

Date of Hearing: April 14, 2026

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Marc Berman, Chair

AB 1826 (Lackey) – As Amended March 19, 2026

NOTE: This bill is double referred and if passed by this Committee will be re-referred to the Assembly Judiciary Committee.

SUBJECT: Cannabis: recall, embargo, and destruction of cannabis and cannabis products.

SUMMARY: Makes several changes to the enforcement provisions of the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), which include: authorizing licensees to engage in a “meet and confer” with Department of Cannabis Control (DCC) staff during the enforcement process; modifying DCC enforcement procedures; modifying enforcement notice requirements; limiting the use of liability waivers during settlements between the DCC and licensees; and adding an “administrative error” category of licensee violations.

EXISTING LAW:

- 1) Establishes the enforcement framework that the DCC shall use to enforce MAUCRSA and regulate licensed and unlicensed cannabis activity in California. (BPC §§ 26030-26039.5)
- 2) Establishes grounds for disciplinary action against cannabis licensees, including failures to comply with state requirements as well as local laws and ordinances. (BPC §§ 26030)
- 3) Establishes procedures for disciplinary actions against a licensee which include: service of an accusation by the DCC on a licensee; hearing procedures; a list of disciplinary actions that can be taken by the DCC following the finding from a hearing that a licensee has committed an act constituting grounds for disciplinary action. (California Code of Regulations (CCR) Title 4 § 17809)
- 4) Requires the DCC to consider the disciplinary guidelines entitled “Department of Cannabis Control Disciplinary Guidelines for All Commercial Cannabis Licenses Amended July 2022,” when reaching a decision on a disciplinary action under MAUCRSA and the Administrative Procedure Act (APA); incorporates the disciplinary guidelines by reference; establishes that deviation from the disciplinary guidelines are appropriate when the DCC determines that the facts of a particular case warrant such a deviation. (CCR tit. 4, § 17814)
- 5) Establishes procedures for administrative adjudications under the APA; describes the scope and applicability of the APA’s adjudication procedures; establishes procedures for hearings, including evidentiary rules and hearing timeframes. (GOV §§ 11400-11475)
- 6) Establishes procedures for formal administrative adjudications under the APA; requires a hearing to determine whether a right, authority, license, or privilege should be revoked, suspended, limited, or conditioned; and establishes the hearing procedures, including initiation, discovery, hearing, evidence, proposed order, and reconsideration. (Government Code (GOV) §§ 11500-11529)

- 7) Authorizes the DCC to issue a citation to a licensee or unlicensed person for violating MAUCRSA or regulations adopted pursuant to MAUCRSA; allows the DCC to assess an administrative fine of up to \$5,000 per violation by a licensee and up to \$30,000 per violation by an unlicensed person; establishes guidelines for determining the appropriate fine amount; establishes hearing and appeal procedures for licensees to whom the DCC has issued citations. (BPC § 26031.5)
- 8) Authorizes licensees to contest a citation by submitting a written request for a hearing within 30 days of the service of the citation; establishes timelines and procedures for the citation appeal process; and establishes procedures for the DCC and licensees after proceedings where a citation is dismissed, issued, or modified. (CCR tit. 4, § 17803)
- 9) Prohibits a person or entity from engaging in commercial cannabis activity without a state license issued by the DCC pursuant to MAUCRSA. (BPC § 26037.5)
- 10) Authorizes the DCC to issue citations, orders of abatement, and fines against a licensee or unlicensed person for any acts or omissions that are in violation of any law applicable to cannabis licensees. (CCR tit. 4, § 17802)
- 11) Requires the DCC, when it has evidence that a cannabis product is adulterated or misbranded, to notify the licensee; establishes that when a licensee is notified, the licensee may voluntarily recall the affected cannabis product and either remediate it or destroy it under the supervision of DCC. (BPC § 26039.1(a))
- 12) Authorizes the DCC to issue a notice to comply to a licensee for violations of MAUCRSA or other applicable laws; lists the requirements for a notice to comply; establishes methods of service for a notice to comply; establishes requirements for licensees who receive a notice to comply and timeframes for licensee action pursuant to the notice. (CCR tit. 4, § 17801)
- 13) Authorizes the DCC to issue a mandatory recall order of a cannabis product if the product poses an immediate threat to human life or health, and other DCC procedures would result in an unreasonable delay. (BPC § 26039.1(b))
- 14) Requires the DCC to provide a licensee with an opportunity for an informal proceeding within five days of a DCC mandatory recall order on why the cannabis or cannabis product should not be recalled, after which the DCC must affirm, modify, or set aside the order. (BPC § 26039.1(c))
- 15) Requires the DCC, when it has probable cause to believe that cannabis or a cannabis product is adulterated or misbranded, or that the cannabis product's sale would violate MAUCRSA, to affix a tag or appropriate marking to the suspected product, thereby embargoing the product; establishes restrictions on licenses with regards to products which have been embargoed; establishes procedures for the DCC and licensees following a hearing to determine whether an embargoed product is adulterated or misbranded, and whether the product can be remediated; and outlines the administrative process leading up to condemnation of the product. (BPC § 26039.3; CCR tit. 4, § 17801.5)
- 16) Defines cannabis as misbranded when it is: cultivated, processed, manufactured, packed, or held in an unlicensed location; its labeling is false or misleading; or its labeling or packaging does not conform to applicable requirements. (BPC § 26039.5(a))

