



complete application for licensure. A temporary license is a conditional license and authorizes the holder to engage in commercial cannabis activity as would be permitted under the privileges of the license for which the applicant has submitted an application. Exempts the issuance or extension of a temporary license by a licensing authority from a hearing or appeal of the decision. (BPC § 26050.1, repealed, as passed by SB 94 (Committee on Budget and Fiscal Review) Chapter 27, Statutes of 2017).

- 6) Authorizes a licensing authority to, in its sole discretion, issue a provisional license, valid for 12 months, to an applicant if 1) The applicant holds or held a temporary license for the same premises and the same commercial cannabis activity for which the license may be issued; 2) The applicant has submitted a license application, including evidence that compliance with the California Environmental Quality Act is underway. (BPC § 26050.2)
- 7) Establishes criteria for providing evidence of California Environmental Quality Act (CEQA) compliance or CEQA exemption for a cultivation license from CDFA. (Title 3, California Code of Regulations (CCR) § 8102 (r)).
- 8) Establishes criteria for providing evidence of CEQA compliance or CEQA exemption for the Bureau. (16 CCR §§ 5010, 5010.2)
- 9) Establishes criteria for providing evidence of CEQA compliance or CEQA exemption for an annual manufacturing license from DPH. (17 CCR § 40132)
- 10) Authorizes a license applicant to voluntarily provide proof of a license, permit, or other authorization from the local jurisdiction verifying that the applicant is complying with the local jurisdiction. The licensing authority shall notify the local jurisdiction of any applicant that voluntarily submits a valid, unexpired license, permit, or other authorization from the local jurisdiction. (BPC § 26055 (e))
- 11) States that if an applicant has not provided adequate proof of compliance with local laws, the licensing authority shall notify the local jurisdiction of receipt of an application for commercial cannabis activity. The local jurisdiction then has 60 days to notify the licensing authority whether the applicant complying with a local ordinance or regulation. If the local jurisdiction fails to respond within 60 days, the licensing authority shall make a rebuttable presumption that the applicant is in compliance with all local ordinances and regulations. (BPC § 26055 (g))

**This bill:**

- 1) Invalidates the expiration date on a temporary license if the temporary licensee submitted an application for an annual license, for the same premises and the same commercial cannabis activity for which the temporary license was issued, before the temporary license's expiration date.
- 2) Voids the temporary license after the licensing authority issues an annual or provisional license for the same premises and the same commercial cannabis activity for which the temporary license was issued.

- 3) Invalidates a temporary license extended pursuant to this bill 30 days after either the licensing authority denies or disqualifies the licensee's application or the licensee abandons the application.
- 4) States that denial, disqualification, revocation, or suspension by the licensing authority of a license extended pursuant to this bill shall not entitle the licensee to a hearing or appeal, and states that a temporary license does not obligate the licensing authority to extend or issue an annual or provisional license.
- 5) Requires the following reporting by each licensing authority, beginning 30 days after this bill becomes operative, and on the first of each month. Information shall be presented in the aggregate, and by city and county:
  - a) The number of pending annual applications submitted by temporary and provisional licensees.
  - b) The number of temporary licensees who have not submitted an annual license application.
  - c) The number of temporary licenses that have expired.
  - d) Any other information that may be relevant to delays in processing annual applications by the licensing authority.
- 6) States that each extended temporary license shall expire on December 31, 2019.
- 7) Authorizes a licensing authority to, in its sole discretion, issue a provisional license to an applicant with an extended temporary license.
- 8) Authorizes a licensing authority to issue a provisional license to an applicant who does not have a temporary license, after the licensing authority has granted, disqualified, or denied annual licenses to temporary licensees. Requires the applicants to have submitted a license application that includes evidence of compliance with CEQA.
- 9) Emphasizes that provisional licensees are subject to track and trace.
- 10) Extends provisional licensing from January 1, 2020 to July 1, 2020.
- 11) Makes Legislative findings and declarations that this bill furthers the purposes and intent of the Control, Regulate and Tax Adult Use of Marijuana Act.
- 12) Declares this bill an urgency because the significant number of temporary licensees whose annual application may not be processed prior to the temporary license's expiration date threatens to create a major disruption in the commercial cannabis marketplace.

