements in three phases. On January 1, 2019, phase three testing became required, meaning that all legal cannabis and cannabis goods harvested or manufactured from that date forward are subject to the Bureau’s full scope of testing requirements. In an effort to educate and provide insight into issues regarding the compliant laboratory testing

CAC SUBCOMMITTEE WORK

of cannabis and the future of laboratory testing for hemp, the Subcommittee on Testing Laboratories received the following informational presentation from licensed cannabis industry representatives. Additional information regarding the informational presentation can be found on the Bureau's website.

An informative presentation, "Cannabis Testing from an Industry Perspective," by Aaron Riley, President, Canna Safe, and Daniel Witt, President, Sonoma Lab Works, provided insight into the following agenda items:

- ◆ CBD and Industrial Hemp: Safety Standards, Testing Regulation and Standardization, and Sale from Licensed Retailers.
- ◆ Quality Standardization and Quality Control: Reference Standards and Stability Testing.
- ◆ Illicit Market Activity and Enforcement: Cross-Reference Batch Numbers, Enforcement Issues, and Taxation.
- ◆ Sampling Challenges: Packaging, Testing Information, and Areas of Standardization for Testing.
- ◆ General Observations on California's Cannabis Testing Industry: Early Outcomes of Phase III Testing, Concentrates and Edibles, Testing Thresholds, Number of Testing Laboratories, and Testing Capacity.
- ◆ Ongoing Challenges with Evolving Testing Regulations: Potency and Pesticides.

After receiving the industry presentation, the subcommittee discussed the findings presented, heard public comment, and made two recommendations, both of which were adopted by the CAC.

Statewide Chemical Standards for Laboratory Testing (Recommendation #1):

Advise the Bureau and CDPH to develop statewide chemical standards and advise CDPH to consider cannabis laboratory capability to go along with standard development and for these agencies to share their plans with the industry and the Committee.

Status: This recommendation was adopted during the June 28, 2019 CAC meeting and is pending Bureau and CDPH consideration.

Laboratory Testing Stakeholder Working Group (Recommendation #2):

Bureau, in conjunction with CDPH, establish a working group, including cannabis lab licensees, subject matter experts, and other interested parties, to review and develop consistent standards regarding items on the committee agenda.

Status: This recommendation was adopted during the June 28, 2019 CAC

CAC SUBCOMMITTEE WORK

SUBCOMMITTEE ON SOCIAL EQUITY

In October 2019, the Bureau awarded \$10 million in equity grant funding to local jurisdictions to be used for commercial cannabis equity programs that focus on inclusion and support of persons or communities that were negatively or disproportionately impacted by cannabis criminalization.²¹ The equity grant funding was authorized by the California Cannabis Equity Act of 2018 established by Senate Bill 1294 (Bradford 2018) and the Budget Act of 2019.

Several California cities have passed ordinances establishing local equity programs that identify common barriers to entry into the cannabis industry. Local equity programs are the result of studies and reports that analyze in part, the disproportionate impacts of cannabis prohibition on disadvantaged communities. The City of Los Angeles is one municipality that has developed local equity programs, and in 2019 was awarded equity grant funding by the Bureau. In an effort to better understand local equity programs and issues, the Subcommittee on Social Equity received a presentation from Cat Packer, Executive Director, Department of Cannabis Regulations, City of Los Angeles, entitled “Cannabis Equity Program in the City of Los Angeles”.

Following the presentation, the subcommittee discussed and heard public comment on the following topics:

- ◆ State and Local Definitions of a “Social Equity Applicant”.
- ◆ Business Development and Educational Services for Social Equity Applicants.
- ◆ Income Limits for Social Equity Applicants.
- ◆ State Equity Program Versus Local Equity Programs.
- ◆ Funding for Social Equity Programs.
- ◆ State Support for Communities Negatively Impacted by the Criminalization of Cannabis.
- ◆ Expunging of Criminal Records Relating to Cannabis.
- ◆ Enforcement of Social Equity Programs.

The Subcommittee on Social Equity made two recommendations. Both recommendations were adopted by the CAC.

Demographic Data (Recommendation #1): Recommend that the licensing authorities collect and provide demographic data on applicants and licensees to the CAC and the public, to the extent provided by law, including ownership and employee demographic data.

Status: This recommendation was adopted during the June 28, 2019 CAC meeting and is pending licensing authority consideration.

²¹ <https://cannabis.ca.gov/2019/10/09/bureau-of-cannabis-control-announces-local-equity-grant-funding-recipients/>

CAC SUBCOMMITTEE WORK

Development of a Statewide Social Equity Program (Recommendation #2):

Recommend that the Bureau, in conjunction with other state agencies, form a statewide social equity program that seeks to collect data and develop a criterion for social equity applicants and local social equity programs, audit and enforce local equity programs, make recommendations to the legislative body and other regulatory bodies regarding level of funding for the social equity programs, including tax rebates for social equity applicants, financial support such as fee deferrals, loans, and other financial support. Provide technical assistance and solicit input from communities most impacted by the war on drugs. Include priority processing for social equity applicants, focus on workforce development, and educational opportunities. Additionally, funds should be used to help with legal assistance with past cannabis convictions.

Status: This recommendation was adopted during the June 28, 2019 CAC meeting and is pending licensing authority consideration.