- 17) Makes it unlawful to cultivate, process, manufacture, sell, deliver, hold, or offer for sale misbranded cannabis products; misbrand cannabis products; or receive or distribute, deliver or offer for delivery misbranded cannabis products. (BPC § 26039.5(b)-(d))
- 18) Defines cannabis as adulterated when under specified unsanitary, spoiled, toxic, impure or low quality, noncompliant, poisonous, or diluted conditions. (BPC § 26039.6(a))
- 19) Makes it unlawful to: cultivate, process, manufacture, sell, deliver, hold, or offer for sale adulterated cannabis products; to adulterate cannabis products; and receive or distribute, deliver or offer for delivery adulterated cannabis products. (BPC § 26039.6(b)-(d))
- 20) Authorizes the Attorney General or a city or county counsel or city prosecutor to bring an action against persons engaged in unlicensed commercial cannabis activity for civil penalties of up to three times the amount of the license fee per day of violation. (BPC § 26038)
- 21) Establishes packaging and labeling requirements for cannabis products. (BPC § 26120)
- 22) Prohibits cannabis and cannabis product packages and labels from being made to be attractive to children. (BPC § 26120(b))
- 23) Requires all cannabis and cannabis product labels and inserts to include specified information, which includes: a warning label; product weight; product type; an active ingredient list; appellation of origin; and any other information specified by the DCC. (BPC § 26120(c))
- 24) Requires the DCC to promulgate regulations setting standards for the manufacturing, packaging, and labeling of all manufactured cannabis products, including a requirement that products be provided to customers with sufficient information to enable the informed consumption of the product, including the potential effects of the cannabis product and directions as to how to consume the cannabis product, as necessary. (BPC § 26130)
- 25) Prohibits specified advertising and marketing practices. (BPC § 26152)
- 26) Prohibits a cannabis licensee from including on the label of any cannabis or cannabis product or publishing or disseminating advertising or marketing containing any health-related statement that is untrue in any particular manner or tends to create a misleading impression as to the effects on health of cannabis consumption. (BPC § 26154)

THIS BILL:

- 1) Requires the DCC, when it has evidence that a licensee's product is misbranded, adulterated, or contains an administrative error, to provide written notice to the licensee. These notices must include the basis for the action, the code section that the action is based on, and the evidence that the DCC has concerning the violation, among other things.
- 2) Requires the DCC to provide licensees an opportunity to "meet and confer" with DCC staff under the following circumstances:
 - a) Upon issuance of a citation, a licensee may request to meet and confer with DCC staff who have knowledge of the matter within five business days of the issuance of the citation.

- b) Upon the issuance of a notice that the DCC has evidence that a licensee's product is misbranded, adulterated, or contains an administrative error, and prior to a voluntary recall, a licensee may request to meet and confer with DCC staff who have knowledge of the matter within five business days of the delivery of the notice. During the meet and confer, a licensee may present evidence and arguments that their product is not misbranded, adulterated, or subject to an administrative error. The DCC may not permit the destruction of a product until the meet and confer process has concluded or the licensee has declined to meet and confer.
 - c) Upon the issuance of a mandatory recall order, a licensee may request to meet and confer with DCC staff who have knowledge of the matter within five business days of the issuance of the order. During this meet and confer, a licensee may present evidence and arguments that their product is not misbranded, adulterated or subject to an administrative error. The DCC may not permit the destruction of a product until the meet and confer process has concluded or the licensee has declined to meet and confer. Following the meet and confer or the licensee's decision not to meet and confer, the DCC must affirm, modify or set aside the recall order.
 - d) Upon the delivery of a notice which states that a licensee's cannabis product is embargoed by the DCC, a licensee may request to meet and confer with DCC staff who have knowledge of the matter within five business days of the issuance of the order. During this meet and confer, a licensee may present evidence and arguments that their product is not misbranded, adulterated or subject to an administrative error. Following the meet and confer, and if the DCC takes longer than five days to make a determination about whether a licensee's product is adulterated misbranded or subject to an administrative error, the DCC shall provide the licensee with weekly updates on the determination process until a final determination is made.
- 3) Requires the DCC, if it determines that a licensee's embargoed cannabis product is not adulterated, misbranded, or does not contain an administrative error, to remove the tag or other marking affixed to the product within 24 hours.
 - 4) Prohibits the DCC from requiring a licensee to conduct a voluntary recall, sign a waiver of liability, or waive any right to an informal meeting or an administrative or judicial hearing or appeal as a condition of approving a voluntary recall, authorizing remediation, or supervising the destruction of the product.
 - 5) Establishes that a licensee that conducts a voluntary recall does not waive any right to an informal meeting or an administrative or judicial hearing or appeal.
 - 6) Requires proceedings for the condemnation of cannabis products to be initiated within ten days of the DCC's rejection of a corrective action plan submitted by the licensee, or within ten days of the embargo if no corrective action plan is submitted.
 - 7) Requires the failure of the DCC to approve a corrective action plan or initiate condemnation proceedings within this timeframe to result in the automatic release of the embargo, unless an administrative law judge determines that the DCC has shown good cause for the delay.

- 8) Requires the administrative law judge presiding over a condemnation hearing, if the cannabis product is a perishable agricultural product, to schedule the hearing no later than five business days after the petition for condemnation is filed, upon the request of the licensee.
- 9) Requires the administrative law judge to issue a decision within 48 hours of the conclusion of the condemnation hearing.
- 10) Prohibits the DCC from requiring a licensee to sign a waiver of liability, or to waive any right to an informal meeting or an administrative or judicial hearing or appeal, as a condition of removing an embargo tag, approving a corrective action plan, or permitting the destruction of product, specifying that a waiver of liability or appeal rights is invalid unless executed following the conclusion of a condemnation proceeding or civil litigation regarding the matter.
- 11) Specifies that cannabis or a cannabis product contains an administrative error if it has any of the following:
 - a) Its labeling or packaging does not conform to specified requirements or any other labeling or packaging requirements.
 - b) The laboratory conducting compliance testing on the product makes a clerical error in the track and trace system in reporting test results.
 - c) Its concentrations differ from, or its purity or quality is below, that which it is represented to possess.
 - d) The methods, facilities, or controls used for its cultivation, manufacture, packing, or holding do not conform to, or are not operated or administered in conformity with, practices established by DCC regulations to ensure that the cannabis or cannabis product meets the requirements as to safety and has the concentrations it purports to have and meets the quality and purity characteristics that it purports or is represented to possess.
 - e) It is a cannabis product and a substance has been mixed or packed with it after testing by a testing laboratory so as to reduce its quality or concentration or if a substance has been substituted, wholly or in part, for the cannabis product.
- 12) Makes it unlawful to cultivate, manufacture, distribute, sell, deliver, hold, or offer for sale cannabis or a cannabis product that has an administrative error or to receive in commerce cannabis or a cannabis product that has an administrative error or to distribute, deliver, or proffer for delivery cannabis or cannabis product that has an administrative error.