**FISCAL EFFECT:** Unknown. This bill is keyed fiscal by the Legislative Counsel.

**COMMENTS:**

1. **Purpose.** This bill is Author sponsored. According to the Author's office, "The temporary license was intended as an intermediary step while the state and local jurisdictions managed their own efforts to come into compliance with the cannabis regulatory structure. However, due to the significant amount of annual license applications that came in during the fall of 2018 after the legislature adjourned, there are over 10,000 temporarily licenses currently in the system that will be eligible for a provisional license.

"This massive volume of temporary licenses creates the real risk that not all provisional annual license applications can be processed prior to temporary licenses expire. CDFA, DPH, and [the Bureau] have been working diligently to address the sheer volume of licenses that came in prior to the temporary license authority was lost, but there is no guarantee they will process all the applications prior to temporary licenses expiring. For example, over 1000 temporary licenses issued by CDFA are set to expire in the month of March 2019 alone, with thousands more over the following months.

"In a time where the golden state is working overtime to bring the cannabis industry out of the black market and into the light of a legal regulatory environment, we can't afford to let good actors who want to comply with state law fall out of our regulated market just because timelines are too short and departments have been unable to process applications in time due to the sheer number of applications."

2. **Cannabis Regulatory Background.** California first legalized cannabis for medical consumption via Proposition 215, also known as the Compassionate Use Act, in 1996. Proposition 215 protected qualified patients and primary caregivers from prosecution related to the possession and cultivation of cannabis for medicinal purposes.

The Legislature passed the Medical Cannabis Regulation and Safety Act (MCRSA) in 2015. MCRSA established for the first time, 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 CDFA.

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.

3. **Temporary cannabis license.** MAUCRSA authorized licensing authorities to issue four-month temporary licenses to applicants, with opportunities for 90-day extensions, through December 31, 2018. The temporary license required only proof of local authorization and entitled the holder to engage in commercial cannabis

activity without completing the annual licensing application requirements, including CEQA review. The state issued temporary licenses at no cost, and temporary licensees did not have access to the track and trace system, though they were obligated to maintain paper records.

The temporary license was intended as an intermediate step while the state and local jurisdictions managed their efforts to come into compliance with the cannabis regulatory structure.

4. **Provisional cannabis license.** Provisional licenses were created by an urgency measure as a bridge between temporary and annual licenses to accommodate unanticipated CEQA delays SB 1459 (Cannella, Chapter 857, Statutes of 2018). A licensing authority could convert a temporary license to a provisional license if the applicant submitted an annual license application that was complete except for full CEQA compliance.

A “complete” application for all license types requires evidence of compliance with, or exemption from, CEQA. In most cases, this CEQA review is performed at the local level, with the local jurisdiction acting as the “lead agency,” which determines the potential environmental impacts of the project. However, if the local jurisdiction does not undertake CEQA review, the state may need to do so.

According to stakeholders, some local jurisdictions issued temporary or provisional local permits for commercial cannabis activities, but could not complete their full local permitting process, including CEQA review, prior to January 1, 2019.

The provisional license was designed to allow applicants, local jurisdictions, and the state additional time to comply with CEQA – which, at the time, appeared to be the only major impediment to licensure.

5. **Processing concerns for temporary licenses.** Temporary licenses were initially valid for 120 days, with additional 90-day extensions available at the discretion of the licensing authority if the licensee submitted a complete application for licensure.

A provisional license may be issued if the only remaining issue for the temporary applicant is full CEQA compliance. However, as noted above, some cities and counties issued only temporary permits for cannabis businesses, so the licensing authorities cannot necessarily rely on the representations made for the temporary license to ensure lawful activity at the local level. Checking with local government may stall an application up to 60 days. Further, cultivator applicants have to ensure compliance with a number of environmental laws besides CEQA, and the Department of Fish and Wildlife’s Streambed Alteration Agreements have been particularly time-consuming. Lastly, any number of paperwork errors can cause unexpected delay; one stakeholder reported that transmission problems with LiveScan was holding up their application.