SUBCOMMITTEE ON PUBLIC HEALTH AND YOUTH

MAUCRSA mandates that the protection of public health be amongst the highest priority for all licensing authorities. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount. The recent outbreak of EVALI has not only raised significant public health concerns, it has also raised awareness and concern about the increase of counterfeit products available to the public as well as the marketing of such products to youth.

As such, the subcommittee received an educational presentation from Lynn Silver, MD, MPH, with the Public Health Institute, entitled “Cannabis Markets Post-Legalization: Youth Use and Public Health.” An informational presentation was also provided by the Subcommittee Chair, Timmen Cermak, MD, summarizing the limited literature on effects of high dose THC products.

The subcommittee made nine recommendations, seven of which were adopted by the CAC. Two of the seven recommendations adopted by the CAC include regulatory changes. The remaining five request that the licensing authorities provide additional information to the CAC and the public while increasing enforcement efforts that deter the inappropriate marketing and advertising of cannabis goods.

Counterfeit Cannabis Products (Recommendation #1): The CAC recommends that the Bureau and the CDPH provide the CAC with information about the extent of counterfeit cannabis products in the regulated and illicit markets and what enforcement actions are being taken about those counterfeit products.

Status: This recommendation was adopted at the October 23, 2019 CAC meeting and is ongoing. During the meeting, the CAC was briefed by Dr. Charity Dean, Assistant Director, CDPH, regarding the status of the EVALI epidemic. The Bureau stated that enforcement efforts are ongoing. The agency was not able to elaborate due to the fact that investigations are currently ongoing.

CAC SUBCOMMITTEE WORK

Toxicological Data Regarding Vaping (Recommendation #2): The CAC recommends that the CDPH present to the committee toxicological data used to determine allowable excipients in vape pens, the level of allowable excipients vape pens, and any parameters related to the hardware of those vape pens themselves to determine what constitutes a safe vaping product for the public.

Status: This recommendation was adopted at the October 23, 2019 CAC meeting and is pending toxicological reporting from the Centers for Disease Control and Prevention (CDC).

Unlawful Health, Therapeutic, Wellness, Safety, & Medical Claims (Recommendation #3): The CAC recommends that all three state licensing agencies adopt regulations to clarify when an advertisement makes an unlawful health, therapeutic, wellness, safety, or medical claim in violation of Section 26154 of the Business and Professions Code.

Status: This recommendation was adopted at the October 23, 2019 CAC meeting and is pending the licensing authorities' consideration. However, permanent regulations and MAUCRSA clearly prohibit health-related claims, or any health-related statement that is untrue or misleading.

Public Warning Letters (Recommendation #4): The CAC recommends that all three agencies make public any warning letters, suspensions, and revocations of licenses due to violation of Section 26154 of the Business and Professions Code, referring to health-related claims in advertising, including on the label of cannabis products, or disseminated through advertising, or marketing.

Status: This recommendation was adopted at the October 23, 2019 CAC meeting and is pending the licensing authorities' consideration. The Bureau does issue press releases related to certain enforcement activities. Such releases are documented on the Bureau's website: https://bcc.ca.gov/media/press_releases.html.

Enforcement of Laws Preventing Marketing and Advertising to Persons Under 21 Years of Age (Recommendation #5): The CAC recommends that the state licensing authorities should prioritize the allocation of resources to enforce laws designed to prevent advertising or marketing to people under 21 years of age.

Status: This recommendation was adopted at the October 23, 2019 CAC meeting and is pending the licensing authorities' consideration.

Prohibition on Advertising on Billboards (Recommendation #6): The CAC recommends to the state licensing authorities to prohibit advertising on billboards on any highway that crosses state borders, specifically referencing Section 26152, subdivision (b) of the Business and Professions Code.

Status: This recommendation was adopted at the October 23, 2019 CAC meeting and is pending the licensing authorities' consideration.

Partnership with Tobacco Control Experts and Academics to Develop Stronger Regulations for Cannabis Licenses (Recommendation #7): The CAC recommends that the state licensing authorities work with tobacco control experts and academics to establish stronger regulations for cannabis licensees, detailing best practices for creating advertisements that are not attractive to youth.

Status: This recommendation was adopted at the October 23, 2019 CAC meeting and is pending the licensing authorities' consideration. Establishing 'best practices' with tobacco control experts and academics is pending. The Bureau's permanent regulations do include a number of restrictions intended to quell marketing and advertising that would be appealing to youth including prohibitions on the following:

- ◆ Depictions or images of minors or anyone under 21 years of age (Section 5040 (a)(2)).
- ◆ Toys, inflatables, movie characters, cartoon characters, or any other display, depiction, or image designed to be appealing to minors or anyone under 21 years of age. (Section 5040 (a), (3).)

Additionally, CDPH's regulations also contain provisions intending to restrict advertisements that appeal to youth as follows:

- ◆ Content that is, or is designed to be, attractive to individuals under the age of 21, including but not limited to:
 - » (1) Cartoons;
 - » (2) Any likeness to images, characters, or phrases that are popularly used to advertise to children;
 - » (3) Any imitation of candy packaging or labeling; or
 - » (4) The terms "candy" or "candies" or variants in spelling such as "kandy" or "kandeez". (Section 40410 (b).)

Public Disclosure of Audience Composition Date (Recommendation #8): The CAC recommends that all three licensing agencies require any licensee who is placing advertisements to publicly disclose their audience composition data as required by Section 265151, subdivision (b) of the Business and Professions Code.

Status: This recommendation failed to receive a motion.