FISCAL EFFECT: Unknown; this bill is keyed fiscal by the Legislative Counsel.

COMMENTS:

Purpose. This bill is sponsored by the *California Cannabis Industry Association*. According to the author:

“[This bill], authored by Assemblyman Tom Lackey, addresses the mounting challenges facing California's licensed cannabis industry, where prolonged enforcement actions without resolution are driving preventable business closures and inventory losses that undermine both the regulated

market and the public safety goals it is meant to advance. Licensed operators - many of them small and minority-owned businesses - cannot absorb the financial harm caused by enforcement actions that lack transparency, move without defined timelines, or condition relief on the surrender of legal rights. The bill establishes evidence disclosure requirements, meet-and-confer procedures, expedited hearing timelines for perishable products, and prohibitions on coercive waiver conditions. Together, these reforms ensure that DCC enforcement actions are grounded in documented evidence, proceed expeditiously, and afford licensees a meaningful opportunity to respond before irreversible harm occurs.”

Background. MAUCRSA authorizes a person who obtains a state license under MAUCRSA to engage in commercial adult-use cannabis activity under that license and any applicable local ordinances. The DCC is the state agency that licenses and regulates cannabis businesses and issues over twenty distinct license types. In 2025, the DCC reported that it regulates approximately 6,800 annual licensees..

Overview of DCC Enforcement. The DCC regulates the growing of cannabis plants; manufacture of cannabis products transportation and tracking of cannabis goods throughout the state; sale of cannabis goods events where cannabis is sold or used; and labeling of goods sold at retail.

Some of the regulatory tools that the DCC uses to enforce MAUCRSA include: citations, fines, and abatement orders; product embargos; product condemnations; and product recalls.

Citations. Citations may be issued against licensees or unlicensed persons for violations of MAUCRSA or other applicable laws. Citations can contain monetary fines, orders of abatement or both. Citations must describe the violation and the DCC’s evidence of a citable offense. Citations may assess a monetary penalty of up to \$5,000 a day per violation for licensees and up to \$30,000 per violation per day for unlicensed persons. The monetary fine contained in a citation must account for the following factors: the gravity of the violation by the licensee or person; the good faith of the licensee or person; and the history of previous violations. To contest a citation, the cited party must file a written request for a hearing within 30 days of service of the citation. Following this written request for a hearing, the cited party may also request an informal hearing with DCC staff. This bill modifies the informal procedures for contesting citations and the requirements of the notice which must accompany a citation.

Product Embargoes. The DCC has the authority to embargo cannabis products which it has probable cause to believe are misbranded or adulterated. When the DCC embargoes a cannabis product, the it must affix a tag or marking to the affected product, and serve the licensee associated with the product, a notice describing the basis for the embargo. Following the issuance of an embargo a licensee may contest the embargo or voluntarily recall a product. Voluntary recalls are initiated by licensees whose product has been contaminated or misbranded.¹ If a licensee does not recall an embargoed product and instead contests the embargo, the DCC may authorize a licensee to remediate the affected product or order the condemnation of the product. Remediation is the process of removing contaminants from a product and must be approved by the DCC in advance.² Condemnation is the process through which the DCC orders a licensee to destroy a product, under the supervision of the department. This bill establishes

¹ Ibid.

² Ibid.

informal conference procedures during the embargo process and creates timelines for the embargo process.

Mandatory Recalls. The DCC also has the authority to issue a mandatory recall when a cannabis product presents an immediate or serious threat to consumers and other DCC remedies would cause an unreasonable delay.³ When the DCC issues a mandatory recall, it notifies the licensees who have the affected product, such as a dispensary.⁴ Licensees can, within five days of the issuance of a recall order, contest the recall through an informal proceeding, where they are able to argue why their product should not be recalled. Following this informal proceeding the DCC can either affirm, modify, or set aside recall order. If the DCC orders the condemnation of the product during the informal proceeding, the licensee can then request a formal adjudication; the procedures of which are governed by the APA. This bill modifies the requirements of the informal process for mandatory recalls.

Lack of DCC Enforcement Clarity. Legalized cannabis in California is a relatively new regulatory field and as a result, there have been numerous material changes to cannabis law enforcement, as well as to cannabis law itself, over the past few years. These changes can be attributed to a number of factors including legislative amendments to MAUCRSA, amendments to DCC's enforcement regulations, and changes in DCC's internal guidance and policy more broadly. This shifting legal landscape has led to confusion amongst stakeholders, and a desire for clearer enforcement policies which appropriately consider the economic realities of DCC licensees. Resultingly, some of the primary policy goals of this bill, as raised by the author and other stakeholders, are to clarify the MAUCRSA provisions which contemplate enforcement, and to decrease the financial burdens of enforcement on DCC licensees. More specifically, some of the enforcement clarity and due process topics that this bill attempts to address are adjudication procedure, enforcement timelines, and evidentiary disclosures during enforcement actions.

“Meet and Confer” Requirement for Citations. MAUCRSA and DCC regulations hold that when the DCC issues a citation, the cited party can contest the citation, request an informal conference, or both.⁵ To contest a citation, a cited party must submit a written request to the DCC within 30 days of the service of the citation.⁶ Citations are contested in formal hearings, the procedure for which comes from the APA.⁷ In an informal conference for a citation, the cited party must request a conference within 15 days of service of a citation.⁸ In the 15 days following the receipt of the written request for an informal conference, DCC staff must meet with a cited party to discuss the citation. Within 15 days of the date of the conference, the DCC may affirm modify or dismiss the citation by written decision.

