

Date of Hearing: June 27, 2023

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Marc Berman, Chair

SB 622 (Allen) – As Amended June 15, 2023

SENATE VOTE: 37-0

SUBJECT: Cannabis regulation: plant identification program: unique identifier

SUMMARY: Authorizes the Department of Cannabis Control (DCC) to determine by regulation how cannabis plant unique identifiers shall be recorded.

EXISTING LAW:

- 1) Enacts the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA) to provide a comprehensive regulatory framework for the cultivation, distribution, transport, storage, manufacturing, processing, and sale of medicinal and adult-use cannabis. (Business and Professions Code (BPC) §§ 26000-26325)
- 2) Establishes the DCC within the Business, Consumer Services, and Housing Agency (previously established as the Bureau of Cannabis Control, the Bureau of Marijuana Control, the Bureau of Medical Cannabis Regulation, and the Bureau of Medical Marijuana Regulation), for purposes of administering and enforcing MAUCRSA. (BPC § 26010)
- 3) Requires the DCC to implement a unique identification program for cannabis and cannabis products. (BPC § 26069(a)(1))
- 4) Specifies that the unique identification program must include the identification of permitted cannabis plants at a cultivation site during the cultivation period and requires that a unique identifier be issued for each cannabis plant and attached at the base of each plant or as otherwise required by law or regulation. (BPC § 26069(a)(2))
- 5) Specifies that unique identifiers can only be issued to DCC licensees. (BPC § 26069(b))
- 6) Requires information associated with the assigned unique identifier and licensee to be included in the DCC's track and trace program. (BPC § 26069(c))
- 7) Authorizes the DCC to charge a fee to cover the reasonable costs of issuing the unique identifier and monitoring, tracking, and inspecting each cannabis plant. (BPC § 26069(d))
- 8) Requires the DCC to take adequate steps to establish protections against fraudulent unique identifiers and limit illegal diversion of unique identifiers to unlicensed persons. (BPC § 26069(e))
- 9) Authorizes a city, county, or city and county to administer unique identifiers and associated identifying information *in addition to* the DCC-issued unique identifiers.
- 10) Exempts cannabis cultivated for personal or medicinal use from the requirement to be assigned a unique identifier. (BPC § 26069(f))

THIS BILL:

- 1) Authorizes the unique identifier to be recorded in a manner determined by the DCC by regulation.
- 2) States that the bill furthers the purpose and intent of the Control, Regulate and Tax Adult Use of Marijuana Act (Proposition 64).

FISCAL EFFECT: According to the Senate Appropriations Committee pursuant to Senate Rule 28.8, no significant state costs anticipated.

COMMENTS:

Purpose. This bill is sponsored by *CannaCraft, Inc.* According to the author:

[This bill] will provide more flexibility to the Department of Cannabis Control to regulate how cannabis plants are tagged to ensure easy identification of plants for effective enforcement by inspectors and compliance by cultivators, while minimizing wasteful and expensive single-use tags. The bill leaves room for emerging alternatives and methods such as reusable digital tags or requiring cultivators to provide a centralized list of plants to satisfy the unique identifier requirement.

Background.

Department of Cannabis Control (DCC). Since July 1, 2021, the DCC has been the single entity responsible for administering and enforcing the majority of California's cannabis laws, collectively known as MAUCRSA. The DCC is additionally responsible for licensing and regulating cannabis businesses, including the cultivation, manufacture, testing, transportation, labeling, and sale of cannabis and cannabis products in this state.¹

Plant Tags with Unique Identifiers. Existing law requires the DCC to implement a unique identification program for cannabis and cannabis products. DCC regulations specify that immature cannabis plants are assigned a plant tag, which is required by regulation to be visible and within clear view of an individual standing next to the lot containing the immature plants.² Immature plants transferred from a licensed nursery for retail tag are transferred in a package with a package tag. Upon receipt, the retail licensee is required to remove the package tag and assign a plant or new package tag, as applicable. Mature plants are required to be tagged with a plant tag that is attached to the main stem at the base of each plant, placed so that it is visible and within clear view of an individual standing next to the mature plant.³ Plant tags are prohibited from being removed until the plant is harvested, destroyed, or disposed of.

¹ Department of Cannabis Control. (n.d.). *About the Department of Cannabis Control*. Department of Cannabis Control. Retrieved April 6, 2023, from <https://cannabis.ca.gov/about-us/about-dcc/>

² Cal. Code Regs. Tit. 4, § 15048.4

³ Ibid.

The author and supporters of this bill contend that the existing requirement to affix a plastic tag containing a unique identifier is duplicative (because each plant is assigned a digital unique identifier that corresponds with the physical tag), wasteful, costly, labor intense, and is not serving its intended purpose, which is to help deter diversion of legal cannabis to the illicit market. Although the plastic tag make it easy to identify specific plants, the author's office points out that nothing prevents diversion by skimming off the top of plants or during harvest when the physical tags are removed.

Prior Related Legislation.