Preventing Cannabis Advertising from Using Online or Digital Apps Targeting Those Under 21 Years of Age (Recommendation #9): The CAC recommends that the state licensing agencies consider and adopt appropriate regulations to prevent cannabis advertising from using online or digital apps that directly target those under 21.

Status: This recommendation failed to be adopted by the CAC.

INFORMATIONAL PRESENTATIONS

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 committee. In addition to presentations noted here, several presentations were provided to specific subcommittees. Presentations provided as part of a subcommittee meeting are noted earlier in this report in the description of the subcommittee receiving the presentation.

Over the course of the 2019 CAC meetings, the following educational presentations were provided to the committee:

“Worker Health and Safety in the Cannabis Industry”

Amalia Neidhardt, MPH/CIH/CSP, Senior Safety Engineer, Cal/OSHA Research and Standards Occupational Health Unit

“Tribal Participation in the Legal Cannabis Industry”

David Vialpando, Executive Director, Ilipay Nation of Santa Ysabel
Mark A. Levitan, Attorney, Levitan Law

“Update from Governor’s Office of Business and Economic Development”

Nicole Elliott, Senior Advisor on Cannabis, California Governor’s Office of Business and Economic Development

“Update on Vaping Related Illnesses”

Charity Dean, MD, MPH, Assistant Director, California Department of Public Health

The Global Issues section of the Annual Report was originally developed by the committee when drafting the 2018 Annual Report to highlight the overarching concerns of the CAC for the licensing authorities.²² The concerns presented in this section of the report resulted in many recommendations brought forward by the various subcommittees. However, several of those recommendations were not presented to the CAC due to a determination by the licensing authorities that the recommendation would require statutory changes.

To date, many of the outstanding concerns brought up in 2018 continue to pose challenges to the industry and consumers throughout 2019. Similar to last year, many of these concerns could not be remedied by regulatory action without legislative action. Because the CAC has determined that each concern contributes to ongoing challenges within the industry, we are continuing to utilize this section of the Annual Report to communicate our findings not only to the regulatory agencies, but also to the general public, the California State Legislature, and the Administration.

The overarching reality remains that the regulatory pathway to licensure may discourage unlicensed businesses from seeking licensure. At the same time, the current structure may actually promote the unlicensed market.²³ The CAC is charged with advising the licensing authorities regarding best practices and guidelines that protect public health and safety, in a way that ensures the regulated environment for commercial cannabis activity does not impose barriers so as to perpetuate, rather than reduce and eliminate, the illicit cannabis market.

This year's Global Issues section emphasizes eleven issues that the CAC has identified as overarching and ongoing challenges facing the industry, consumers, and patients. Of the 11 issues addressed in this section, the Tribal Issues and EVALI sections were added in 2019. The remaining 9 sections have been carried over from the 2018 Global Issues section. As such, the Global Issues section organizes the 11 issues into three issue categories that include a Progress Update, Ongoing Issues, and New Global Issues.

PROGRESS UPDATE

The CAC would like to thank the licensing authorities, the California Legislature, and the Administration for acknowledging and providing remedies to the following Global Issues. The CAC recognizes that the following issue areas continue to pose challenges to regulators, licensees, consumers, patients, and the public. As such, the CAC would like to emphasize that various aspects of the following issues may still need to be improved through regulatory, legislative, and/or administrative action.

²² https://www.bcc.ca.gov/about_us/documents/cac_annual_report_2018.pdf

²³ CAC 2018 Annual Report, page 28; https://www.bcc.ca.gov/about_us/documents/cac_annual_report_2018.pdf

PUBLIC EDUCATION

The CAC, in advance of the Bureau's launch of an educational program, made a number of recommendations during 2018 and 2019 supporting additional public education efforts to inform and educate the applicants, licensees, and the public regarding the rules and regulations related to legalization. The 2018 Annual Report emphasized the need for public education on the safe use of cannabis, and the differentiation between licensed and unlicensed businesses. Additionally, the 2018 Annual Report included a number of recommendations adopted by the committee that highlighted the need for industry education on a number of issues, including but not limited to, navigating the licensing applications, new regulations, compliant packaging, and compliant marketing and advertising.

With a permanent regulatory framework in place, state licensing authorities have an opportunity to build out a strong campaign that educates Californians on consumer health and safety, informs licensees of regulatory requirements, and deters the illicit market.

Each of the three licensing authorities devoted resources to educational programming. CDFA established stakeholder working groups and informational pages on the CalCannabis website for the OCal and Appellation of Origin programs. In an effort to educate applicants and licensees, CalCannabis also built out the CalCannabis Licensing eLearning Resource page; and updated or created new FAQs pertaining to Track-and-Trace, Provisional Cannabis Licenses, Application, License, and Renewal Fees; Creating a Cultivation Plan; and What We Do at CalCannabis.

CDPH upgraded the File a Complaint section of the website and kicked-off the "Let's Talk Cannabis" health information and public education campaign to promote conversations about the effects of cannabis on health. The campaign includes information about legal, safe and responsible use, and health information for youth, pregnant and breastfeeding women, parents and mentors, and health care providers.

New fact sheets related to safe storage tips, purchasing and possessing cannabis for personal use, and a digital educational toolkit were also developed in 2019. In an effort to educate applicants and licensees, updated or new fact sheets were created addressing General Questions, Licensing, the MCLS Online System, Local Authorization, Packaging and Labeling, Product Standards and Classifications, Premises, Manufacturing Operations, and Record Keeping.