Adulteration/Misbranding Notice Meet and Confer Requirement. Currently, when the DCC has evidence that a product is adulterated or misbranded, they are required to notify the licensee whose product is the subject of the notice. After receiving a notice, a licensee is then able to either voluntarily recall the product, and either remediate it, if allowed by the DCC, or destroy it. Existing law does not provide specifics regarding the form or content of this notice. Stakeholders

³ Department of Cannabis Control. (n.d.). *Cannabis recalls and safety notices*. Department of Cannabis Control. Retrieved April 13, 2023, from <https://cannabis.ca.gov/resources/cannabis-recalls-and-safety-notice/>

⁴ Ibid.

⁵ BPC § 26031.5(d).

⁶ *Id.*

⁷ GOV §§ 11500-11529.

⁸ CCR tit. 4, §17803.

have expressed concerns that this process is both ineffective and overly opaque because they are not permitted to speak with DCC staff about their case. This bill would permit licensees to “meet and confer” in cases where the DCC issues a citation, embargoes a product, or orders a product recall. During the meet and confer, licensees must be given the chance to present arguments and evidence to DCC staff who have knowledge of their case.

Mandatory Recall Meet and Confer Requirement. Currently, when the DCC orders the mandatory recall of a product, the DCC is required to offer the licensee an opportunity for an informal proceeding, as determined by the DCC, during which the licensee can argue why the product should not be recalled. Following this proceeding, the order shall be affirmed, modified, or set aside. This bill would rename the informal proceeding to a “meet and confer” and apply the same requirements used for other meet and confer opportunities under this bill.

Product Embargo Meet and Confer Requirement. Currently, the DCC is not required to engage in an informal proceeding with a licensee whose product has been embargoed by DCC. Existing law does permit a licensee whose product is embargoed to request that the embargo be removed because the licensee has remediated the embargoed product or otherwise brought it into compliance with DCC requirements. However, there is currently no requirement that the DCC meet with a licensee during the embargo process. This bill would additionally add the 5 day meet and confer requirement to the embargo process.

Enforcement Timelines. This bill also seeks to address concerns related to enforcement timelines. The sponsors of this bill have said that product embargos or recall orders can have extreme financial impacts on DCC licensees, and these impacts are particularly problematic for licensees who runs small or midsize cannabis businesses. Currently, when the DCC has evidence that a licensee’s product is adulterated or misbranded, the it must provide notice to a licensee. Following this notice, a licensee can work with the DCC through an informal process to recall, remediate, or destroy the product.

Stakeholders have stated that this informal process is not clearly defined and as a result, products often lose value or expire while a licensee is contesting a DCC notice, recall or embargo. This bill would require that when the DCC has found a licensee’s product to be adulterated, misbranded or subject to an administrative error, the DCC may not order a mandatory recall, a voluntary recall, or a product condemnation until the meet and confer periods associated with each of these actions has lapsed.

Evidentiary Disclosure Requirements. This bill also seeks to increase evidentiary disclosure requirements associated with the DCC enforcement actions. Currently, when the DCC has evidence that a product is misbranded or adulterated, it must provide notice to a licensee. Existing law does not provide details about the form or content of this notice. This bill would require that the notice provide specific evidence about the violation including lab testing data, if applicable, as well as chain of custody documentation, the identity of the laboratory responsible for testing, and a description of the sampling methodology used.

In cases where DCC issues a mandatory recall order, DCC is currently required to notify a licensee of the facts that necessitate the recall. This bill would require that the notice of a mandatory recall includes the evidence upon which the recall order is based. This bill would also set similar notice requirements for cases where DCC embargoes a licensee’s product.

Administrative Error. Currently, there are two categories of cannabis product violations. These categories are adulteration and misbranding. Under existing law a cannabis product can be adulterated in a variety of circumstances which include: contamination; presence of a putrid or decomposed substance; presence of poison; presence of a restricted or limited substance; cases where the products concentration or purity is different than what it represents to possess; it was produced in facilities which do not conform to applicable laws; its container contains a poisonous substance; or it has been mixed with another substance after testing in a testing facility. Under existing law, a product can be misbranded in the following situations: it was cultivated or processed in a facility that is not duly licensed; its labeling is false or misleading; or its labeling does not conform to applicable requirements.

This bill would create a third category of violations for administrative errors. This bill states that a product is contains an administrative error when: its labeling does not conform to applicable labeling requirements; the laboratory conducting compliance testing for a product made clerical error; its concentrations or purity differ from what it represents to possess the methods facilities or controls used for its production do not conform to applicable requirements under this division; or it has been mixed with a substance after laboratory testing which dilutes its purity. This bill would permit the DCC to conduct enforcement actions based on administrative errors in every instance that they would otherwise be able to conduct an enforcement action based on misbranding or adulteration.

Current Related Legislation. AB 2532 (Irwin) would limit the amount of THC that can be contained in an edible cannabis beverage to 10 milligrams per beverage container and require that the telephone number for the national Poison Help line is included on the packaging for all edible cannabis products and cannabis beverages. *AB 2532 is pending a hearing in this Committee.*

AB 2537 (Chen) would require DCC to prioritize its enforcement of MAUCRSA based on a risk-based framework that focuses on material threats and decreases the severity of enforcement for minor technical or administrative violations of the act. *AB 2537 is pending a hearing in this Committee.*

Prior Related Legislation. SB 758 (Bradford) of 2021, would have lowered the maximum fine amount for a violation by a licensee from \$5,000 per violation to \$4,000 per violation. *SB 758 died pending a hearing in the Senate Business, Professions and Economic Development Committee.*

AB 141 (Committee on Budget), Chapter 70, Statutes of 2021, consolidated the state cannabis licensing authorities into the DCC, among other changes to MAUCRSA.