According to a January 29, 2019 article by New Cannabis Ventures, *California Cannabis Licenses Have More Than Doubled Since November*, CDFA issued 65% of all temporary licenses, and the Bureau and CDPH represent 23% and 12%,

respectively. The following data focus on CDFA because it has the most licensees and the most complex licensing process.

As of mid-January 2019, CDFA reported the following data:

Temporary licenses: 6,931

Temporary licenses with pending annual applications: 4,109

Temporary licenses with pending annual applications expiring in March: 1,100 (approx.)

CDFA recently sent the following email to applicants:

The annual license application review process includes three major components: local verification, administrative review, and scientific review. Each one of those components has a review timeframe associated. For instance, local verification can take up to 60 business days for the local jurisdiction to reply with compliance approval and the administrative and scientific reviews allow anything that is deficient to be provided within 90 calendar days of notice. In general, the entire process can take 6+ months to complete. This process is heavily dependent on the applicants and owners responding in a timely manner to every notification and Deficiency.

As of February 24, 2019, CDFA's online license database indicates they have issued 10 annual cultivation licenses and one provisional license. CDFA has not presented a plan to address the expiring licenses.

6. **Temporary and provisional licenses under this bill.** This bill makes two main changes to the current temporary and provisional licensing structure: it extends temporary licenses if the licensee has submitted an application for an annual license before the temporary license's expiration date, and allows individuals who may not have had a temporary license to obtain a provisional license prior to obtaining an annual license.

Temporary licenses could be extended in two ways:

- 1) Current law allows multiple 90-day extensions if the applicant has submitted a complete application for licensure. However, according to the precise terms of the law and the realities of CEQA compliance, this represents a fraction of the temporary license population.
- 2) This bill would allow a temporary license to remain valid through the end of this year if the licensee submitted an application for an annual license, for the same premises and the same commercial cannabis activity for which the temporary license was issued, before the temporary license's expiration date. This makes no mention of "completeness" or CEQA compliance for the application to trigger an extension.

Provisional licenses could be issued in three ways:

- 1) Current law allows a licensing authority to issue a provisional license if the applicant holds or held a temporary license and the applicant submitted an application that is complete except for full CEQA compliance.
- 2) This bill would allow a licensing authority to issue a provisional license to an applicant whose temporary license is extended because the applicant submitted an application for an annual license. This bill does not require demonstration of CEQA compliance as a prerequisite.
- 3) This bill would allow the licensing authorities to issue a provisional license to anyone without a valid temporary license and who has submitted an annual license application that is complete except for full CEQA compliance.

Expanding the criteria to issue a provisional license benefits the licensing authorities by giving them additional time to issue an annual license and facilitates enforcement because a provisional license requires licensees to participate in the track and trace system. The ability for individuals to obtain a provisional license who do not have a temporary license encourages earlier participation in the regulated cannabis marketplace.

## 7. **Comments.**

New provisional license criteria. At present, in order to obtain a provisional license, one must have or have had a temporary license. The statute authorizing licensing entities to issue temporary licenses expired on January 1, 2019; it did not require the licensing entities to process applications received prior to that time. CDFR indicates they received at least 400 applications they were unable to address before the deadline (it is unknown whether the other licensing authorities had similar experiences). While this bill authorizes the licensing entities to issue provisional licenses to applicants who did not have a temporary license, it requires them to do so only after the authorities have granted, disqualified, or denied annual licenses to temporary licensees in order to clear the backlog of applications. The Author and Committee may wish to create an additional preference for those individuals who applied for a temporary license prior to the deadline, but whose applications went unprocessed.

Data Collection. This bill also requires licensing authorities to report on their pending workload of annual license applications submitted by temporary and provisional licensees, the number of temporary licensees who have not submitted an annual license application, the number of temporary licenses that have expired, as well as address any other factors that may contribute to processing delays. If it is the Author and Committee's interest to dedicate limited staff time to processing applications, reporting requirements could be further reduced by eliminating the request for temporary licenses who have not submitted an annual license application and the number of temporary licenses that have expired. These figures are certainly informative, as the former provides some indication of future workload, and the latter represents individuals who may slide back into the unregulated market, but the effort to collect the data may absorb resources that could be better spent transitioning individuals towards annual licensees.