In June 2019, the Bureau launched the statewide public education and informational program, “Get #weedwise,” designed to educate and encourage consumers to only purchase cannabis from licensed businesses.²⁴ “Get #weedwise” also serves to educate unlicensed businesses about the need to be licensed and the consequences of continuing to operate without a license. The campaign features educational materials outlining the differences between licensed and illegal cannabis businesses along with a business license verification website. The Bureau has also released several updated licensing fact sheets and video tutorials providing information to assist applicants, promote ongoing compliance, assisting the public with filing a complaint, and local equity programs.

ENFORCEMENT AND PUBLIC SAFETY

With the passage and implementation of MAUCRSA, the three licensing authorities were tasked with establishing a regulatory model that protects 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. However, MAUCRSA only specifically granted the three licensing authorities the ability to issue fines and notices of abatement to licensed cannabis businesses making the enforcement of illicit cannabis activity primarily the responsibility of local and state law enforcement agencies.

Throughout 2018, and into 2019, the illicit market flourished, due in part to the need for more enforcement and limited enforcement tools coupled with the competitive financial advantage illicit operators have over legal cannabis businesses. Legal cannabis businesses are required to pay local permitting fees, state licensing fees, and local and state cannabis taxes. However, in June 2019, the California Legislature passed AB 97 which provided the three licensing authorities with the ability to assess violations of up to \$30,000 per violation per day, and issue notices of abatement to unlicensed cannabis operations, effective immediately.

Additionally, \$30 million in Cannabis Tax Funds were allocated to encourage local governments that permit cannabis businesses in their jurisdictions to bolster their enforcement capabilities by creating local enforcement grants to be administered by the Board of State and Community Corrections, to provide greater support for statewide enforcement against unlicensed cannabis operations with an emphasis on retail, and to establish and support the California Cannabis Interagency Team to develop guidance to cities and counties on all aspects of cannabis enforcement.

²⁴ <https://bcc.ca.gov/consumers/weedwise.html>

The Bureau, assisted by CDPH and CDFA, has continued to take action against illicit cannabis operations and now can use the expanded authority provided by AB 97. Recent enforcement efforts included notifying landlords that the Bureau has information their property is being used for illicit cannabis activity and allowing illegal activity on their property could subject them to criminal and civil liabilities. After the allocation of Cannabis Tax Funds for enforcement purposes, local enforcement agencies with support from the California Department of Fish and Wildlife (CDFW), State Water Resources Control Board (SWRCB), National Guard, and other agencies conducted a number of search warrants on illicit cultivation sites in an attempt to deter illicit cannabis operations, and to protect licensed operators, the environment, and the public.

SOCIAL EQUITY

Throughout 2018 and 2019, the CAC heard repeated public comments related to the development of Social Equity Programs at the state and local level. As such, the CAC established the Subcommittee on Social Equity, which met multiple times in 2018, and again in 2019. Please see the Subcommittee section of this report for details on recommendations adopted by the CAC in 2019.

The Global Issues section of the 2018 Annual Report acknowledged the Bureau's ongoing efforts to remedy some of the challenges facing social equity program development and applicants. However, the report also notes that "...efforts to promote participation in the new legal cannabis industry by members of communities impacted by enforcement of the war on drugs have by most measures been unsuccessful for several reasons..."²⁵ Recommendations adopted by the CAC in 2018 emphasized the need for:

- ◆ Funding allocations for social equity programs.
- ◆ Guidance, support and educational tools designed to assist equity applicants.
- ◆ Development of a statewide equity licensing program.
- ◆ Creation of earmarks, fee waivers, and loans for qualifying equity businesses.
- ◆ Development programs that provide for payment installments and deferrals from licensing expenses and fees.
- ◆ Data collection.
- ◆ Communication and cohesion between local and state equity programs.

²⁵ https://bcc.ca.gov/about_us/documents/cac_annual_report_2018.pdf Page 28

In August 2019, the Bureau announced the availability of funding authorized by the California Cannabis Equity Act of 2018 established by SB 1294 (Bradford) and the Budget Act of 2019. The Equity Grant Funding allows for direct assistance to local jurisdictions' commercial cannabis equity programs that provide assistance to local equity applicants or local equity licensees.

In October 2019, the Bureau awarded \$10 million in grant funding to 10 qualifying jurisdictions that met the grant criteria and requirements set forth in the "Local Equity Grant Program Guidelines". The current state budget also allocates an additional \$30 million for equity grants. While these actions established an identifiable pathway forward for local jurisdictions and equity applicants, many questions remain about the functionality of the State's Equity Grant Program and the success of local equity programs.

To address equity issues including the need for state licensing fee waivers to assist needs-based applicants and local equity applicants, the California Legislature enacted SB 595 (Bradford) in 2019. As such, the Subcommittee on Equity has requested a thorough report back on the status of State and Local Equity Programs be provided to the CAC in 2020.

COMPASSIONATE USE PROGRAMS

With the implementation of medicinal and adult-use regulations in 2018, nonprofit compassionate use programs experienced challenges, largely in part due to the inability to receive free, compliant cannabis donations that have been tested, and are within the legal marketplace. The CAC repeatedly heard from the public that cultivators, whom are required to pay cultivation taxes and have been crucial to the past success of compassionate programs, no longer had a financially viable way to donate the cannabis goods compassionate use programs so greatly depend on. Additionally, retailers wishing to provide tax free medicinal cannabis to low-income patients for free or little cost were prohibited by statute from doing so.