AB 97 (Committee on Budget), Chapter 40, Statutes of 2019, established the authority of state licensing entities to issue citations and administrative fines for cannabis law violations.

ARGUMENTS IN SUPPORT:

The *California Cannabis Industry Association (CCIA)* is sponsoring this bill. According to CCIA, this bill: “introduces reasonable, necessary changes to the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA) to ensure that due process protections for licensees keep pace with the state’s enforcement efforts.”

Kiva Brands supports this bill, writing that this bill would: “would strengthen due process protections for licensed cannabis operators by requiring the Department of Cannabis Control (DCC) to provide supporting documentation when notifying licensees of findings of adulteration, misbranding, or probable cause to issue an embargo. This bill is a fundamental and necessary step that increases transparency for operators, protects small businesses from arbitrary enforcement, and ensures licensed operators can understand and respond to key regulatory decisions affecting their future.”

ARGUMENTS IN OPPOSITION:

There is no opposition on file.

POLICY ISSUE FOR CONSIDERATION:

Meet and Confer for Citations. This bill would apply the “meet and confer” opportunity to citations issued to licensed and unlicensed individuals. The timelines and procedures for the meet and confer opportunity are currently used as part of the mandatory recall process, where the product and potential harm to consumers are at stake. Notwithstanding the technical questions surrounding the process, as discussed under the Implementation Issues section of this analysis, this process is atypical for this type of enforcement action, and there is already an informal conference process, as outlined in the DCC’s regulations.

IMPLEMENTATION ISSUES:

Potential Conflicts with Existing DCC Regulations. Several of the changes that this bill makes to MAUCRSA would affect the DCC’s enforcement procedures. The DCC has not commented on this bill or released any information concerning the potential effects that it could have on the its enforcement program. As a result, there are a number of open questions about the potential effects of this bill on licensees and the DCC. Some of these questions include: whether the addition of a meet and confer requirement would conflict with, or have any adverse effects on current DCC enforcement practices; whether the DCC currently has any internal guidance or policy regarding evidentiary requirements for enforcement notices; whether the additional evidentiary requirement for notices in this bill would interfere with existing DCC enforcement procedures; and whether the addition of administrative error as a category of violation would have any adverse effects on licensees or DCC. Input from the DCC would be helpful in determining the effects that this bill would have on DCC enforcement and what, if any, amendments could be made to improve the integration of this bill into the existing DCC enforcement program.

Meet and Confer Timeframes and Procedures. As written, the meet and confer requirements in this bill would require that within five days of certain DCC enforcement actions, the DCC would be required to meet and confer with the licensee who is the subject of the action.

The first potential issue with the meet and confer requirements in this bill are that the timeframes for the meet and confer opportunities are unclear. Section 26031.5(c) requires that a citation “shall include an opportunity to meet and confer on the matter with department personnel with knowledge of the matter within five business days of the issuance of the citation.” It is unclear whether this five-day period is the time allotted for the DCC to conduct a meeting and confer, or the time allotted for a licensee to request to meet and confer. Additionally, citations can be served

by mail, and it is likely that in many cases, by the time the citation is served on a licensee, the time to request to meet and confer will already have lapsed.

A second related issue is that the timeframes imposed by the meet and confer provisions in this bill are shorter than those contained in DCC regulations. As a result, DCC may find these timeframes impracticable or unreasonable. DCC has not yet weighed in on this bill, but the five-day timeframe contained in the bill is considerably shorter than DCC is currently allotted to respond to a request for other informal conferences under existing law. It would likely be helpful to discuss the timeframes proposed by this bill with the DCC.

Meet and Confer Purpose. As written, this bill establishes that the DCC shall allow licensees to meet and confer with DCC staff at various points in the enforcement process. One potential issue with this meet and confer process is that the process as written does not require any action by the DCC following the opportunity to meet and confer. Under existing law, licensees who receive a citation, or whose product is subject to a mandatory recall are allowed to engage in an informal process with the DCC, where after the two parties meet to discuss the enforcement action in question, the DCC is required to send the licensee a notice stating their decision to either affirm, modify, or dismiss the action. This requirement is important to the process because it requires that the DCC makes a decision following the opportunity to meet with the licensee, and informs the licensee of their decision. Adding similar requirements to the meet and confer provisions in this bill could further the author and sponsor's stated purpose for the bill by increasing the effectiveness of the DCC's informal enforcement processes.

Evidentiary requirements in DCC Notices. As written, this bill broadens the requirements for notices that the DCC issues pursuant to the department's enforcement actions. This bill requires that the DCC notices relating to a mandatory recall order, or a product embargo must be accompanied by clear, articulable facts and evidentiary documentation supporting the department's legal basis for the embargo, including, but not limited to, all of the following: the specific section or subdivision of code or regulation alleged to be violated; a copy of the laboratory certificate of analysis and testing data, if applicable; chain of custody documentation; a detailed description of the sampling procedure; any photographic, electronic, or other evidence, if applicable; and a summary of the evidence supporting the finding of adulteration, misbranding, or administrative error. Stakeholders have expressed that additional evidentiary requirements in the DCC notices would be helpful in addressing violations and contesting enforcement action, but the specific requirements in this bill could potentially be overly onerous for the DCC. These requirements could be amended to require only the forms of evidence contained in the code section that DCC has and used as the basis of the enforcement action.

Administrative Error. As written, this bill creates an administrative error violation category. The creation of this category could pose a number of implementation challenges. First, this new category seems to be different from the misbranded and adulterated categories because unlike those categories of violations, this new category seems to assign intent to the violations in the category. Violations for products which are misbranded or adulterated could potentially be committed with any degree of intent (e.g. purposefully, recklessly, negligently). However, the administrative error category appears to make the determination that all of the violations contained in it were committed in error or negligently. The assignment of intent to these violations raises a number of questions and is potentially outside the scope of what this bill intended to do.

