

AMENDED IN SENATE MARCH 29, 2022

AMENDED IN SENATE MARCH 10, 2022

**SENATE BILL**

**No. 1186**

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**Introduced by Senator Wiener**

February 17, 2022

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An act to amend Section 26200 of, and to add Chapter 25 (commencing with Section 26300) to Division 10 of, the Business and Professions Code, relating to cannabis.

LEGISLATIVE COUNSEL'S DIGEST

SB 1186, as amended, Wiener. Medicinal Cannabis ~~Patients'~~ *Patients'* Right of Access Act.

Existing law, the Compassionate Use Act of 1996, an initiative measure enacted by Proposition 215 at the November 6, 1996, statewide general election, declares that its purpose is, among other things, to ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes, as specified, and exempts from state criminal liability certain patients and their primary caregivers who possess or cultivate marijuana for the personal medical purposes of the patient. Existing law, known as the Medical Marijuana Program, establishes a voluntary registration program for qualified medicinal cannabis patients and their primary caregivers through a statewide identification card system maintained by the State Department of Public Health and sets forth guidelines for the possession of medicinal cannabis.

The Control, Regulate and Tax Adult-Use of Marijuana Act of 2016 (AUMA), an initiative measure approved as ~~Prop~~ *Proposition 64* at the November 8, 2016, statewide general election, established a comprehensive system to legalize, control, and regulate the cultivation, processing, manufacture, distribution, testing, and sale of nonmedical

marijuana. AUMA reserved to a local jurisdiction specified powers regarding commercial adult-use cannabis activity, including adopting and enforcing local ordinances regulating commercial adult-use cannabis activity. The Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), among other things, consolidates the licensure and regulation of commercial medicinal and adult-use cannabis activities, including the retail sale of medicinal cannabis.

This bill would enact the Medicinal Cannabis ~~Patients'~~ *Patients'* Right of Access Act, which would prohibit a local jurisdiction from adopting or enforcing any regulation that prohibits the sale of, or otherwise imposes unreasonable restrictions on the safe and affordable sale of, medicinal cannabis to medicinal cannabis patients or their primary caregivers by medicinal cannabis businesses, as defined. The bill would prohibit regulations that unreasonably restrict, among other things, the operating hours or the number or frequency of sales of medicinal cannabis businesses. This bill would authorize a local jurisdiction to adopt and enforce ~~specified regulations that would not be deemed unreasonable restrictions, including~~ limiting the sale of medicinal cannabis to ~~delivery only or to storefront retail sale only, as specified.~~ *only*. The bill would provide that the act may be enforced by an action for writ of mandate brought by a medical cannabis patient or their primary caregiver, a medicinal cannabis business, the Attorney General, or any other party otherwise authorized by law.

Existing law, the California Environmental Quality Act (CEQA), requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report on a project that it proposes to carry out or approve that may have a significant effect on the environment, or to adopt a negative declaration if it finds that the project will not have that effect.

This bill would provide that CEQA does not apply to specified actions taken by a local jurisdiction to comply with the bill's provisions, including the repeal of any local regulation prohibiting the operation of medicinal cannabis businesses.

To the extent this bill would impose additional duties on local jurisdictions, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state,

reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 26200 of the Business and Professions  
2 Code is amended to read:  
3 26200. (a) (1) Except as set forth in the Medicinal Cannabis  
4 Patients' Right of Access Act (Chapter 25 (commencing with  
5 Section 26300)), this division shall not be interpreted to supersede  
6 or limit the authority of a local jurisdiction to adopt and enforce  
7 local ordinances to regulate businesses licensed under this division,  
8 including, but not limited to, local zoning and land use  
9 requirements, business license requirements, and requirements  
10 related to reducing exposure to secondhand smoke, or to completely  
11 prohibit the establishment or operation of one or more types of  
12 businesses licensed under this division within the local jurisdiction.  
13 (2) Except as set forth in the Medicinal Cannabis Patients' Right  
14 of Access Act (Chapter 25 (commencing with Section 26300)),  
15 this division shall not be interpreted to supersede or limit existing  
16 local authority for law enforcement activity, enforcement of local  
17 zoning requirements or local ordinances, or enforcement of local  
18 license, permit, or other authorization requirements.  
19 (b) This division shall not be interpreted to require the  
20 department to undertake local law enforcement responsibilities,  
21 enforce local zoning requirements, or enforce local licensing,  
22 permitting, or other authorization requirements.  
23 (c) A local jurisdiction shall notify the department upon  
24 revocation of any local license, permit, or authorization for a  
25 licensee to engage in commercial cannabis activity within the local  
26 jurisdiction. Within 60 days of being so informed, the department  
27 shall begin the process to determine whether a license issued to  
28 the licensee should be suspended or revoked pursuant to Chapter  
29 3 (commencing with Section 26030).  
30 (d) For facilities issued a state license that are located within  
31 the incorporated area of a city, the city shall have full power and  
32 authority to enforce this division and the regulations promulgated  
33 by the department, if delegated by the state. Notwithstanding

1 Sections 101375, 101400, and 101405 of the Health and Safety  
2 Code or any contract entered into pursuant thereto, or any other  
3 law, the city shall assume complete responsibility for any  
4 regulatory function pursuant to this division within the city limits  
5 that would otherwise be performed by the county or any county  
6 officer or employee, including a county health officer, without  
7 liability, cost, or expense to the county.

8 (e) (1) This division does not prohibit the issuance of a state  
9 temporary event license to a licensee authorizing onsite cannabis  
10 sales to, and consumption by, persons 21 years of age or older at  
11 a county fair event, district agricultural association event, or at  
12 another venue expressly approved by a local jurisdiction for the  
13 purpose of holding temporary events of this nature, provided that  
14 the activities, at a minimum, comply with all the following:

15 (A) The requirements of paragraphs (1) to (3), inclusive, of  
16 subdivision (g).

17 (B) All participants who are engaged in the onsite retail sale of  
18 cannabis or cannabis products at the event are licensed under this  
19 division to engage in that activity.

20 (C) The activities are otherwise consistent with regulations  
21 promulgated and adopted by the department governing state  
22 temporary event licenses.

23 (D) A state temporary event license shall only be issued in local  
24 jurisdictions that authorize such events.

25 (E) A licensee who submits an application for a state temporary  
26 event license shall, 60 days before the event, provide to the  
27 department a list of all licensees that will be providing onsite sales  
28 of cannabis or cannabis products at the event. If any changes occur  
29 in that list, the licensee shall provide the department with a final  
30 updated list to reflect those changes. A person shall not engage in  
31 the onsite retail sale of cannabis or cannabis products, or in any  
32 way participate in the event, who is not included in the list,  
33 including any updates, provided to the department.

34 (2) The department may impose a civil penalty on any person  
35 who violates this subdivision, or any regulations adopted by the  
36 department governing state temporary event licenses, in an amount  
37 up to three times the amount of the license fee for each violation,  
38 consistent with Sections 26018 and 26038.

39 (3) The department may require the event and all participants  
40 to cease operations without delay if in the opinion of the

1 department or local law enforcement it is necessary to protect the  
2 immediate public health and safety of the people of the state. The  
3 department may also require the event organizer to immediately  
4 expel from the event any participant selling cannabis or cannabis  
5 products without a license from the department that authorizes the  
6 participant to sell cannabis or cannabis products. If the unlicensed  
7 participant does not leave the event, the department may require  
8 the event and all participants to cease operations immediately.

9 (4) The order by the department for the event to cease operations  
10 pursuant to paragraph (3) does not entitle the event organizer or  
11 any participant in the event to a hearing or an appeal of the  
12 decision. Chapter 3 (commencing with Section 490) of Division  
13 1.5 and Chapter 4 (commencing with Section 26040) of this  
14 division shall not apply to the order by the department for the event  
15 to cease operations pursuant to paragraph (3).