The inability for compassionate use programs to operate in the newly regulated market led many low-income patients to go without medicinal cannabis, and in some cases, to seek medicinal products from the illicit market. To address the needs of patients and to stabilize compassionate use programs, the California Legislature brought forward SB 829 (Wiener) in 2018, that would have provided the ability for cannabis businesses to provide samples for compassionate use purposes. The bill was not signed into law.

In 2019, the California Legislature passed SB 34 (Wiener), which addresses compassionate use programs by allowing a cultivator to donate cannabis and cannabis goods to compassionate use programs without being assessed with cultivation taxes. SB 34 also allows licensed retailers to donate cannabis goods to low-income patients without charging or accruing the cannabis excise tax.²⁶

²⁶ http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201920200SB34

OUTSTANDING ISSUES

While the CAC would like to thank the California Legislature for establishing a statute designed to support and remedy issues relating to public education, enforcement and public safety, social equity programs, and compassionate use programs, the CAC feels that it is important to express concerns about the future success of these programs, should the licensing authorities and California Legislature fail to address a broad range of issues continuing to impact all aspects of the supply chain, consumers, patients, and the public.

With upwards of 80 percent²⁷ of California's cannabis businesses remaining in the illicit market, the CAC finds it necessary to emphasize that the aforementioned programs and efforts, continue to be at risk of failure if issues associated with local control and market access, excessive regulatory burden, excessive taxation, and access to banking are not immediately addressed. The following "Outstanding Global Issues" cannot be remedied by enforcement and public education programs alone, and if left unaddressed, stand to cost the state and taxpayers significant revenue.

LOCAL CONTROL AND MARKET ACCESS

Proposition 64 provides for local control, which allows local jurisdictions to ban, in whole or in part, medicinal and adult-use commercial cannabis activity. If a city or county has banned commercial cannabis operations, businesses are not able to apply for a state license. While it was expected that cities and counties would need time to enact cannabis ordinances and transition existing medicinal cannabis retailers and producers into the regulated market, less than 40 percent of California's 482 cities and 58 counties currently permit commercial cannabis businesses.

Additionally, it is estimated that approximately 76 percent of cities and 69 percent of counties have passed ordinances that ban all legal medicinal and adult-use cannabis sales in their jurisdictions.²⁸ The widespread ban on legal cannabis sales comes despite a recent University of California Berkeley poll suggesting that 63 percent of California voters support permitting cannabis stores where they live.²⁹ Further complicating matters, the statute that had established a defense for patients and caregivers engaged in collective and cooperative cultivation and/or the sale of medicinal cannabis was repealed in January 2019, eliminating the ability for unlicensed operators to produce and provide medicinal cannabis to patients and their caregivers.

²⁷ Kapur, Harinder, Senior Assistant Attorney General, Cannabis Control Section; 2:19:37 – 2:18:48; <https://www.youtube.com/watch?v=3zpgiSrTaKQ>

²⁸ <https://www.latimes.com/california/story/2019-08-14/californias-biggest-legal-marijuana-market>

²⁹ <https://escholarship.org/uc/item/9z9330q5>

In June 2019, almost three years after the passage of Proposition 64, the Bureau had issued a total of 1,187 retailer licenses throughout California to serve its adult population of approximately 26 million.³⁰ Initially, the state cannabis licensing authorities estimated 6,000 retail stores were to be operating throughout California.³¹ By comparison, Colorado has issued 1,012 commercial cannabis retail licenses to serve its adult population of roughly 4.2 million.³² Among states that have legalized adult-use, California has the lowest market density ratio of retail licenses to consumers, with just one retailer for every 34,256 adults over 21.³³ Therefore, as willing and able as the Bureau may be to issue licenses, local control has impacted the Bureau's ability to do so.

Providing patients and consumers access to licensed retailers is essential for reducing the size of the illicit market, as location and convenience are two of the most important factors influencing a consumer's purchasing decisions.³⁴ It is fair to say that the current market density does not meet the current demand. In fact, reports suggest that California's illicit market is actually growing since legalization. According to BDS Analytics and ArcView Market Research, 74 percent of cannabis sales in 2017 occurred in the illicit market. And in 2018, as much as 80 percent of cannabis sales occurred in the illicit market.³⁵ The California Legislature continues to consider efforts addressing the lack of local cannabis licensing.

Without ample access to legal retail sales, patients and consumers will continue to acquire untested cannabis from the illicit market, posing serious health risks to Californians around the state and further driving the growth of the illicit market. Licensing on the local level should be sufficiently robust to allow the legal market to compete with the large, preexisting illegal market.

EXCESSIVE REGULATORY BURDEN

The CAC believes the intention of Proposition 64 was to provide an onramp for small businesses, including existing cultivators, over large, well-funded operations, at least initially.³⁶ However, after nearly two full years of licensed activity, this intent has not been realized. The dual nature of the licensing process (i.e., state and local), coupled with bans from the local jurisdictions on commercial cannabis activity, has created a bottleneck in licensing.