The administrative error category could also potentially have unforeseen effects on DCC enforcement practices. The author and sponsor of this bill have expressed that one of the primary purposes of the bill is to increase clarity for licensees during DCC enforcement actions and add due process protections to the enforcement process. As written, this bill allows for enforcement actions based on an administrative error in all circumstances which, enforcement actions could be pursued based on misbranded or adulterated products. This could allow the DCC to embargo products, issue mandatory recalls, issue citations, and commence condemnation proceedings for products which it determines to contain an administrative error.

Section 26039.7. (a) of this bill, which is the first subsection which describes what an administrative error is, states that “cannabis or a cannabis product has an administrative error if it has any of the following.” This language seems to suggest that the administrative error violation category, as defined, is not a closed list. As a result, this bill could potentially allow the DCC, in its discretion, to pursue nearly any enforcement action against a licensee for any product which it determines to have an administrative error.

Further, this bill adds administrative error, in addition to adulteration or misbranding, to the violations that an administrative law judge may consider when making a finding during the hearing process. The current drafting allows the judge to order the destruction of the product for administrative errors alone, even if the product is not adulterated or misbranded.

This could potentially decrease clarity for licensees during the enforcement process, and more research into the potential effects of the creation of this violation category appears to be necessary. Because of the potential implementation issues listed above, the author may wish to amend sections 4, 5 and 6 out of this bill so that they can be further discussed, and potentially reincorporated into this bill at a later date.

Uncommon and Undefined Terms. This bill utilizes a number of terms that are not commonly used in the context of administrative enforcement actions, are terms of art used elsewhere, or are otherwise not clearly defined in the context of this bill. The author may wish to amend the bill to use terms that are used more commonly in this context.

AMENDMENTS:

In order to address implementation concerns raised in the analysis, and in response to technical feedback sent to the Committee from the author and the sponsor, amend the bill as follows:

- 1) To address the issues raised regarding “meet and confer” for citations, amend the bill to utilize existing informal conference procedures:

On page 1, after line 10:

26031.5. (a) The department may issue a citation to a licensee or unlicensed person for any act or omission that violates or has violated any provision of this division or any regulation adopted pursuant to this division. The department shall issue the citation in writing, ~~and shall describe with particularity the basis of the citation, and the notification described in subdivision (d).~~ *(c).* *The citation shall describe with particularity, the legal and factual basis of the citation, and it shall also include the notification described in subdivision (c).* The department may include in each citation an order of abatement and fix a reasonable time for abatement of the violation. The department may, as part of each citation, assess an administrative fine not to exceed five

thousand dollars (\$5,000) per violation by a licensee and thirty thousand dollars (\$30,000) per violation by an unlicensed person. Each day of violation shall constitute a separate violation.

(1) In assessing a fine, the department shall give due consideration to the appropriateness of the amount of the fine with respect to factors the department determines to be relevant, including the following:

~~(1)~~ (A) The gravity of the violation by the licensee or person.

~~(2)~~ (B) The good faith of the licensee or person.

~~(3)~~ (C) The history of previous violations.

On page 1, after line 34:

~~(e) A citation issued pursuant to this section shall include an opportunity to meet and confer on the matter with department personnel with knowledge of the matter within five business days of the issuance of the citation.~~

~~(d)~~ (c) A citation issued pursuant to this section shall include a provision that notifies the licensee or person that a hearing *or an informal conference* may be requested to contest the finding of a violation by submitting a written request within 30 days from service of the citation.

(1) (A) The hearing shall be held pursuant to the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code), ~~unless-~~

(B) The informal conference shall held in accordance with the provisions of Chapter 4.5 (commencing with Section 11400) *of Part 1 of Division 3 of Title 2 of the Government Code*, as authorized by *the requirements contained in subsection (c)(2) and the* regulation of the department.

(C) If the licensee or person cited fails to submit a written request for a hearing *or an informal conference* within 30 days from the date of service of the citation, the right to a hearing is waived and the citation shall be deemed a final order of the department and is not subject to review by any court.

(2) The department shall, within 15 calendar days after receipt of the written request, hold an informal conference with the cited licensee and/or their legal counsel or authorized representative.

(A) At this conference, the cited licensee, will be allowed the opportunity to meet with a representative of department who has knowledge of citation. The department representative shall describe the factual and legal basis for the citation to the cited licensee, if requested. The cited licensee shall be allowed to present evidence and argument as to why the citation should be modified, or dismissed.

(B) After the informal conference, the department shall affirm, modify, or dismiss the citation, including any fines levied or orders of abatement issued. The department shall notify the cited licensee of its decision and the reasoning supporting the decision via written notification, which shall be mailed to the cited licensee and their legal counsel, if any, within 15 calendar days after

the date of the informal conference. This decision shall be deemed to be a final order with regard to the citation issued, including the levied fine and/or the order of abatement, if any.

(C) If the citation is dismissed, any request for a hearing shall be deemed withdrawn. If the citation is affirmed or modified, the cited licensee may either withdraw the request for a hearing or proceed with the administrative hearing process.

(D) If the citation, including any fines levied or orders of abatement issued, is modified, the citation originally issued shall be considered withdrawn and new citation issued. If a hearing is requested for the subsequent citation, it shall be requested within 30 calendar days after issuance of the citation.

~~(e)~~ (d) After the exhaustion of the administrative and judicial review procedures, the department may apply to the appropriate superior court for a judgment in the amount of the administrative fine and an order compelling the cited person to comply with the order of the department. The application, which shall include a certified copy of the final order of the department, shall constitute a sufficient showing to warrant the issuance of the judgment and order.

~~(f)~~ (e) The department may recover from the licensee or person who was the subject of the citation costs of investigation and enforcement, which may include reasonable attorney's fees for the services rendered. If the department recovers costs from a licensee, the department shall recover the costs pursuant to Section 26031.1.