16 (5) The smoking of cannabis or cannabis products at temporary  
17 events authorized pursuant to this subdivision is prohibited in  
18 locations where smoking is prohibited. For purposes of this section,  
19 “smoking” has the same meaning as defined in subdivision (c) of  
20 Section 22950.5.

21 (f) This division, or any regulations promulgated thereunder,  
22 shall not be deemed to limit the authority or remedies of a city,  
23 county, or city and county under any provision of law, including,  
24 but not limited to, Section 7 of Article XI of the California  
25 Constitution.

26 (g) Notwithstanding paragraph (1) of subdivision (a) of Section  
27 11362.3 of the Health and Safety Code, a local jurisdiction may  
28 allow for the smoking, vaporizing, and ingesting of cannabis or  
29 cannabis products on the premises of a retailer or microbusiness  
30 licensed under this division if all of the following are met:

31 (1) Access to the area where cannabis consumption is allowed  
32 is restricted to persons 21 years of age or older.

33 (2) Cannabis consumption is not visible from any public place  
34 or nonage-restricted area.

35 (3) Sale or consumption of alcohol or tobacco is not allowed  
36 on the premises.

37 (h) This division shall not be interpreted to supersede Section  
38 6404.5 of the Labor Code.

39 SEC. 2. Chapter 25 (commencing with Section 26300) is added  
40 to Division 10 of the Business and Professions Code, to read:

1 CHAPTER 25. MEDICINAL CANNABIS PATIENTS’ RIGHT OF  
2 ACCESS ACT  
3

4 26300. The Legislature finds and declares as follows:

5 (a) Access to medicinal cannabis is an integral aspect of access  
6 to health care, and eliminating barriers to medicinal cannabis access  
7 is essential to promoting and preserving the health of Californians  
8 for whom physicians have recommended the use of cannabis or  
9 cannabis products.

10 (b) It is the policy of the state and the intent of the Legislature  
11 to ensure that Californians throughout the state have timely and  
12 convenient access to safe, effective, and affordable medicinal  
13 cannabis.

14 26301. (a) This act shall be known, and may be cited, as the  
15 Medicinal Cannabis Patients’ Right of Access Act.

16 (b) For purposes of this section:

17 (1) “Medicinal cannabis” means medicinal cannabis or medicinal  
18 cannabis products, as those terms are defined in paragraph (1) of  
19 subdivision (ai) of Section 26001.

20 (2) “Medicinal cannabis business” means a business authorized  
21 to engage in the retail sale of medicinal cannabis to medicinal  
22 cannabis patients pursuant to a medicinal cannabis retail license  
23 or microbusiness license.

24 (3) “Medicinal cannabis patient” means a qualified patient, as  
25 defined in Section 11362.7 of the Health and Safety Code, who  
26 possesses a physician’s recommendation that complies with Article  
27 25 (commencing with Section 2525) of Chapter 5 of Division 2,  
28 or a qualified patient or primary caregiver for a qualified patient  
29 issued a valid identification card pursuant to Section 11362.71 of  
30 the Health and Safety Code.

31 (4) “Regulation” means a local ordinance, regulation, policy,  
32 or practice.

33 26302. A local jurisdiction shall not adopt or enforce any  
34 regulation that prohibits the sale of medicinal cannabis to medicinal  
35 cannabis patients or their primary caregivers, or that otherwise  
36 imposes unreasonable restrictions on the safe and affordable sale  
37 of medicinal cannabis to medicinal cannabis patients or their  
38 primary caregivers by medicinal cannabis businesses, including,  
39 but not limited to, regulations that unreasonably restrict any of the  
40 following:

1 (a) The number of medicinal cannabis businesses authorized to  
2 operate in the local jurisdiction.

3 (b) The operating hours of medicinal cannabis businesses.