³⁰ <https://suburbanstats.org/population/how-many-people-live-in-california>

³¹ <https://www.latimes.com/california/story/2019-10-01/poll-californians-marijuana-sales>

³² <https://www.colorado.gov/pacific/enforcement/med-resources-and-statistics>

³³ From Dispensaries to Superstores: Opportunities in US Cannabis Retail

³⁴ <https://bdsanalytics.com/wp-content/uploads/2019/01/BDS-Analytics-Top-10-Trends-2019.pdf>

³⁵ <https://bdsanalytics.com/wp-content/uploads/2019/02/Breaking-Down-Year-1-of-California-Adult-Use-Sales-Webinar.pdf>

³⁶ 2018 CAC Annual Report, page 29: https://bcc.ca.gov/about_us/documents/cac_annual_report_2018.pdf

GLOBAL ISSUES

During CAC meetings, the complexity of the issues facing small businesses, existing cultivators, and the factors that may be contributing to this complexity were discussed. These factors included:

- ◆ Duplicative and onerous regulatory requirements.
- ◆ Complicated licensing structure that requires multiple licenses to operate.
- ◆ Expensive and complicated environmental compliance.
- ◆ Prohibitive statutory language.
- ◆ Lack of access to local permits.
- ◆ Inability to obtain small business loans.
- ◆ Inability to access banking.
- ◆ Excessive taxation at the local and state level.

As such, small businesses and existing cultivators continue to have difficulty emerging from their historically underground status into the regulated market. Please see the **Global Issues** sections on *Regulatory Fragmentation* and *Excessive Taxation* for additional details.

REGULATORY FRAGMENTATION

The challenges facing small businesses and existing cultivators continue to be impacted by the ongoing fragmentation of regulations between the three licensing authorities, the state environmental agencies, and local jurisdictions. Some licensees may need to interact with three separate regulatory agencies (Bureau, CDPH, and CDFG) which can be burdensome. To qualify for a state license, cultivation-type applicants must also show compliance with environmental programs implemented by the California Department of Fish and Wildlife, and the California State Water Resources Control Board.

In addition, CEQA requires local jurisdictions to conduct a Programmatic Environmental Impact Report (PEIR) of the local ordinance before issuing commercial cannabis permits. If a local jurisdiction refuses to engage in fulfilling CEQA requirements, the responsibility to conduct an Environmental Impact Report falls upon the applicant(s) seeking licensure. Over the last two years, the California Legislature enacted statute that provides extended timelines for meeting CEQA requirements and gives local jurisdictions the ability to issue permits to commercial cannabis business while CEQA compliance is being met, so long as the permits issued are discretionary.

While extending the CEQA compliance timelines were meant to encourage local jurisdictions to take on CEQA compliance, many jurisdictions have been slow to start the CEQA compliance process or have required the locally permitted cannabis business to conduct its own CEQA review.

During CAC meetings, the following issues were discussed in regard to regulatory fragmentation and streamlining of licensing:

- ◆ Addressing the onerous and duplicative nature of local and state licensing.
- ◆ Relaxing the prohibition on shared premises by a licensee.
- ◆ Reducing the duplicative nature of environmental compliance such as the requirement that cultivators rewrite operations plans and remap all roads, culverts, water sources, water storage vessels, water crossings, and water distribution systems for CDFA when this work was already conducted by the applicant to obtain compliance with CDFW and SWRCB programs.
- ◆ Removing the requirement that a licensee who holds multiple contiguous licenses must also hold a transportation license to move propagation material from the nursery to the flowering area of the cultivation license, and then again from the cultivation license to the processing license.
- ◆ Establishing consistency amongst the three licensing authorities on regulations that are applied to ALL license types such as ownership, owner consent, live scans, and property leases.

EXCESSIVE TAXATION

On January 1, 2018, CDTFA implemented the two taxes established by the passage of Proposition 64. In addition to state taxes, all aspects of the supply chain may be subject to local taxes as well. As noted in the 2018 Annual Report, there does not appear to be an objective method for determining the contribution of current tax rates to maintain the underground market.

In 2018, and again in 2019, the California Legislature considered a bill that would have temporarily eliminated the cultivation taxes. The bill did not pass, and the tax burden placed on licensed operators remains in excess of 35 percent. Then in November 2019, the CDTFA announced an increase of the mark-up rate used by distributors to calculate the excise tax from 60 percent to 80 percent, and per statutory mandate, an increase of the cultivation taxes to account for inflation.³⁷ Both tax rate increases are scheduled to take effect on January 1, 2020.

The increase in taxation comes at a time when the complex regulatory framework, coupled with high taxation, pose significant challenges to the licensed cannabis market. According to a recently released report published by Arcview Market Research, these two factors could disadvantage the licensed market by as much as 77 percent on pricing compared to well-established illicit market operations.³⁸

³⁷ <https://www.cdtfa.ca.gov/news/19-01-Media-Alert.htm>

³⁸ http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201920200AB286

Per statutory mandate, the Legislative Analyst's Office (LAO) is required, by January 1, 2020, to analyze and issue a report regarding the taxes implemented under Proposition 64. The LAO's analysis and report may provide the Legislature and Administration with the guidance needed to accomplish tax reform in 2020.