8. **Current Related Legislation.** SB 34 (Weiner) will regulate the distribution of donated medicinal cannabis and cannabis products by retailers and compassionate care programs. Status: *This bill is pending in the Senate Committee on Business, Professions and Economic Development.*

SB 185 (McGuire) prohibits the advertising, marketing, labeling, or sale of cannabis using an appellation of origin unless the cannabis meets the appellation of origin requirements for the geographical area. Status: *This bill is pending in the Senate Business, Professions and Economic Development.*

9. **Previous Legislation.** SB 1459 (Cannella, Chapter 857, Statutes of 2018) established a provisional cannabis license that may be issued at the sole discretion of a licensing authority, as specified, until January 1, 2020.

SB 94 (Committee on Budget and Fiscal Review) Chapter 27, Statutes of 2017) was the cannabis trailer bill for the Budget Act of 2017. This bill established a single system of administration for cannabis laws in California and contains changes related to the Budget Act of 2017 that were necessary for state licensing entities to implement a regulatory framework pursuant to the Medical Cannabis Regulation and Safety Act (MCRSA), established by AB 266 (Bonta, Chapter 689, Statutes of 2015), AB 243 (Wood, Chapter 688, Statutes of 2015), SB 643 (McGuire, Chapter 719, Statutes of 2015), and SB 837 (Committee on Budget and Fiscal Review, Chapter 32, Statutes of 2016), and the Adult Use of Marijuana Act (AUMA) of 2016 (Proposition 64).

10. **Arguments in Support.** The California Cannabis Industry Association writes, “Unfortunately, despite the creation of provisional licenses, current data shows that, unless addressed, over 6,200 temporary cannabis business licenses will expire by April. Many of these businesses have carried out their due diligence and applied for annual licenses, in some cases as far back as mid-2018. Moreover, further research has shown many of these soon-to-expire licenses belong to cultivators, the essential starting point of the cannabis supply chain. Should these licenses lapse, not only will these businesses lose months of time, money, investment, and hard work, but the upstream ramifications on the cannabis industry as a whole would be severe.”

## **SUPPORT AND OPPOSITION:**

### Support:

(For the February 19, 2019 bill version)

Bloom Farms  
 California Cannabis Courier Association  
 California Cannabis Industry Association  
 California Cannabis Manufacturers Association  
 California Teamsters  
 Cannabis Distribution Association  
 CBD Botanica  
 CKA Nursery

CMG/Caliva  
Coastal Growers Association  
Compliant Farms Certified  
Connected Cannabis Co.  
County of Mendocino  
Covelo Cannabis Advocacy Group  
Dragonfly Wellness Center  
Driven  
Eaze  
Emerald Grown  
Farmily 805 LLC  
Flow Kana  
Full Cup Farmstead  
FV Farms  
Gold Coast Botanicals  
Green Hummingbird Farm  
Green Wise Consulting  
Grouse Valley Farms  
Harborside  
Hill Craft Farms LLC  
House of Harlequin  
Humboldt County Board of Supervisors  
Humboldt County Growers Alliance  
Humboldt Headless Chicken Ranch  
Humboldt Sun Growers Guild, LLC  
Humboldt36Farms LLC  
IndigoKidz Inc.  
International Cannabis Farmers Association  
Jolly Meds  
Justice Grown California  
Kiva  
Law Offices of Omar Figueroa  
Mandolin Gardens, LLC  
Margro Advisors  
Meadow  
Mendocino Appellations Project  
Mendocino County Board of Supervisors  
MMLG  
Namaskar LLC  
Nevada County Cannabis Alliance  
NorCal Cannabis Company  
North Country Farms  
Numerous individuals  
Origin Group Law LLP  
Over The Bridge Farm  
Oxalis Integrative Support Services  
Rambling Rose, LLC  
Ringgenberg Law Firm PC  
Rural County Representatives of California  
Sanctuary Farms

Sanel Highlands  
Sequoyah Hudson  
Shepp Family Farms  
Sierra Select Gardens  
Sierra Uplift  
SoHum Royal  
Southern California Coalition  
Star Trail Naturals  
Startling, INC  
Telemanus LLC  
Terra Tech  
Tranquility Lane Growery  
Water Now  
Westbound Farms

Opposition:

None on file.

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