4 (c) The number or frequency of sales of medicinal cannabis.

5 (d) The types or quantities of medicinal cannabis authorized to  
6 be sold.

7 (e) Any other aspect of the operation of a medicinal cannabis  
8 business that is essential to its ability to offer medicinal cannabis  
9 products for sale to medicinal cannabis patients and their primary  
10 caregivers within the local jurisdiction in a timely and readily  
11 accessible manner, and in types and quantities that are sufficient  
12 to meet demand from medicinal cannabis patients within the local  
13 jurisdiction.

14 26303. A local jurisdiction may adopt and enforce regulations  
15 that ~~do any of the following~~, *limit the sale of medicinal cannabis*  
16 *to delivery only*, which shall not be deemed to be *an unreasonable*  
17 ~~restrictions~~: *restriction*.

18 ~~(a) Limit the sale of medicinal cannabis to delivery only.~~

19 ~~(b) Limit the sale of medicinal cannabis to storefront retail sale~~  
20 ~~only at one or more licensed retail sale premises within the local~~  
21 ~~jurisdiction.~~

22 ~~(c) Exercise any right to regulate adult-use cannabis pursuant~~  
23 ~~to Section 26200.~~

24 26304. The California Environmental Quality Act (CEQA)  
25 (Division 13 (commencing with Section 21000) of the Public  
26 Resources Code) does not apply to any of the following:

27 (a) The repeal of any local ordinance, regulation, or rule  
28 prohibiting the operation of medicinal cannabis businesses.

29 (b) The adoption of any local ordinance, regulation, or rule  
30 providing for discretionary review and approval of any local  
31 permits, licenses, or other local authorizations, consistent with  
32 Sections 26302 and 26303, to engage in retail sales of medicinal  
33 cannabis or medicinal cannabis products conducted by businesses  
34 engaged in delivery from premises within the local jurisdiction,  
35 or by storefront retailers within the local jurisdiction, or both, on  
36 the condition that the discretionary review provided for by that  
37 local ordinance, regulation, or rule includes any applicable  
38 environmental review required by CEQA.

1 (c) The adoption of any local ordinance, regulation, or rule  
2 otherwise establishing a local jurisdiction’s compliance with this  
3 chapter.

4 26305. (a) This chapter may be enforced by an action brought  
5 pursuant to Chapter 2 (commencing with Section 1084) of Title 1  
6 of Part 3 of the Code of Civil Procedure by any of the following  
7 parties, who shall be beneficially interested within the meaning of  
8 Section 1086 of the Code of Civil Procedure:

9 (1) A medicinal cannabis patient or their primary caregiver who  
10 seeks to purchase medicinal cannabis or medicinal cannabis  
11 products within the local jurisdiction.

12 (2) A medicinal cannabis business that seeks to offer medicinal  
13 cannabis for sale within the local jurisdiction.

14 (3) The Attorney General.

15 (4) Any other party otherwise authorized by law.

16 (b) This section shall not be construed to limit the availability  
17 of any other remedy otherwise available to enforce this chapter.  
18 The existence of any other remedy shall not restrict the availability  
19 of relief to enforce this chapter under Chapter 2 (commencing with  
20 Section 1084) of Title 1 of Part 3 of the Code of Civil Procedure.

21 *26306. Nothing in this chapter shall be construed to limit or*  
22 *otherwise affect the ability or right of a local jurisdiction to*  
23 *regulate adult-use cannabis pursuant to Section 26200.*

24 ~~26306.~~

25 26307. This chapter addresses a matter of statewide concern  
26 and not a municipal affair, as that term is used in Section 5 of  
27 Article XI of the California Constitution.

28 SEC. 3. If the Commission on State Mandates determines that  
29 this act contains costs mandated by the state, reimbursement to  
30 local agencies and school districts for those costs shall be made  
31 pursuant to Part 7 (commencing with Section 17500) of Division  
32 4 of Title 2 of the Government Code.