

The California Medical Marijuana Regulation and Safety Act

Overview of the California Medical Marijuana Regulation and Safety Act

On October 9, 2015, the Governor signed three bills into law: AB 243 (Wood), AB 266 (Bonta, Cooley, Jones-Sawyer, Lackey, Wood), and SB 643 (McGuire). Medical Marijuana Regulation Safety Act (MMRSA) is the most comprehensive regulation enacted since the passage of Proposition 215, “The Compassionate Use Act of 1996” and it addresses all aspects of medical marijuana including cultivation, processing, transportation, testing, distribution, sale and taxation. These bills were combined to create the MMRSA. The following is a brief summary of the bills:

- AB 243 (Wood) – The bill establishes a regulatory and licensing structure for cultivation sites under the Department of Food and Agriculture and provides direction around the regulation of pesticides, environmental impacts, etc.
- AB 266 (Bonta, Cooley, Jones-Sawyer, Lackey, Wood) – The bill establishes a dual licensing structure requiring a state license and local license to engage in commercial medical marijuana activity, creates the Bureau of Medical Marijuana Regulation within the California Department of Consumer Affairs and outlines the Bureau’s areas of responsibility. This bill also requires the creation and promulgation of health and safety and testing regulations. In addition, under this bill, cities and counties retain the ability to tax, zone, regulate and ban medical marijuana users, including delivery services.
- SB 643 (McGuire) – The bill establishes criteria for licensing of medical marijuana businesses, regulates physicians and recognizes local authority to levy taxes and fees.

MMRSA becomes operative on January 1, 2016; however, many of the new state standards will not take effect until January 1, 2018. For example, under MMRSA a facility or entity may continue to operate as they do today until at least January 1, 2018 when the formal state licensing process is expected to begin.

Key Provisions within the MMRSA

The following are key provisions within the MMRSA:

- **Local Government Authority Is Broad** – Local governments must issue a permit to a local business in order for it to lawfully operate. Local governments could also assist in enforcing state law, creating their own standards in addition to state standards, and taxing business activity.
- **Collectives and Cooperatives Will Be Phased Out** – The system established in these bills would not license collectives and cooperatives as they exist today, but the transition is gradual. They could continue to operate in compliance with local rules until at least January 1, 2018. Provisions within the bills state that the collective/cooperative defense would remain in effect for one year after the department announces that business licenses are being issued.
- **Patients Can Still Grow Their Own** – Patients could continue to grow their own medical marijuana (except where local governments have banned personal cultivation). However, grow space would be limited to 100 square feet, and patients would be prohibited from giving, selling or donating medical cannabis to another person without becoming licensed. Caregivers – which are narrowly defined under California’s voter-enacted law – could grow for up to five patients, and would be limited to 500 square feet. (Note: California legislation cannot legally amend a voter-enacted law. Thus, this limitation could be overturned to the extent it was found to conflict with Proposition 215.)

- **Cultivator Space Would Be Capped** – Licensed outdoor cultivators would be limited to one-acre spaces, while indoor cultivators would be limited to approximately one-half acre.
- **New Standards for Cultivators** – The California Department of Pesticide Regulation and Department of Food and Agriculture will develop pesticide use and organic marijuana standards.
- **Protections for Businesses and Employees** – The new framework expressly protects business owners, employees, landlords, and others from both criminal law and civil asset forfeiture so long as they follow the requirements.
- **Many Types of Licenses** – Many different annual business licenses would be available, including indoor and outdoor cultivators of different sizes, plant nurseries, processors, testing labs, and dispensaries. A new class of business licenses will be available for distributors that would be responsible for all transport between businesses. At this point, there are 17 different license classifications.
- **Testing and Labelling Is Required** – Medical cannabis sold to patients would be subject to specific requirements, including testing for potency and contaminants, tamper-resistant packaging and labeling.
- **Medical Marijuana Is Tracked during the Process** – The framework imposes a “track and trace” system that requires medical marijuana to be tracked from the earliest stages to the sales point.
- **Deliveries Are Allowed** – Unless banned at the local level, dispensary license holders can make deliveries to their patients as there are not separate licenses required for delivery services.
- **Criminal Background Checks Are Required** – Business license applications may be denied a license if they have a felony record related to the qualifications, functions, or duties of the business, including a conviction for illegal possession for sale, manufacture, transportation, or cultivation of marijuana.
- **Some Vertical Integration Is Allowed** – Some business types may hold licenses in more than one category (some cultivators can own dispensaries), but holding multiple licenses is limited.

