
THIRD READING

Bill No: AB 1171
Author: Blanca Rubio (D), et al.
Amended: 7/5/23 in Senate
Vote: 27

SENATE BUS., PROF. & ECON. DEV. COMMITTEE: 11-0, 7/3/23
AYES: Roth, Nguyen, Alvarado-Gil, Archuleta, Ashby, Becker, Eggman, Glazer,
Smallwood-Cuevas, Wahab, Wilk
NO VOTE RECORDED: Dodd, Niello

SENATE JUDICIARY COMMITTEE: 11-0, 7/11/23
AYES: Umberg, Wilk, Allen, Ashby, Caballero, Durazo, Laird, Min, Niello,
Stern, Wiener

SENATE APPROPRIATIONS COMMITTEE: 7-0, 9/1/23
AYES: Portantino, Jones, Ashby, Bradford, Seyarto, Wahab, Wiener

ASSEMBLY FLOOR: 69-0, 5/15/23 - See last page for vote

SUBJECT: Cannabis: private right of action

SOURCE: UFCW Western States
San Diego/Imperial Counties Joint Labor Management Cannabis
Committee

DIGEST: This bill authorizes a licensee under the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA) to bring a civil action in superior court against a person engaging in commercial cannabis activities without a license, as specified.

ANALYSIS:

Existing law:

- 1) Establishes the Department of Cannabis Control (DCC) to administer and regulate provisions of MAUCRSA. (Business and Professions Code (BPC) § 26010)
- 2) Subjects a person engaging in commercial cannabis activity without a required license under MAUCRSA to civil penalties of up to three times the amount of the license fee for each violation, and each day constitutes a new violation. (BPC § 26038(a)(1))
- 3) Subjects a person who has management or control of a commercial property, or a commercial building, room, space, or enclosure either as an owner, lessee, agent, employee or mortgagee who knowingly rents, leases, or makes available for use, with or without compensation, the commercial property, commercial building, room, space, or enclosure for the purpose of the unlicensed commercial cannabis cultivation, manufacture, storage, sale or distribution of cannabis to a civil penalty of up to \$10,000 for each violation, and each day constitutes a new violation. (BPC § 26038(a)(3))
- 4) Specifies who is to be reimbursed when collecting civil penalties associated with the investigation and to which fund the monies are to be deposited based on who brought forth the action, as specified. (BPC § 26038(c)(e))
- 5) Authorizes a peace officer, including a peace officer with the DCC, to seize cannabis products in any of the following circumstances, The cannabis or cannabis product is subject to recall or embargo by the DCC, subject to destruction, or is seized related to an investigation or disciplinary action. (BPC § 26039.4)
- 6) Authorizes the superior court for the county in which any person has engaged or is about to engage in any act which constitutes a violation of MAUCRSA to, upon a petition filed by the DCC, issue an injunction or other appropriate order restraining the conduct. (BPC § 26031.2(a))

This bill:

- 1) Provides that in addition to other remedies permitted by law, a licensee under MAUCRSA may bring an action in superior court against a person engaging in

commercial cannabis activity without a required license.

- 2) Requires a licensee to demonstrate actual harm resulting from the unlicensed commercial cannabis activity in order to prevail in an action brought pursuant to 1) above.
- 3) Authorizes a court to enter an order enjoining the defendant from engaging in commercial cannabis activity without a license in an action pursuant to 1) above.
- 4) Makes a licensee who prevails in an action pursuant to 1) above entitled to both the following:
 - a) Either of the following damages, at the election of the prevailing licensee:
 - i) Actual damages caused by the unlicensed commercial cannabis activity;
or,
 - ii) Statutory damages not to exceed \$500,000
 - b) Reasonable attorney's fees and costs.
- 5) States that this bill does not apply to any violation of the Labor Code committed by a person engaging in unlicensed cannabis activity and not form the basis for a cause of action under the Labor Code Private Attorneys General Act, as specified.

Background

Under current law, a cannabis license is required for every corner of the cannabis market, including growing cannabis, transporting cannabis, making cannabis products, testing cannabis products, selling cannabis, and holding an event where cannabis is sold. Each license type is distinct and must be approved before operating.

