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**SB-185 Cannabis: marketing.** (2019-2020)

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**Senate Bill No. 185**

**CHAPTER 841**

An act to amend Sections 26001 and 26063 of the Business and Professions Code, relating to cannabis.

[ Approved by Governor October 12, 2019. Filed with Secretary of State October 12, 2019. ]

**LEGISLATIVE COUNSEL'S DIGEST**

SB 185, McGuire. Cannabis: marketing.

(1) Existing law, the Control, Regulate and Tax Adult Use of Marijuana Act (AUMA), approved by the voters at the November 8, 2016, statewide general election, regulates the cultivation, distribution, transport, storage, manufacturing, testing, processing, sale, and use of marijuana for nonmedical purposes by individuals 21 years of age and older. 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.

(2) MAUCRSA requires the department, no later than January 1, 2018, to establish standards by which a licensed cultivator may designate a county of origin for cannabis. MAUCRSA requires the department, no later than January 1, 2021, to establish a process by which cultivators may establish appellations for cannabis grown in certain geographical areas of California, instead of by county. MAUCRSA prohibits cannabis from being represented to consumers, as specified, as grown in a California county unless the cannabis was grown in that county. MAUCRSA prohibits the name of a California county or any similar name that is likely to mislead consumers as to the origin of cannabis products from being used, as specified, unless the cannabis contained in the product was grown in that county. Existing law defines the term "kind" to mean the applicable type or designation regarding a particular cannabis variant or cannabis product type, including, but not limited to, strain name or other grower trademark, or growing area designation.

This bill would use the term "appellations of origin" instead of "appellations" and would apply the same prohibitions against misrepresentation of county of origin to misuse of appellations of origin established pursuant to the above-described process. The bill would apply the same prohibitions against misrepresentation of county of origin and appellation of origin to the use of names that are likely to mislead consumers as to the kind of cannabis. The bill would alter the definition of "kind" to include the applicable type or designation of a particular cannabis origin.

(3) This bill would incorporate additional changes to Section 26001 of the Business and Professions Code proposed by SB 34 to be operative only if this bill and SB 34 are enacted and this bill is enacted last.

(4) AUMA authorizes the Legislature to amend by majority vote certain provisions of the act to implement specified substantive provisions, provided that the amendments are consistent with, and further the purposes and intent of, AUMA.

This bill would declare that its provisions implement specified substantive provisions of AUMA and are consistent with, and further the purposes and intent of, AUMA.

## THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

### **SECTION 1.** Section 26001 of the Business and Professions Code is amended to read:

#### **26001.** For purposes of this division, the following definitions apply:

(a) "A-license" means a state license issued under this division for cannabis or cannabis products that are intended for adults who are 21 years of age and older and who do not possess a physician's recommendation.

(b) "A-licensee" means any person holding a license under this division for cannabis or cannabis products that are intended for adults who are 21 years of age and older and who do not possess a physician's recommendation.

(c) "Applicant" means an owner applying for a state license pursuant to this division.

(d) "Batch" means a specific quantity of homogeneous cannabis or cannabis product that is one of the following types:

(1) Harvest batch. "Harvest batch" means a specifically identified quantity of dried flower or trim, leaves, and other cannabis plant matter that is uniform in strain, harvested at the same time, and, if applicable, cultivated using the same pesticides and other agricultural chemicals, and harvested at the same time.

(2) Manufactured cannabis batch. "Manufactured cannabis batch" means either of the following:

(A) An amount of cannabis concentrate or extract that is produced in one production cycle using the same extraction methods and standard operating procedures.

(B) An amount of a type of manufactured cannabis produced in one production cycle using the same formulation and standard operating procedures.

(e) "Bureau" means the Bureau of Cannabis Control within the Department of Consumer Affairs, formerly named the Bureau of Marijuana Control, the Bureau of Medical Cannabis Regulation, and the Bureau of Medical Marijuana Regulation.

(f) "Cannabis" means all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. "Cannabis" also means the separated resin, whether crude or purified, obtained from cannabis. "Cannabis" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. For the purpose of this division, "cannabis" does not mean "industrial hemp" as defined by Section 11018.5 of the Health and Safety Code.

(g) "Cannabis accessories" has the same meaning as in Section 11018.2 of the Health and Safety Code.

(h) "Cannabis concentrate" means cannabis that has undergone a process to concentrate one or more active cannabinoids, thereby increasing the product's potency. Resin from granular trichomes from a cannabis plant is a concentrate for purposes of this division. A cannabis concentrate is not considered food, as defined by Section 109935 of the Health and Safety Code, or a drug, as defined by Section 109925 of the Health and Safety Code.