ACCESS TO BANKING

Continued lack of access to traditional banking services remains an unnecessary burden on cannabis businesses, complicating cultivation and excise tax collection, and exacerbating public safety issues associated with limiting cannabis businesses to deal in cash only. Due to the Bank Secrecy Act, the USA Patriot Act, and the Racketeer Influenced and Corrupt Organizations (RICO) Act, it remains illegal for traditional financial institutions to handle funds stemming from criminal activity, including funds generated in violation of federal drug laws.³⁹

Additionally, the Money Laundering Control Act of 1986 made money laundering—the concealment of the origins of illegally obtained money—a federal crime. Regardless of state law, financial institutions may be charged with money laundering, and/or be subject to violations, by conducting financial transactions involving substances explicitly prohibited by the Controlled Substances Act, such as cannabis.⁴⁰

Under the Bank Secrecy Act of 1970, financial institutions must assist government agencies in detecting and preventing money laundering. They must report any transaction exceeding \$10,000, and any suspicious or illegal activities to the federal Financial Crimes Enforcement Network (FinCEN). If financial institutions do not abide by the Act, FinCEN has the authority to seek significant civil penalties and even criminal prosecution.⁴¹

As a result, neither the Federal Deposit Insurance Corporation (FDIC) nor the National Credit Union Administration have been willing to provide deposit insurance to banks and credit unions that knowingly provide banking services to legal cannabis businesses. Additionally, no federal clearinghouse has been willing to clear a check known to have been written by or to a cannabis business. Banks and credit unions will not approve traditional business loans, or issue credit or debit cards to businesses identified to be cannabis businesses.⁴²

While the banking challenges are mostly a federal issue that would need to be addressed by federal regulators, the CAC would like to encourage the California Legislature to explore remedies to the current banking situation.

³⁹ http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201920200SB51

⁴⁰ http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201920200SB51

⁴¹ http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201920200SB51

⁴² http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201920200SB51

NEWLY ADDED ISSUES

As the CAC convened public meetings in 2019, two new Global Issues emerged — 1) Tribal Participation in the regulated market, and 2) EVALI. Since the implementation of MAUCRSA in 2018, Native American tribes have identified a number of challenges conducting commercial cannabis activities and engaging with state-licensed commercial cannabis businesses.

The second issue to be added this year is EVALI, which has led to a high number of significant health issues and deaths throughout the U.S. and in Canada. While there are currently more questions than answers available in the EVALI cases, the CAC feels that it is important to capture the actions that have been taken in 2019 to address and better understand this pressing issue.

TRIBAL ISSUES

MAUCRSA and Proposition 64 did not include provisions related to how Native American tribes would interact with the regulated California marketplace, in which state-licensed businesses are only able to conduct business with other state-licensed businesses. Tribes are not subject to the civil jurisdiction of the state, and instead are subject to state criminal laws pursuant to Public Law 280. Tribes can establish cultivation, manufacturing, and retail commercial cannabis operations in tribal territory under their own authority and can conduct cannabis activities that occur exclusively on tribal lands. The products sold on tribal land are not required to be cultivated, manufactured, packaged, labeled, or tested pursuant to California standards.⁴³

Tribal sovereignty refers to the authority of Federally Recognized Tribes to govern themselves within the borders of the United States of America. The federal government recognizes tribal nations as “domestic dependent nations.” The Constitution and other federal laws grant local sovereignty to tribal nations but do not grant full sovereignty equivalent to that of foreign nations. Existing limitations to these authorities are defined through acts of Congress, treaties, and federal court decisions.⁴⁴

In order for tribes to participate in the state commercial cannabis market, permanent regulations require tribes to cede civil jurisdiction over tribal land to the state so that tribes would have to act as if they are not sovereign governments for these purposes. Per Section 5009 of the Bureau’s regulations regarding the Limited Waiver of Sovereign Immunity, the Bureau requires an applicant or licensee to “submit a written waiver of sovereign immunity to the Bureau with any license application or renewal, which is valid for the period of the license.”⁴⁵

The CAC believes there should be further discussions on how tribes can participate in California’s cannabis market under a common regulatory structure.

⁴³ http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201720180AB924

⁴⁴ http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201720180AB924

⁴⁵ https://bcc.ca.gov/law_regs/cannabis_order_of_adoption.pdf

E-CIGARETTE OR ELECTRONIC VAPING ASSOCIATED LUNG INJURY (EVALI)

In September 2019, in response to the steep rise in EVALI, in California, Governor Newsom issued an Executive Order (EO) tasking CDPH with the launch of a \$20 million statewide digital and social media public awareness campaign to educate youth and the public about the health risks associated with vaping. Additionally, the EO addresses the development of recommendations for reducing vaping devices to people under 21, and the establishment of warning signs, as well as standards, for nicotine content and uniform packages.⁴⁶ One component of the EO included increased enforcement against illegal sales of vaping products and e-liquid flavors to youth.

Nationwide, as of December 2019, all 50 states, the District of Columbia, and two U.S. territories (Puerto Rico and U.S. Virgin Islands) have reported 2,291 EVALI cases to CDC, including 48 EVALI deaths.⁴⁷ As of December 2019, in California, EVALI cases totaled 173 including four deaths.⁴⁸ EVALI patients were predominantly male and the median age for the cases was 27 years.⁴⁹ Of EVALI cases in California, 43 percent required admission to the Intensive Care Unit and 28 percent required mechanical ventilation.⁵⁰ Though there is no single product or substance linked to EVALI, most reported cases involved products containing THC from the unlicensed market. Of all the patients interviewed by CDPH, only one case self-reported buying vaping products from the licensed market. The remaining patients who self-reported the sources of THC vaping products used reported obtaining those products from illicit street vendors, pop-up shops, social contacts, or unverified sellers.⁵¹

In response to the vaping-related injuries, CDPH issued a vaping health advisory urging the public to refrain from vaping until current investigations are complete. CDPH, along with other states, the CDC, the U.S. Food and Drug Administration (FDA), local health departments, and healthcare providers are working to investigate what is in the vape materials that is making people sick.