The illicit cannabis market and those operating without local or state oversight do not abide by any of California's current state licensing requirements and do not remit the proper payments into the Cannabis Tax Fund, which is designated for the collection of state cannabis excise tax. Monies from the fund are dedicated to regulatory and administrative costs, reimbursing certain state agencies for

reasonable costs associated with implementing, administering, and enforcing MAUCRSA.

Business and Professions Code Section 26038 details penalties for unlicensed commercial cannabis activity. A person engaging in commercial cannabis without a license is subject to civil penalties. Further, the DCC is permitted to destroy cannabis seized as part of a violation of operating without a license and the DCC can seek reimbursement for the costs of the enforcement process. It is currently illegal to grow, distribute, sell, deliver, transport, and make cannabis products etc., without obtaining the appropriate state or local license and authorization.

Current law specifies the parameters for assessing civil penalties, which are sought in court. Under current law, an action for civil penalties can be brought by the DCC, the Attorney General, or local public attorneys. There are individual penalties of up to three times the amount of the required license fee for each violation, and each day constitutes a separate violation. There are also civil penalties of up to \$30,000 per day of operation for aiding and abetting unlicensed cannabis activity, which means a person encouraged, aided, or facilitated the activity. There are also civil penalties of up to \$10,000 per day for a person who provides property, including providing the space, enclosures, rents, etc. for the purpose of unlicensed commercial activity.

Under current law, the civil penalties assessed are collected by either the DCC, the AG or a local city attorney and divided amongst administrative costs to the prosecuting agency with the balance deposited into the General Fund. This bill expressly authorizes a licensee to bring a civil action in superior court against a person engaging in commercial cannabis activity without a license. This bill proposes a unique new way to address the illicit cannabis market in California. In order to prevail in a case, a licensee would need to demonstrate “actual harm” incurred by the unlicensed activity.

A private right of action allows a private person or persons to enforce their rights under a particular statute. Private rights of action can be express or implied. Express rights explicitly outline in statute how a person or persons can enforce their rights in court, and against whom. Implied rights are rights that a statute may contain, or are assumed to contain, usually based on a previous judicial opinion outlining and confirming the existing right. The question as to whether a private right of action should exist in a statute is a common one in the Legislature, where proponents often argue explicitly providing these statutory rights expands access to justice for private citizens, and opponents are concerned about creating

unnecessary lawsuits that will backlog courts and create additional, unnecessary expenses for individuals or business owners.

FISCAL EFFECT: Appropriation: No Fiscal Com.: No Local: No

According to the Senate Committee on Appropriations, this bill will result in unknown court workload cost pressures to the extent this bill results in increased litigation as a result of cannabis licensees bringing civil actions against persons engaging in unlicensed commercial cannabis activity. DCC does not anticipate additional costs or workload associated with this bill.

SUPPORT: (Verified 9/1/23)

United Food and Commercial Workers, Western States Council (co-source)
San Diego/Imperial Counties Joint Labor Management Cannabis Committee (co-source)

California Association of Professional Scientists
California Cannabis Industry Association
County of Santa Barbara

OPPOSITION: (Verified 9/1/23)

None received

ARGUMENTS IN SUPPORT: Supporters note generally that this bill will help address the illicit cannabis market and provide an additional tool to address the illicit market.

ASSEMBLY FLOOR: 69-0, 5/15/23

AYES: Addis, Aguiar-Curry, Alanis, Alvarez, Arambula, Bains, Bauer-Kahan, Bennett, Berman, Boerner, Bonta, Bryan, Calderon, Juan Carrillo, Wendy Carrillo, Cervantes, Chen, Connolly, Davies, Essayli, Mike Fong, Gabriel, Gallagher, Garcia, Gipson, Grayson, Haney, Hart, Hoover, Irwin, Jackson, Jones-Sawyer, Kalra, Lackey, Lee, Low, Lowenthal, Maienschein, McCarty, McKinnor, Muratsuchi, Stephanie Nguyen, Ortega, Pacheco, Papan, Pellerin, Petrie-Norris, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Sanchez, Santiago, Schiavo, Soria, Ting, Valencia, Villapudua, Wallis, Ward, Weber, Wicks, Wilson, Wood, Zbur, Rendon

NO VOTE RECORDED: Megan Dahle, Dixon, Flora, Vince Fong, Friedman,
Holden, Mathis, Jim Patterson, Joe Patterson, Ta, Waldron

Prepared by: Elissa Silva / B., P. & E.D. / 916-651-4104
9/2/23 16:56:00

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