AB 2555 (Cooley) of 2018 would have allowed a unique identifier to be used to reference a lot of immature plants, as defined, and required mature plants to be referenced by their own unique identifiers. *AB 2555 died on the Senate Inactive File.*

ARGUMENTS IN SUPPORT:

CannaCraft, the sponsor of this bill, and *March & Ash* collectively write in support:

Single-use plant tags do nothing to prevent diversion. In addition to the plastic plant tag, each cannabis plant is also assigned a digital plant tag in the track and trace system. Digital plant tagging is currently used by traditional farmers and has been recognized as an effective method by the California Farm Bureau as well as the U.S. Department of Agriculture, in providing the same level of transparency and reported data on the number of plants in the ground at any given time, as plastic ones. Requiring both a digital and plastic plant tag is unnecessary and does nothing to enhance the integrity of the state's track and trace program. In fact, if a cannabis cultivator wished to divert cultivated cannabis into the illegal market, it would most likely occur at the time of harvest, at which point the single use plants tags have already been removed, and discarded. Harvested plants are then combined and assigned a batch tag in track and trace, making the original plastic plant tag obsolete [...] Single-use plant tags generate millions of pounds of plastic waste and unnecessary labor and operational costs for licensed cultivators. According to data provided by the Department of Cannabis Control, 43 million plant tags were issued to licensed cultivators and microbusinesses in 2022 for a total cost to the state of \$15 million. This does not include the millions of pounds of ancillary plastic waste from the plant tagging process including zip ties, the packaging the tags and zip ties are shipped in, and the garbage bags used for disposing them. By eliminating the individual plastic plant tag requirement, while maintaining digital plant tags, [this bill] preserves the integrity of the track and trace system and eliminates an estimated quarter million pounds of single use plastic waste from landfills each year.

Origins Council, the *Humboldt County Growers Alliance*, the *Big Sur Farmers Association*, the *Nevada County Cannabis Alliance*, the *Mendocino Cannabis Alliance*, and the *Trinity County Agricultural Alliance* collectively write in support:

Existing law establishes a track-and-trace system intended to track the movement of cannabis throughout the licensed supply chain and prevent diversion to the unlicensed market. Within this track-and-trace framework, the existing requirement to attach a physical tag to each plant is among the most time and labor-intensive requirements in

California state cannabis law, establishing considerable costs on licensed cultivators who are participating within the regulated market.

At the same time, this requirement provides no corresponding regulatory benefit to the state. Following harvest, state regulations require harvested material from individual plants to be combined into a single harvest “batch,” which receives its own collective tag, and individual plant tags are discarded. Additionally, each cannabis plant is digitally tagged within the track-and-trace system, and can be identified regardless of whether a corresponding physical tag is attached to each plant.

[...]

[R]equirements to tag every plant impose substantial costs that divert time and resources from meaningful business and compliance tasks. For a half-acre farm, we estimate it typically requires a crew of five people 3-4 days to tag all plants within a licensed cultivation area. These requirements also generate significant environmental impact: we estimate that a single 10,000 square foot cultivator utilizing light deprivation generates about 30 pounds of plastic tag waste per year.

The existing requirement to physically tag each cannabis plant is wasteful, redundant, and imposes unnecessary costs on both the state and licensed cannabis operators.

ARGUMENTS IN OPPOSITION:

The *Coalition de Buena Salud y Bienestar* writes in opposition to this bill:

We oppose [this bill] because it will have a detrimental impact on low income-communities where people often are challenged by violence, food insecurity, poverty, and other socioeconomic barriers such as high unemployment. Illegal cannabis products, at times laced with Fentanyl, are being sold in our communities that cause death.

[...]

We oppose [this bill] because we strongly believe that these proposed regulations violate Proposition 64 as it contradicts its Purpose and Intent which goes against the will of the voters to reduce the illicit market and protect communities. The State of California must maintain the unique and individualized identification of legal cannabis to ensure that they are not diverted into the illicit market. Before the State of California deregulates cannabis, it must start enforcing its own laws to protect our communities.

Los Amigos de la Comunidad writes in opposition to this bill:

[This bill] deregulates cannabis which will only exacerbate the problems faced by the immigrant community. For these communities, cannabis related convictions can result in disproportionate and devastating consequences. Almost all cannabis offenses cause mandatory imprisonment in an immigration detention center and they are consistently among the top ten types of convictions for those who are deported. It is well documented and known nationally that the California cannabis illicit market is out of control.

[...]

California must ensure that there are strong regulations in place to shrink the illicit market in order to protect our immigrant communities from being deported or barred from adjusting their immigration status. A strong regulatory program, including the individual identification of legal plants, and proper enforcement against illicit operators will help to keep our immigrant communities safe.

REGISTERED SUPPORT:

CannaCraft, Inc. (*Sponsor*)
Big Sur Farmers Association
California Cannabis Industry Association
California NORML
California Product Stewardship Council
Environmental Working Group
Ethical Data Alliance
Humboldt County Growers Alliance
Kiva Confections
Lompoc Valley Cannabis Association, Santa Barbara County
Mendocino Cannabis Alliance
National Stewardship Action Council
Nevada County Cannabis Alliance
Origins Council
The Parent Company
San Diego & Imperial Counties Cannabis Industry Labor Management
Trinity County Agriculture Alliance
Upstream

REGISTERED OPPOSITION:

Coalition de Buena Salud y Bienestar
First Day Foundation
Los Amigos de la Comunidad, Inc.

Analysis Prepared by: Kaitlin Curry / B. & P. / (916) 319-3301