⁴⁶ <https://www.gov.ca.gov/2019/09/16/governor-gavin-newsom-signs-executive-order-to-confront-youth-vaping-epidemic/>

⁴⁷ https://www.cdc.gov/tobacco/basic_information/e-cigarettes/severe-lung-disease.html

⁴⁸ <https://www.cdph.ca.gov/Programs/CCDPHP/Pages/EVALI-Weekly-Public-Report.aspx>

⁴⁹ <https://www.cdph.ca.gov/Programs/CCDPHP/Pages/EVALI-Weekly-Public-Report.aspx>

⁵⁰ <https://www.cdph.ca.gov/Programs/CCDPHP/Pages/EVALI-Weekly-Public-Report.aspx>

⁵¹ <https://www.cdph.ca.gov/Programs/CCDPHP/Pages/EVALI-Weekly-Public-Report.aspx>

Under California’s comprehensive cannabis regulatory framework, cannabis and cannabis products legally sold in the state must come from the supply chain through licensed businesses starting at cultivation and ending with a sale to consumer. All licensees must comply with requirements that put public health and safety first. Additionally, every cannabis and cannabis product must meet rigorous testing standards and meet levels set by the Bureau in consultation with CDPH for safe human consumption before it can be sold to consumers. Cannabis and cannabis products that do not meet the standards are remediated and retested or destroyed.

While the EVALI cases are still pending investigation, it appears that vitamin E acetate may be associated with EVALI.⁵² The CDC warns that evidence is not yet sufficient to rule out contribution of other substances and product sources still under investigation. A new report based on a vaping case from California describes findings of hard-metal pneumoconiosis in the lung tissue of a patient usually only associated with exposure to hard metals in industrial settings.⁵³ There is a strong need to investigate not only additives, but also vaping technology and high heat sources such as the heating coils in vaping devices.

In the past few months, the Bureau and its enforcement unit, CDPH, CDTFA, and local law enforcement worked swiftly to shut down unlicensed operators and prioritize complaints. To date, based on these efforts, several search warrants were served for illegally manufactured products and thousands of vape pens were seized. Additionally, the Bureau launched “Get #WeedWise”, a campaign to educate Californians about the risks associated with cannabis purchased from the unlicensed market and encourage consumers to purchase legal cannabis products.

⁵² https://www.cdc.gov/tobacco/basic_information/e-cigarettes/severe-lung-disease.html

⁵³ <https://www.usnews.com/news/health-news/articles/2019-12-05/vaping-may-have-triggered-lung-illness-typically-only-seen-in-metalworkers>

CONCLUSION

Currently, California has the largest cannabis market, introducing adult-use sales in January 1, 2018. However, illicit cannabis sales are three times as high as legal sales, depriving the state of taxes, keeping communities from much-needed economic development and putting Californians who choose to use cannabis but cannot access it legally in real danger.⁵⁴ The California cannabis industry faces a myriad of complex challenges. With the implementation of permanent regulations to shift the industry to a legal framework, there are significant tax and regulatory compliance burdens for small licensed businesses that do not impact the bottom line for illicit operators. Enforcement efforts continue to require a thoughtful approach as many Californians have already lost so many lives and futures to the failed war on drugs. Bans in local jurisdictions contribute to the proliferation of illicit sales as millions of Californians use cannabis but lack safe and convenient access.

Though it will be difficult to fully convert the massive and unstable underground economy into the legal market overnight, it is critical that the state develop and enact policies before the illicit market becomes firmly entrenched and intractable and the fledgling legal market is completely decimated. Licensed businesses are folding, and people's livelihoods and health are at stake as there is no shortage of illicit shops to meet the demand. Though the transition may be upwards of a five-to-ten-year process, the CAC, along with the cannabis licensing authorities, share the vision of ensuring the long-term sustainability and stability for the industry in order to meet the needs of different communities around the state.

Each of the five subcommittees this year adopted recommendations seeking to improve the existing industry without making it too burdensome as to perpetuate the illicit market. The committee adopted 19 of the recommendations, in an effort to address pressing challenges.

While the CAC has accomplished a great deal over the course of the past year, there remain issues that have not yet been addressed or require further discussion, including but not limited to regulatory fragmentation, local control and market access, and reducing the barriers associated with excessive taxation and regulatory burden. In the prior year, many committee members 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 CAC has affected positive progress, the issues facing the developing industry are complex and continue to pose significant challenges. Many of the issues facing the state highlighted in the Global Issues section cannot be remedied through regulatory action by the licensing authorities and will require legislative action. It may be helpful for the CAC to continue to consider these issues in future work.

⁵⁴ <https://www.latimes.com/california/story/2019-09-11/california-marijuana-black-market-dwarfs-legal-pot-industry>

CONCLUSION

The CAC would like to acknowledge the remarkable amount of effort the Administration, the Bureau, CDFA, and CDPH have invested during this critical time. The policies implemented by the State for this industry should reflect our state's values, environmental policies, the economic needs of small businesses, and most importantly, the health and safety of Californians. The CAC looks forward to continuing to work with the State's licensing authorities along with every involved individual to build a robust, sustainable 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 in progress and hope this report serves as an important marker in this long-term project.





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PDE_19-398