What State Agencies Will Regulate Medical Marijuana

Primary authority for regulating the industry would go to the Department of Consumer Affairs. The department will be home to a new Bureau of Medical Marijuana Regulation, which would oversee the program and share licensing authority for various types of businesses, along with the Department of Food and Agriculture (cultivators) and the State Department of Public Health (testing labs and manufactures).

How Will El Dorado County Departments Possibly Be Affected by the Law?

Some El Dorado County departments would be affected by the state law changes if the County decides to retain its current medical marijuana ordinances. The following are a few examples of departments that would be affected:

- **Department of Agriculture/Weights and Measures** – The new legislation defines medical marijuana as an agricultural product. Due to this definition, the California Department of Food and Agriculture (CDFA) will publish regulations for cultivation, nurseries, develop an organic certification program and create a track and trace program for reporting the movement of medical marijuana. The state department will look into weighing or measuring devices in connection of the sale or distribution.

The law allows CDFA to enter into a cooperative agreements with a county agriculture commissioner to carry out the provisions of the law, including, but not limited to administering marijuana cultivation at the local level, conducting licensing for cultivation and nurseries,

conducting inspections, distributing the unique identifiers for the track and trace program, assisting the state with organic certification of medical marijuana and testing commercial weighting scales at distributors. The County Department of Agriculture already conducts pesticide inspections on commodities and it is anticipated that the state will be expecting the County to conduct inspections and pesticide permitting.

If the number of legal and illegal grows estimated by the Sheriff's Office become permitted under the law and the state wants to enter into cooperative agreements with the County, need for additional staffing in the El Dorado Department of Agriculture/Weights and Measures could increase by as many as six full time equivalent positions. The funding for these positions may be available from multiple revenue sources (i.e. state revenue, charges for services, etc.), but it is not certain at this time where the funds would come from for the positions.

- **Sheriff's Office** – The Western El Dorado County Narcotics Enforcement Team (WENET) is the primary unit within the Sheriff's Office tasked with the investigation of marijuana related complaints. WENET is comprised of a local four person unit with a supervisor. Roughly 80% of WENET's time is spent investigating marijuana related crime and activity, including approximately 1,560 hours a year in overtime. Even at that, WENET is only able to investigate approximately 2% of the cultivation sites within the County that are operating outside the County zoning ordinance. With the passage of the MMRSA, it is anticipated illegal cultivation sites could easily double.

Now with 17 different license classification types there could be an increased marijuana presence that will bring increased crime. Without additional personnel, other narcotics related investigations regarding heroin, methamphetamine, and cocaine, and secondary effects of those crimes will be impacted. There will be a need for additional Patrol, Records, Property, and Custody personnel, plus the associated resources. For more effects of medical marijuana on the Sheriff's Office please see its attachment 1B.

- **Air Quality Management District** – Currently, the Air Quality Management District can issue a written warning, called a notice to comply, to individuals growing marijuana if the odors are determined to violate the district's Nuisance Rule. If the violation continues, the district can issue a notice of violation, which comes with a fine.

It is understood at this time that marijuana is categorized as an agricultural product in the legislation. Agricultural operations are exempt from the Air Quality Management District's nuisance rule. The legislation could affect the district's ability to continue to apply the nuisance rule to marijuana cultivation. The district is continuing to study this subject.

There are other departments that could be affected by the new law (e.g. Community Development Agency, Health and Human Services Agency, etc.). These departments are waiting to see what administrative regulations state departments complete in the next year to evaluate what level of responsibility they will have.

Local Action on the California Medical Marijuana Regulation and Safety Act

In the law, the individuals must obtain a local license/permit/etc. from the local government allowing cultivation before receiving a license from the state. The legislation originally had March 1, 2016 as the deadline to have a local ordinance complete that provides the County's regulatory authority the ability

to regulate medical marijuana. If a local government provides no local ordinance, the law states the following:

“if a city, county, or city and county does not have land use regulations or ordinances regulating or prohibiting the cultivations of marijuana, either expressly or otherwise under principles of permissive zoning, or chooses not to administer a conditional permit program pursuant to this section, then commencing March 1, 2016, the division shall be the sole licensing authority for medical marijuana cultivation in that city, county, or city and county.”

As stated above, the State was looking for local action by March 1, 2016. However, the state provided a revision in AB 21 that allows local governments an undetermined amount of time to take local action (e.g. eliminating the March 1, 2016 deadline). The Governor’s Office announced on February 2nd that he had signed AB 21.

In addition to AB 21, AB 1575 is currently in the legislature. AB 1575 would make clear that marijuana cultivators could operate either as for-profit businesses or nonprofits. It clarifies that cities and counties can add fees and taxes on top of state fees. AB 1575 also clarifies other standards and requirements.