(i) "Cannabis products" has the same meaning as in Section 11018.1 of the Health and Safety Code.

(j) "Child resistant" means designed or constructed to be significantly difficult for children under five years of age to open, and not difficult for normal adults to use properly.

(k) "Commercial cannabis activity" includes the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery, or sale of cannabis and cannabis products as provided for in this division.

(l) "Cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.

(m) "Cultivation site" means a location where cannabis is planted, grown, harvested, dried, cured, graded, or trimmed, or a location where any combination of those activities occurs.

(n) "Customer" means a natural person 21 years of age or older or a natural person 18 years of age or older who possesses a physician's recommendation, or a primary caregiver.

- (o) "Day care center" has the same meaning as in Section 1596.76 of the Health and Safety Code.
- (p) "Delivery" means the commercial transfer of cannabis or cannabis products to a customer. "Delivery" also includes the use by a retailer of any technology platform.
- (q) "Director" means the Director of Consumer Affairs.
- (r) "Distribution" means the procurement, sale, and transport of cannabis and cannabis products between licensees.
- (s) "Dried flower" means all dead cannabis that has been harvested, dried, cured, or otherwise processed, excluding leaves and stems.
- (t) "Edible cannabis product" means cannabis product that is intended to be used, in whole or in part, for human consumption, including, but not limited to, chewing gum, but excluding products set forth in Division 15 (commencing with Section 32501) of the Food and Agricultural Code. An edible cannabis product is not considered food, as defined by Section 109935 of the Health and Safety Code, or a drug, as defined by Section 109925 of the Health and Safety Code.
- (u) "Fund" means the Cannabis Control Fund established pursuant to Section 26210.
- (v) "Kind" means applicable type or designation regarding a particular cannabis variant, origin, or product type, including, but not limited to, strain name, trademark, or production area designation.
- (w) "Labeling" means any label or other written, printed, or graphic matter upon a cannabis product, upon its container or wrapper, or that accompanies any cannabis product.
- (x) "Labor peace agreement" means an agreement between a licensee and any bona fide labor organization that, at a minimum, protects the state's proprietary interests by prohibiting labor organizations and members from engaging in picketing, work stoppages, boycotts, and any other economic interference with the applicant's business. This agreement means that the applicant has agreed not to disrupt efforts by the bona fide labor organization to communicate with, and attempt to organize and represent, the applicant's employees. The agreement shall provide a bona fide labor organization access at reasonable times to areas in which the applicant's employees work, for the purpose of meeting with employees to discuss their right to representation, employment rights under state law, and terms and conditions of employment. This type of agreement shall not mandate a particular method of election or certification of the bona fide labor organization.
- (y) "License" means a state license issued under this division, and includes both an A-license and an M-license, as well as a testing laboratory license.
- (z) "Licensee" means any person holding a license under this division, regardless of whether the license held is an A-license or an M-license, and includes the holder of a testing laboratory license.
- (aa) "Licensing authority" means the state agency responsible for the issuance, renewal, or reinstatement of the license, or the state agency authorized to take disciplinary action against the licensee.
- (ab) "Live plants" means living cannabis flowers and plants, including seeds, immature plants, and vegetative stage plants.
- (ac) "Local jurisdiction" means a city, county, or city and county.
- (ad) "Lot" means a batch or a specifically identified portion of a batch.
- (ae) "M-license" means a state license issued under this division for commercial cannabis activity involving medicinal cannabis.
- (af) "M-licensee" means any person holding a license under this division for commercial cannabis activity involving medicinal cannabis.
- (ag) "Manufacture" means to compound, blend, extract, infuse, or otherwise make or prepare a cannabis product.
- (ah) "Manufacturer" means a licensee that conducts the production, preparation, propagation, or compounding of cannabis or cannabis products either directly or indirectly or by extraction methods, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis at a fixed location that packages or repackages cannabis or cannabis products or labels or relabels its container.
- (ai) "Medicinal cannabis" or "medicinal cannabis product" means cannabis or a cannabis product, respectively, intended to be sold for use pursuant to the Compassionate Use Act of 1996 (Proposition 215), found at Section 11362.5 of the Health and Safety Code, by a medicinal cannabis patient in California who possesses a physician's recommendation.

(aj) "Nursery" means a licensee that produces only clones, immature plants, seeds, and other agricultural products used specifically for the propagation and cultivation of cannabis.

(ak) "Operation" means any act for which licensure is required under the provisions of this division, or any commercial transfer of cannabis or cannabis products.