~~(g)~~ (f) Fines shall be paid within 30 days of service of a citation by the department. Failure to pay a fine assessed pursuant to this section within 30 days of the date of service of the citation, unless the citation is being appealed, shall constitute a separate violation under this division subject to additional action by the department. The department shall not renew or grant a license to a person who was the subject of the fine until that person pays the fine.

~~(h)~~ (g) All moneys collected pursuant to this section associated with the recovery of investigation and enforcement costs shall be deposited into the Cannabis Control Fund. Any administrative fine amount shall be deposited directly into the Cannabis Fines and Penalties Account and shall be distributed pursuant to subdivision (d) of Section 26210.

2) To remove the term "chain of custody" to avoid confusion with the evidentiary defense process and track and trace requirements on licensees:

On page 3, after line 108:

(1) The notification shall include *the following, if used by the department as the basis of the notice described in subsection (a)*: a copy of the laboratory certificate of analysis and testing data, if applicable, and a summary of the evidence supporting the finding of adulteration, misbranding, or administrative error, including the identity of the laboratory, if applicable, the chain of custody documentation, and a description of the *collection and* sampling methodology used.

(2) The ~~notification~~ *notice* shall also state whether or not the department has determined that a mandatory recall will be ordered.

On page 4, after line 147:

(d) (1) Simultaneously with the issuance of a mandatory recall order, the department shall provide the licensee with a summary of the department's determination for the recall and the specific evidence upon which the order is based, ~~including, but not limited to,~~ *which may include but is not limited to*, all of the following:

On page 4, after line 156:

(C) ~~Chain of custody~~ *sampling methodology* documentation.

On page 6, after line 240:

(B) The notice shall be accompanied by clear, articulable facts and evidentiary documentation supporting the department's legal basis for the embargo, ~~including, but not limited to, all of~~ *which may include, but is not limited to* the following:

On page 6, after line 248:

(iii) ~~Chain of custody~~ *sampling methodology* documentation.

3) To clarify the informal conference requirement for voluntary recalls:

On page 3, after line 122:

(2) Prior to a voluntary recall by the licensee, the department, ~~within five business days of delivery of the notification required by subdivision (a),~~ shall provide the licensee with an opportunity for ~~a meet and confer an informal conference~~ on why the cannabis or cannabis product is considered adulterated or misbranded, or to have an administrative error. The ~~meet and confer informal conference~~ shall be with department staff who are knowledgeable on the matter and shall provide the licensee with an opportunity to present information and argument as to why the cannabis or cannabis product is not adulterated or misbranded, does not contain an administrative error, and is not otherwise in violation of this division. The department shall not permit destruction of the product until either the ~~meet and confer~~ informal conference process has concluded, or the licensee has declined to ~~meet and confer participate in the informal conference~~.

(A) Following the informal conference the department may determine that a product does not need to be recalled. If the department determines that a product does not need to be recalled, they shall send the licensee a written notice which will serve as a final decision on the matter.

4) For further informal conference clarifications and APA conforming changes:

On page 4, after line 165:

(2) (A) ~~Within five business days of issuance of the recall order, the department shall provide the licensee shall have an opportunity for a meet and confer on the matter, including on the actions required by the order and on why the cannabis or cannabis product should not be recalled. The meet and confer shall be held with department staff who are knowledgeable on the matter and~~

~~shall provide the licensee with an opportunity to present information and argument as to why the cannabis or cannabis product is not adulterated or misbranded, does not contain an administrative error, and is not otherwise in violation of this division. The department shall provide the licensee an opportunity for an informal conference on the order. The department shall permit the licensee to request an informal conference for 5 days following the delivery of the order to the licensee. If the licensee fails to submit a written request for an informal conference within 5 calendar days from the delivery of the order to the licensee, the right to an informal conference is waived and the order shall be deemed a final order of the department. The informal conference shall be held in accordance with the provisions of Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code), as authorized by the requirements contained in subsection (d), and by regulations of the department.~~

(C) The department shall, within 15 calendar days after receipt of the request, hold an informal conference with the licensee and/or their legal counsel or authorized representative.

(i) At this conference, the licensee, will be allowed the opportunity to meet with a representative of department who has knowledge of the order. The licensee will be allowed to present evidence and argument as to why the order should be modified, or set aside.

(ii) After the informal conference, the department shall affirm, modify, or set aside the order. The department shall notify the licensee of its decision and the reasoning supporting the decision via written notification, which shall be mailed to the cited licensee and/or their legal counsel or authorized representative, if any, within 15 calendar days after the date of the informal conference. This decision shall be deemed to be a final order of the department.

~~*(B) (D) The department shall not permit destruction of the product until either the meet and confer-informal conference process has concluded or the licensee has declined to meet and confer-the informal conference. Following the meet and confer or the licensee's decision not to meet and confer, the order shall be affirmed, modified, or set aside as determined appropriate by the department in a written decision setting out the reasons for the action taken.*~~

On page 6, after line 257:

(C) The notice shall be sent to the licensee within 5 calendar days of the tag or marking being placed on a product.

On page 7, after line 280:

(d) (1) For any cannabis or a cannabis product that is embargoed, the department shall provide the licensee with an opportunity ~~to meet and confer~~ for an informal conference on the matter within ~~five business~~ 15 calendar days of the delivery of the notification required by paragraph (2) of subdivision (a). The meeting shall include department personnel with knowledge of the matter and shall provide the licensee with an opportunity to present information and argument as to why the cannabis or cannabis product is not adulterated or misbranded, does not contain an administrative error, and is not otherwise in violation of this division.

(2) The department shall ~~work diligently to~~ make a final determination on whether or not the cannabis or cannabis product is adulterated or misbranded, or has an administrative error, or the sale of the cannabis or cannabis product would be in violation of this division, within 15 calendar days from the date of the informal conference. ~~If the department takes longer than five~~

~~business days to make a final determination, the department shall provide the affected licensee with weekly updates on the determination process and a summary of remaining action items until a final determination is made.~~

(3) If the department finds that cannabis or a cannabis product that is embargoed is not adulterated or misbranded, or does not have an administrative error, or that its sale is not otherwise in violation of this division, the department shall remove the tag or other marking within ~~24 hours~~ *five calendar days* of that determination.

