
THIRD READING

Bill No: AB 1458
Author: Quirk (D)
Amended: 8/25/20 in Senate
Vote: 21

SENATE BUS., PROF. & ECON. DEV. COMMITTEE: 9-0, 8/8/20
AYES: Glazer, Chang, Archuleta, Dodd, Galgiani, Hill, Leyva, Pan, Wilk

SENATE APPROPRIATIONS COMMITTEE: 5-2, 8/20/20
AYES: Portantino, Bradford, Hill, Leyva, Wieckowski
NOES: Bates, Jones

ASSEMBLY FLOOR: 59-9, 1/27/20 - See last page for vote

SUBJECT: Cannabis testing laboratories

SOURCE: California Cannabis Manufacturers Association

DIGEST: This bill requires, for edible cannabis products, the certificate of analysis (COA) to report that the milligrams (mg) of Tetrahydrocannabinol (THC) per serving does not exceed 10 mg per serving, plus or minus 12% until January 1, 2022, and plus or minus 10% after January 1, 2022.

Senate Floor Amendments of 8/25/20 add double-jointing language with AB 1470 (Quirk).

ANALYSIS:

Existing law:

- 1) Establishes the Bureau of Cannabis Control under the Department of Consumer Affairs to administer and enforce the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA) and the Control, Regulate and Tax Adult Use of Marijuana Act of 2016 (AUMA), which establishes a comprehensive system to control and regulate the distribution, transport,

storage, and sale of cannabis products. (Business and Professions Code (BPC) § 26000 et seq.)

- 2) Requires licensed sellers of cannabis or cannabis products to have a representative sample tested by a licensed testing laboratory. (BPC § 26100(a))
- 3) Authorizes a testing laboratory to receive and test samples of cannabis or cannabis products from a qualified patient or primary caregiver, only if the qualified patient or caregiver presents the qualified patient's valid physician's recommendation for cannabis for medicinal purposes. Prohibits a testing laboratory from certifying samples from a qualified patient or primary caregiver for resale or transfer to another party or licensee. Requires all tests performed by a testing laboratory for a qualified patient or primary caregiver to be recorded with the name of the qualified patient or primary caregiver and the amount of cannabis or cannabis product received. (BPC § 26104(d))
- 4) Defines "certificate of analysis" (COA) as the report prepared by the laboratory about the analytical testing performed and results obtained by the laboratory. (California Code of Regulations (CCR), Title 16, § 5700(q))
- 5) Requires a distributor after receipt of a COA from a testing laboratory, or upon transfer from another distributor, before transporting the cannabis goods, to ensure, among other things, that the certificate is the proper certificate for the batch, is timely, is consistent with the label on the goods. (CCR, tit. 16, § 5307)
- 6) Requires any one cannabinoid, Total THC, and/or Total CBD claimed to be present on a label shall not be considered inaccurate if the difference in percentage on the COA is plus or minus 10.0%. (CCR, tit. 16, § 5307.1(a))
- 7) Requires the terpenoid testing results on the label of any one terpenoid claimed to be present shall not be considered inaccurate if the difference in percentage on the COA is plus or minus 10.0%. (CCR, tit. 16, § 5307.1(b))

This bill requires, for edible cannabis products, the COA to report that the mg of THC per serving does not exceed 10 mg per serving, plus or minus 12% until January 1, 2022, and plus or minus 10% after January 1, 2022.

Background

MAUCRSA requires cannabis in its final form to be laboratory tested prior to sale. Cannabis testing laboratories are required to evaluate the levels of contaminants of cannabis samples, including residual solvent, processing chemicals, foreign material (such as hair and insects) and microbiological impurities. Testing also

determines the concentrations of active chemicals and to ensure compliance with safety standards.

In addition to information pertaining to the product's chemical profiles and contaminants, the COA documents administrative information about the laboratory, the distributor or microbusiness, dates and signatures, and other non-testing data which can be subject to simple data entry mistakes. Once issued, current law prohibits amending a COA or retesting samples, and the cannabis must be either remediated or destroyed. (However, the Bureau has indicated that, in limited circumstances, it has allowed a failed batch to be re-sampled and re-tested with another laboratory when the original laboratory clearly failed to meet quality control acceptance criteria.)