(al) "Owner" means any of the following:

(1) A person with an aggregate ownership interest of 20 percent or more in the person applying for a license or a licensee, unless the interest is solely a security, lien, or encumbrance.

(2) The chief executive officer of a nonprofit or other entity.

(3) A member of the board of directors of a nonprofit.

(4) An individual who will be participating in the direction, control, or management of the person applying for a license.

(am) "Package" means any container or receptacle used for holding cannabis or cannabis products.

(an) "Person" includes any individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit, and the plural as well as the singular.

(ao) "Physician's recommendation" means a recommendation by a physician and surgeon that a patient use cannabis provided in accordance with the Compassionate Use Act of 1996 (Proposition 215), found at Section 11362.5 of the Health and Safety Code.

(ap) "Premises" means the designated structure or structures and land specified in the application that is owned, leased, or otherwise held under the control of the applicant or licensee where the commercial cannabis activity will be or is conducted. The premises shall be a contiguous area and shall only be occupied by one licensee.

(aq) "Primary caregiver" has the same meaning as in Section 11362.7 of the Health and Safety Code.

(ar) "Purchaser" means the customer who is engaged in a transaction with a licensee for purposes of obtaining cannabis or cannabis products.

(as) "Sell," "sale," and "to sell" include any transaction whereby, for any consideration, title to cannabis or cannabis products is transferred from one person to another, and includes the delivery of cannabis or cannabis products pursuant to an order placed for the purchase of the same and soliciting or receiving an order for the same, but does not include the return of cannabis or cannabis products by a licensee to the licensee from whom the cannabis or cannabis product was purchased.

(at) "Testing laboratory" means a laboratory, facility, or entity in the state that offers or performs tests of cannabis or cannabis products and that is both of the following:

(1) Accredited by an accrediting body that is independent from all other persons involved in commercial cannabis activity in the state.

(2) Licensed by the bureau.

(au) "Unique identifier" means an alphanumeric code or designation used for reference to a specific plant on a licensed premises and any cannabis or cannabis product derived or manufactured from that plant.

(av) "Youth center" has the same meaning as in Section 11353.1 of the Health and Safety Code.

**SEC. 1.5.** Section 26001 of the Business and Professions Code is amended to read:

**26001.** For purposes of this division, the following definitions apply:

(a) "A-license" means a state license issued under this division for cannabis or cannabis products that are intended for adults who are 21 years of age and older and who do not possess a physician's recommendation.

(b) "A-licensee" means any person holding a license under this division for cannabis or cannabis products that are intended for adults who are 21 years of age and older and who do not possess a physician's recommendation.

(c) "Applicant" means an owner applying for a state license pursuant to this division.

(d) "Batch" means a specific quantity of homogeneous cannabis or cannabis product that is one of the following types:

(1) Harvest batch. "Harvest batch" means a specifically identified quantity of dried flower or trim, leaves, and other cannabis plant matter that is uniform in strain, harvested at the same time, and, if applicable, cultivated using the same pesticides and

other agricultural chemicals, and harvested at the same time.

(2) Manufactured cannabis batch. "Manufactured cannabis batch" means either of the following:

(A) An amount of cannabis concentrate or extract that is produced in one production cycle using the same extraction methods and standard operating procedures.

(B) An amount of a type of manufactured cannabis produced in one production cycle using the same formulation and standard operating procedures.

(e) "Bureau" means the Bureau of Cannabis Control within the Department of Consumer Affairs, formerly named the Bureau of Marijuana Control, the Bureau of Medical Cannabis Regulation, and the Bureau of Medical Marijuana Regulation.

(f) "Cannabis" means all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. "Cannabis" also means the separated resin, whether crude or purified, obtained from cannabis. "Cannabis" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. For the purpose of this division, "cannabis" does not mean "industrial hemp" as defined by Section 11018.5 of the Health and Safety Code.

(g) "Cannabis accessories" has the same meaning as in Section 11018.2 of the Health and Safety Code.

(h) "Cannabis concentrate" means cannabis that has undergone a process to concentrate one or more active cannabinoids, thereby increasing the product's potency. Resin from granular trichomes from a cannabis plant is a concentrate for purposes of this division. A cannabis concentrate is not considered food, as defined by Section 109935 of the Health and Safety Code, or a drug, as defined by Section 109925 of the Health and Safety Code.

(i) "Cannabis products" has the same meaning as in Section 11018.1 of the Health and Safety Code.