On page 8, after line 309:

~~(B) (i) A proceeding for condemnation shall be initiated by the department within 10 days of the department's rejection of a corrective action plan submitted by the licensee, or within 10 days of the embargo if no corrective action plan is submitted.~~

(B) If the Department cannot approve the plan, or the Department does not receive a response from the licensee within seven (7) calendar days after providing the notice described in subsection (c), the Department may initiate condemnation proceedings in accordance the provisions of this section.

~~(ii) Failure of the department to approve a corrective action plan or initiate condemnation proceedings within this timeframe shall result in the automatic release of the embargo, unless an administrative law judge determines that the department has shown good cause for the delay.~~

On page 8, after line 326:

~~(2) (A) Notwithstanding the timelines in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, if the cannabis or cannabis product subject to condemnation is a perishable agricultural product, the administrative law judge shall schedule the hearing no later than five business days after the petition for condemnation is filed, upon request of the licensee.~~

~~(B) (2) The administrative law judge shall ~~issue~~ submit a *proposed* decision within ~~48 hours of the conclusion of the hearing~~ *30 days after the case is submitted to him or her, in a form that may be adopted by the agency as the final decision in the case.*~~

5) To reserve issues around the administrative errors for a later time, strike sections 4-6 from the bill:

On page 9, after line 361:

~~SEC. 4. Section 26039.5 of the Business and Professions Code is amended to read:~~

~~**26039.5.** (a) Cannabis or a cannabis product is misbranded if it is any of the following:~~

~~(1) Cultivated, processed, manufactured, packed, or held in a location not duly licensed as provided in this division.~~

~~(2) Consists of cannabis or cannabis product that was cultivated, processed, manufactured, packed, or held in a location not duly licensed as provided in this division.~~

~~(3) Its labeling is false or misleading in any particular.~~

~~(b) It is unlawful to cultivate, process, manufacture, sell, deliver, hold, or offer for sale cannabis or a cannabis product that is misbranded.~~

~~(c) It is unlawful to misbrand cannabis or a cannabis product.~~

~~(d) It is unlawful to receive in commerce cannabis or a cannabis product that is misbranded or to distribute, deliver, or offer for delivery any such cannabis or cannabis product.~~

SEC. 5. Section 26039.6 of the Business and Professions Code is amended to read:

26039.6. (a) Cannabis or a cannabis product is adulterated if it is any of the following:

~~(1) It has been produced, prepared, packed, or held under unsanitary conditions in which it may have become contaminated with filth or in which it may have been rendered injurious.~~

~~(2) It consists, in whole or in part, of any filthy, putrid, or decomposed substance.~~

~~(3) It bears or contains any poisonous or deleterious substance that may render it injurious to users under the conditions of use suggested in the labeling or under conditions that are customary or usual.~~

~~(4) It bears or contains a substance that is restricted or limited under this division or regulations promulgated pursuant to this division and the level of substance in the product exceeds the limits specified pursuant to this division or in regulation.~~

~~(5) Its container is composed, in whole or in part, of any poisonous or deleterious substance that may render the contents injurious to health.~~

~~(b) It is unlawful to cultivate, manufacture, distribute, sell, deliver, hold, or offer for sale cannabis or a cannabis product that is adulterated.~~

~~(c) It is unlawful to adulterate cannabis or a cannabis product.~~

~~(d) It is unlawful to receive in commerce cannabis or a cannabis product that is adulterated or to distribute, deliver, or proffer for delivery any such cannabis or cannabis product.~~

SEC. 6. Section 26039.7 is added to the Business and Professions Code, to read:

26039.7. (a) Cannabis or a cannabis product has an administrative error if it has any of the following:

~~(1) Its labeling or packaging does not conform to the requirements of Section 26120 or any other labeling or packaging requirement established pursuant to this division.~~

~~(2) The laboratory conducting compliance testing on the product makes a clerical error in the track and trace system in reporting test results.~~

~~(3) Its concentrations differ from, or its purity or quality is below, that which it is represented to possess.~~

~~(4) The methods, facilities, or controls used for its cultivation, manufacture, packing, or holding do not conform to, or are not operated or administered in conformity with, practices established by regulations adopted under this division to ensure that the cannabis or cannabis product meets the requirements of this division as to safety and has the concentrations it purports to have and meets the quality and purity characteristics that it purports or is represented to possess.~~

~~(5) It is a cannabis product and a substance has been mixed or packed with it after testing by a testing laboratory so as to reduce its quality or concentration or if a substance has been substituted, wholly or in part, for the cannabis product.~~

~~(b) It is unlawful to cultivate, manufacture, distribute, sell, deliver, hold, or offer for sale cannabis or a cannabis product that has an administrative error.~~

~~(c) It is unlawful to receive in commerce cannabis or a cannabis product that has an administrative error or to distribute, deliver, or proffer for delivery cannabis or cannabis product that has an administrative error.~~

REGISTERED SUPPORT:

Ametrine Wellness dba Jetty Extracts
ALG Strategies
Austin Legal Group
Big Pete's Treats
California Cannabis Industry Association (sponsor)
California Cannabis Operators Association
Central California Cannabis Club
Cannabis Distribution Association
California NORML
Embarc
Equity Trade Network
Good Famers Great Neighbors
Highlands Dispensary
Humboldt County Growers Alliance
Kiva Brands, Inc.
Level
Mammoth Distribution
Mendocino Cannabis Alliance
Nug Inc.
Origins Council
PacStone
Trinity County Agriculture Alliance
UpNorth Distribution
Weedmaps
West Coast Cure

REGISTERED OPPOSITION:

There is no opposition on file.

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