

## CONCURRENCE IN SENATE AMENDMENTS

AB 1458 (Quirk)

As Amended August 25, 2020

Majority vote

**SUMMARY:**

Requires, for edible cannabis products, the certificate of analysis 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.

**The Senate Amendments:**

Adds double-jointing language with AB 1470 (Quirk) of the current legislative session.

**COMMENTS:**

*State Regulation of Cannabis.* In 1996, California first legalized cannabis for medical consumption via Proposition 215, also known as the Compassionate Use Act (the Act). Proposition 215 protected qualified patients and primary caregivers from prosecution related to the possession and cultivation of cannabis for medicinal purposes. In 2003, the Legislature authorized the formation of medical marijuana cooperatives—nonprofit organizations that cultivate and distribute marijuana for medical uses to their members through dispensaries.

In 2015, the Legislature passed the Medical Cannabis Regulation and Safety Act (MCRSA). For the first time, MCRSA established a comprehensive, statewide licensing and regulatory framework for the cultivation, manufacture, transportation, testing, distribution, and sale of medicinal cannabis to be administered by the Bureau within Department of Consumer Affairs, DPH, and CDFG.

Shortly following the passage of MCRSA in November 2016, California voters passed Proposition 64, the "Control, Regulate and Tax Adult Use of Marijuana Act" (Proposition 64), which legalized adult-use cannabis. Less than a year later in June 2017, the California State Legislature passed a budget trailer bill, SB 94 (Committee on Budget and Fiscal Review), Chapter 27, Statutes of 2017), that integrated MCRSA with Prop 64 to create MAUCRSA, the current regulatory structure for both medicinal and adult-use cannabis. Beginning in 2018, Proposition 64 permitted adults 21 years of age or older can legally grow, possess, and use cannabis for nonmedical purposes, with certain restrictions.

*Cannabis Testing.* 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 certificate of analysis (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 milligrams is roughly one "dose" of THC. A recommended option for beginners or those unaware of how one dose of 10 milligrams will affect them is to choose a brand or product that comes in 5-milligram doses. Often, these products are created for new customers and those with a low tolerance.

Regulatory Inconsistency. According to the Author, in February of 2019, 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, the 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.

#### **According to the Author:**

This bill is sponsored by the *California Cannabis Manufacturer's Association*. According to the Author, "[o]n February 1, 2019 the Bureau of Cannabis Control (BCC) released a Fact Sheet clarifying that a licensed testing laboratory shall deem an edible cannabis product sample to have passed testing if the THC per serving does not exceed 10 mg/serving plus 10% and/or if the THC per package does not exceed 100 mg/package plus 10%. However, there is an interpretation of the BCC regulations that reveals a conflict: BCC Regulations §5307.1 states that a test is valid if this analysis is within plus or minus 10%, whereas §5724(d)(1) states that milligrams per serving must not exceed 10 milligrams of THC per serving."

#### **Arguments in Support:**

The *Southern California Coalition* states, "The testing of cannabis manufactured products is an essential part of quality assurance. Because considerable expense is entailed in manufacturing cannabis products and the sourced ingredients are tested prior to manufacture to avoid contaminating the final product, it would be highly unusual for a manufactured product to fail testing. While both the manufacturer and the testing labs exercise extreme caution failed batches do sometimes occur. This bill gives the manufacturer and the laboratory the option to determine the source of the failure, correct it and retest. For instance, if laboratory equipment was not properly cleaned after a prior test, various residues might show up in a subsequent test."

**Arguments in Opposition:**

None on file.

**FISCAL COMMENTS:**

According to Senate Appropriations Committee:

- 1) Minor costs to the Bureau of Cannabis Control (BCC). The temporary change in the permissible variance as prescribed by the bill would require the BCC to make minor modifications to its regulations. The BCC reports that these changes would likely be absorbable within existing resources.
- 2) One-time cost of \$133,590 to the California Department of Food and Agriculture for track and trace system updates. Other ongoing costs for routine maintenance and operational activities are anticipated to be absorbable within existing resources.

**VOTES:****ASM BUSINESS AND PROFESSIONS: 15-1-3**

**YES:** Low, Arambula, Bloom, Chen, Chiu, Eggman, Gipson, Gloria, Grayson, Holden, Irwin, McCarty, Mullin, Obernolte, Ting

**NO:** Cunningham

**ABS, ABST OR NV:** Brough, Fong, Medina

**ASM APPROPRIATIONS: 13-3-2**

**YES:** Gonzalez, Bloom, Bonta, Calderon, Carrillo, Chau, Eggman, Gabriel, Eduardo Garcia, Maienschein, Petrie-Norris, Quirk, Robert Rivas

**NO:** Bigelow, Megan Dahle, Diep

**ABS, ABST OR NV:** Brough, Fong

**ASSEMBLY FLOOR: 59-9-12**

**YES:** 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, O'Donnell, Obernolte, Petrie-Norris, Quirk, Quirk-Silva, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Smith, Mark Stone, Ting, Waldron, Weber, Wicks, Wood

**NO:** Bigelow, Choi, Cunningham, Megan Dahle, Diep, Gallagher, Kiley, Melendez, Voepel

**ABS, ABST OR NV:** Boerner Horvath, Brough, Cervantes, Chu, Flora, Fong, Mathis, Mayes, Nazarian, Patterson, Ramos, Rendon

**SENATE FLOOR: 32-5-3**

**YES:** Allen, Archuleta, Atkins, Beall, Bradford, Caballero, Chang, Dahle, Dodd, Durazo, Galgiani, Glazer, Lena Gonzalez, Hertzberg, Hill, Hueso, Hurtado, Jackson, Leyva, McGuire, Mitchell, Monning, Moorlach, Pan, Portantino, Roth, Rubio, Skinner, Umberg, Wieckowski, Wiener, Wilk

**NO:** Bates, Grove, Melendez, Morrell, Nielsen

**ABS, ABST OR NV:** Borgeas, Jones, Stern

**UPDATED:**

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CONSULTANT: Danielle Sires / B. & P. / (916) 319-3301

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