(j) "Child resistant" means designed or constructed to be significantly difficult for children under five years of age to open, and not difficult for normal adults to use properly.

(k) "Commercial cannabis activity" includes the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery, or sale of cannabis and cannabis products as provided for in this division.

(l) "Cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.

(m) "Cultivation site" means a location where cannabis is planted, grown, harvested, dried, cured, graded, or trimmed, or a location where any combination of those activities occurs.

(n) "Customer" means a natural person 21 years of age or older or a natural person 18 years of age or older who possesses a physician's recommendation, or a primary caregiver.

(o) "Day care center" has the same meaning as in Section 1596.76 of the Health and Safety Code.

(p) "Delivery" means the commercial transfer of cannabis or cannabis products to a customer. "Delivery" also includes the use by a retailer of any technology platform.

(q) "Director" means the Director of Consumer Affairs.

(r) "Distribution" means the procurement, sale, and transport of cannabis and cannabis products between licensees.

(s) "Dried flower" means all dead cannabis that has been harvested, dried, cured, or otherwise processed, excluding leaves and stems.

(t) "Edible cannabis product" means a cannabis product that is intended to be used, in whole or in part, for human consumption, including, but not limited to, chewing gum, but excluding products set forth in Division 15 (commencing with Section 32501) of the Food and Agricultural Code. An edible cannabis product is not considered food, as defined by Section 109935 of the Health and Safety Code, or a drug, as defined by Section 109925 of the Health and Safety Code.

(u) "Fund" means the Cannabis Control Fund established pursuant to Section 26210.

(v) "Kind" means applicable type or designation regarding a particular cannabis variant, origin, or product type, including, but not limited to, strain name, trademark, or production area designation.

(w) "Labeling" means any label or other written, printed, or graphic matter upon a cannabis product, upon its container or wrapper, or that accompanies any cannabis product.

(x) "Labor peace agreement" means an agreement between a licensee and any bona fide labor organization that, at a minimum, protects the state's proprietary interests by prohibiting labor organizations and members from engaging in picketing, work stoppages, boycotts, and any other economic interference with the applicant's business. This agreement means that the applicant has agreed not to disrupt efforts by the bona fide labor organization to communicate with, and attempt to organize and represent, the applicant's employees. The agreement shall provide a bona fide labor organization access at reasonable times to areas in which the applicant's employees work, for the purpose of meeting with employees to discuss their right to representation, employment rights under state law, and terms and conditions of employment. This type of agreement shall not mandate a particular method of election or certification of the bona fide labor organization.

(y) "License" means a state license issued under this division, and includes both an A-license and an M-license, as well as a testing laboratory license.

(z) "Licensee" means any person holding a license under this division, regardless of whether the license held is an A-license or an M-license, and includes the holder of a testing laboratory license.

(aa) "Licensing authority" means the state agency responsible for the issuance, renewal, or reinstatement of the license, or the state agency authorized to take disciplinary action against the licensee.

(ab) "Live plants" means living cannabis flowers and plants, including seeds, immature plants, and vegetative stage plants.

(ac) "Local jurisdiction" means a city, county, or city and county.

(ad) "Lot" means a batch or a specifically identified portion of a batch.

(ae) "M-license" means a state license issued under this division for commercial cannabis activity involving medicinal cannabis.

(af) "M-licensee" means any person holding a license under this division for commercial cannabis activity involving medicinal cannabis.

(ag) "Manufacture" means to compound, blend, extract, infuse, or otherwise make or prepare a cannabis product.

(ah) "Manufacturer" means a licensee that conducts the production, preparation, propagation, or compounding of cannabis or cannabis products either directly or indirectly or by extraction methods, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis at a fixed location that packages or repackages cannabis or cannabis products or labels or relabels its container.

(ai) (1) "Medicinal cannabis" or "medicinal cannabis product" means cannabis or a cannabis product, respectively, intended to be sold or donated for use pursuant to the Compassionate Use Act of 1996 (Proposition 215), found in Section 11362.5 of the Health and Safety Code, by a medicinal cannabis patient in California who possesses a physician's recommendation, or in compliance with any compassionate use, equity, or other similar program administered by a local jurisdiction.

(2) The amendments made to this subdivision by the act adding this paragraph shall become operative upon completion of the necessary changes to the track and trace program in order to implement the act adding this paragraph, as determined by the Department of Food and Agriculture, or on March 1, 2020, whichever occurs first.

(aj) "Nursery" means a licensee that produces only clones, immature plants, seeds, and other agricultural products used specifically for the propagation and cultivation of cannabis.