Edibles and THC. In recent years, edibles have emerged as a popular product in the legalized recreational and medical cannabis market. Edibles are given a different strength depending on a person's tolerance. For example, the suggested amount of THC mg for users with no tolerance is 1.5-5 mg, whereas the suggested amount for people with a very high tolerance to edibles is 60-100 mg+ of THC. Knowing a person's particular tolerance is important to ensure consumer protection and consumer safety.

There are also risks with the amount of cannabis a consumer might consume, given that ingestion produces a delayed onset of drug effect as opposed to inhalation.

Labeling, then, is a critical way for a consumer to tell how much of that particular product is safe for that person to consume. Industry indicates that 10 mg is roughly one "dose" of THC. A recommended option for beginners or those unaware of how one dose of 10 mg will affect them is to choose a brand or product that comes in 5-mg doses. Often, these products are created for new customers and those with a low tolerance.

Comments

According to the author, in February of 2019, the Bureau of Cannabis Control (BCC) released a Fact Sheet clarifying that a product sample would be considered as have "passed testing" if the THC per serving dose did not exceed 10 mg/serving plus 10% and/or if the THC per package does not exceed 100 mg/package plus 10%. However, the BCC regulations provided a conflicting interpretation. One regulation provided that a test is valid if the above analysis is within plus or minus 10%. The second analysis provided that the mg per serving must not exceed 10 mg of THC per serving. To resolve this confusion and to provide industry with time to comply with California's strong consumer protection standards, this bill codifies a

variance in statute, requiring the COA report that THC mgs per serving do not exceed 10 mgs per serving, plus or minus 12% until January 1, 2022, and plus or minus 10% after January 1, 2022.

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

According to the Senate Appropriations Committee, this bill will result in minor costs to BCC, a one-time cost of \$133,590 to the California Department of Food and Agriculture for track and trace system updates, and other ongoing costs for routine maintenance and operational activities are anticipated to be absorbable within existing resources.

SUPPORT: (Verified 8/25/20)

California Cannabis Manufacturers Association (source)
California Cannabis Industry Association
CMG/Caliva
Southern California Coalition

OPPOSITION: (Verified 8/25/20)

None received

ARGUMENTS IN SUPPORT: Supporters generally argue that while currently the potency standard “makes sense for products such as raw cannabis flower or concentrates, it poses challenges for edible cannabis products when tested. This is because the current regulations dictate that potency levels may not exceed 10mg per serving and provides no variance. Consequently, if a cannabis product exceeds 10mg of THC per serving the product receives a failed COA and must be remediated or destroyed. As result, one-fifth of all edible products in the cannabis supply chain fail quality assurance testing.” They also argue that this flexibility will better reflect the “infancy that the industry, processes, and technology are currently in.”

ASSEMBLY FLOOR: 59-9, 1/27/20

AYES: Aguiar-Curry, Arambula, Bauer-Kahan, Berman, Bloom, Bonta, Burke, Calderon, Carrillo, Chau, Chen, Chiu, Cooley, Cooper, Daly, Eggman, Frazier, Friedman, Gabriel, Cristina Garcia, Eduardo Garcia, Gipson, Gloria, Gonzalez, Gray, Grayson, Holden, Irwin, Jones-Sawyer, Kalra, Kamlager, Lackey, Levine, Limón, Low, Maienschein, McCarty, Medina, Mullin, Muratsuchi, Obernolte, O'Donnell, Petrie-Norris, Quirk, Quirk-Silva, Reyes, Luz Rivas, Robert Rivas,

Rodriguez, Blanca Rubio, Salas, Santiago, Smith, Mark Stone, Ting, Waldron,
Weber, Wicks, Wood

NOES: Bigelow, Choi, Cunningham, Megan Dahle, Diep, Gallagher, Kiley,
Melendez, Voepel

NO VOTE RECORDED: Boerner Horvath, Brough, Cervantes, Chu, Flora, Fong,
Mathis, Mayes, Nazarian, Patterson, Ramos, Rendon

Prepared by: Dana Shaker / B., P. & E.D. /
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