(ak) "Operation" means any act for which licensure is required under the provisions of this division, or any commercial transfer of cannabis or cannabis products.

(al) "Owner" means any of the following:

(1) A person with an aggregate ownership interest of 20 percent or more in the person applying for a license or a licensee, unless the interest is solely a security, lien, or encumbrance.

(2) The chief executive officer of a nonprofit or other entity.

(3) A member of the board of directors of a nonprofit.

(4) An individual who will be participating in the direction, control, or management of the person applying for a license.

(am) "Package" means any container or receptacle used for holding cannabis or cannabis products.

(an) "Person" includes any individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit, and the plural as well as the singular.

(ao) "Physician's recommendation" means a recommendation by a physician and surgeon that a patient use cannabis provided in accordance with the Compassionate Use Act of 1996 (Proposition 215), found at Section 11362.5 of the Health and Safety Code.

(ap) "Premises" means the designated structure or structures and land specified in the application that is owned, leased, or otherwise held under the control of the applicant or licensee where the commercial cannabis activity will be or is conducted. The premises shall be a contiguous area and shall only be occupied by one licensee.

(aq) "Primary caregiver" has the same meaning as in Section 11362.7 of the Health and Safety Code.

(ar) "Purchaser" means the customer who is engaged in a transaction with a licensee for purposes of obtaining cannabis or cannabis products.

(as) "Sell," "sale," and "to sell" include any transaction whereby, for any consideration, title to cannabis or cannabis products is transferred from one person to another, and includes the delivery of cannabis or cannabis products pursuant to an order placed for the purchase of the same and soliciting or receiving an order for the same, but does not include the return of cannabis or cannabis products by a licensee to the licensee from whom the cannabis or cannabis product was purchased.

(at) "Testing laboratory" means a laboratory, facility, or entity in the state that offers or performs tests of cannabis or cannabis products and that is both of the following:

(1) Accredited by an accrediting body that is independent from all other persons involved in commercial cannabis activity in the state.

(2) Licensed by the bureau.

(au) "Unique identifier" means an alphanumeric code or designation used for reference to a specific plant on a licensed premises and any cannabis or cannabis product derived or manufactured from that plant.

(av) "Youth center" has the same meaning as in Section 11353.1 of the Health and Safety Code.

**SEC. 2.** Section 26063 of the Business and Professions Code is amended to read:

**26063.** (a) (1) No later than January 1, 2018, the Department of Food and Agriculture shall establish standards by which a licensed cultivator may designate a county of origin for cannabis. To be eligible for the designation, 100 percent of the cannabis shall be produced within the designated county, as defined by finite political boundaries.

(2) Cannabis shall not be advertised, marketed, labeled, or sold as produced in a California county, including any similar name that is likely to mislead consumers as to the kind of cannabis, when the cannabis was not produced in that county.

(3) The name of a California county, including any similar name that is likely to mislead consumers as to the kind of cannabis contained in the product, shall not be used in the advertising, labeling, marketing, or packaging of cannabis products unless 100 percent of the cannabis contained in the product was produced in that county.

(b) (1) No later than January 1, 2021, the Department of Food and Agriculture shall establish a process by which licensed cultivators may establish appellations of origin, including standards, practices, and cultivars applicable to cannabis produced in a certain geographical area in California, not otherwise specified in subdivision (a).

(2) Cannabis shall not be advertised, marketed, labeled, or sold using an appellation of origin established pursuant to paragraph (1), including any similar name that is likely to mislead consumers as to the kind of cannabis, unless the cannabis meets the appellation of origin requirements for, and was produced in, the geographical area.

(3) An appellation of origin established pursuant to this subdivision, including any similar name that is likely to mislead consumers as to the kind of cannabis contained in a product, shall not be used in the advertising, labeling, marketing, or packaging of a cannabis product unless 100 percent of the cannabis contained in the product meets the appellation of origin requirements and was produced in the geographical area.

**SEC. 3.** Section 1.5 of this bill incorporates amendments to Section 26001 of the Business and Professions Code proposed by both this bill and Senate Bill 34. That section of this bill shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2020, (2) each bill amends Section 26001 of the Business and Professions Code, and (3) this bill is enacted after Senate Bill 34, in which case Section 1 of this bill shall not become operative.

**SEC. 4.** The Legislature finds and declares that Sections 1 and 2 of this act, amending Sections 26001 and 26063 of the Business and Professions Code, implement Section 6.1 of the Control, Regulate and Tax Adult Use of Marijuana Act and are consistent with and further the purposes and intent of that act as stated in Section 3 of that act.