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SB-166 Department of Cannabis Control: licensure: fee waivers and deferrals. (2021-2022)

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Senate Bill No. 166

CHAPTER 260

An act to amend Sections 26050.2 and 26249 of the Business and Professions Code, relating to cannabis, and making an appropriation therefor, to take effect immediately, bill related to the budget.

[Approved by Governor September 23, 2021. Filed with Secretary of State September 23, 2021.]

LEGISLATIVE COUNSEL'S DIGEST

SB 166, Committee on Budget and Fiscal Review. Department of Cannabis Control: licensure: fee waivers and deferrals.

Existing law, the Control, Regulate and Tax Adult Use of Marijuana Act (AUMA), an initiative measure approved as Proposition 64 at the November 8, 2016, statewide general election, authorizes a person who obtains a state license under AUMA to engage in commercial adult-use cannabis activity pursuant to that license and applicable local ordinances.

Existing law, 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. Existing law requires the Department of Cannabis Control within the Business, Consumer Services, and Housing Agency to administer the act, except as specified.

The California Cannabis Equity Act of 2018 requires the Department of Cannabis Control, on or before January 1, 2021, to develop and implement a program to provide a deferral or waiver for an application fee, a licensing fee, or renewal fee otherwise required by MAUCRSA for a needs-based applicant or needs-based licensee.

This bill would instead require the department, on or before January 1, 2022, to develop and implement a program to provide waivers for application fees, licensing fees, and renewal fees required by MAUCRSA. The bill would further require the department, on or before January 1, 2023, to develop and implement a program to provide deferrals for application fees, licensing fees, and renewal fees required by MAUCRSA.

The California Cannabis Equity Act of 2018 requires at least 60% of the total dollar amount of deferrals of fees pursuant to the program for a deferral or waivers, as described above, to be allocated for local equity applicants and licensees. The act also requires at least 60% of the total dollar amount of waivers of fees to be allocated to the deferral of fees for local equity applicants and licensees.

This bill would delete the term "local," used in the above provisions, and would instead refer to "equity applicants and licensees." The bill would specify that, for purposes of these provisions, the term "equity applicants and licensees" means applicants and licensees that satisfy all of specified criteria. These conditions would include, among others, that applicants and licensees individually or in combination with other persons who qualify as equity applicants or licensees own no less than 50% of the business that is in the process of being licensed or is licensed.

MAUCRSA, until June 30, 2023, authorizes the Department of Cannabis Control, in its sole discretion, to issue a provisional license for a local equity license application that includes cultivation activities, provided that the applicant meets specified

requirements. These requirements include, among others, that the local equity applicant is not a cultivation license applicant for a premises that exceeds one acre of total canopy for outdoor cultivation or 22,000 square feet for mixed-light or indoor cultivation.

The bill, in the above-described provisions on issuing a provisional license for a local equity license application, would delete the reference to that application including "cultivation activities."

This bill would appropriate \$10,000 from the General Fund to the Department of Cannabis Control for purposes of implementing the provisions of the bill.

AUMA authorizes the Legislature to amend its provisions with a $\frac{2}{3}$ vote of both houses to further its purposes and intent.

This bill would state that the bill furthers the purposes and intent of AUMA.

This bill would declare that it is to take effect immediately as a bill providing for appropriations related to the Budget Bill.

Vote: 2/3 Appropriation: yes Fiscal Committee: yes Local Program: no

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

SECTION 1. Section 26050.2 of the Business and Professions Code is amended to read:

26050.2. (a) (1) Until June 30, 2022, except as provided in paragraphs (3) and (4), the department may, in its sole discretion, issue a provisional license to an applicant if the applicant has submitted a completed license application to the department, including the following, if applicable:

(A) If compliance with the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) is not complete, evidence that compliance is underway.

(B) If compliance with local ordinances enacted pursuant to Section 26200 is not complete, evidence that compliance is underway.

(C) Compliance with paragraphs (5) and (11) of subdivision (a) of Section 26051.5.

(D) For a license application that includes cultivation activities, any of the following documents:

(i) A final streambed alteration agreement.

(ii) A draft streambed alteration agreement provided by the Department of Fish and Wildlife and signed and returned to the Department of Fish and Wildlife.

(iii) Written verification by the Department of Fish and Wildlife that a streambed alteration agreement is not needed.

(iv) Written verification by the Department of Fish and Wildlife that the applicant has submitted a notification described in Section 1602 of the Fish and Game Code, submitted payment of applicable fees pursuant to Section 1609 of the Fish and Game Code, and is responsive to the Department of Fish and Wildlife. For purposes of this subparagraph, an applicant is not responsive to the Department of Fish and Wildlife if either of the following apply:

(I) The notification has been deemed incomplete a second time.

(II) After a notification has been deemed incomplete once, the Department of Fish and Wildlife has not received requested information from the applicant for more than 60 days.

(E) The application is submitted to the department on or before March 31, 2022.

(2) If an application for a cultivation license is submitted on or after January 1, 2022, the department shall not issue a provisional license pursuant to this section if issuing the provisional license would cause a licensee to hold multiple cultivation licenses on contiguous premises to exceed one acre of total canopy for outdoor cultivation, or 22,000 square feet for mixed-light or indoor cultivation.

(3) Until June 30, 2023, the department may, in its sole discretion, issue a provisional license for a local equity license application, provided that the applicant meets the following requirements:

(A) The local equity applicant is not a cultivation license applicant for a premises that exceeds one acre of total canopy for outdoor cultivation, or 22,000 square feet for mixed-light or indoor cultivation.

(B) Issuing the license would not cause the applicant to hold multiple cultivation licenses on contiguous premises to exceed one acre of total canopy for outdoor cultivation, or 22,000 square feet for mixed-light or indoor cultivation.

(C) The local equity applicant satisfies all of the requirements in subparagraphs (A) to (D), inclusive, of paragraph (1).

(D) The local equity applicant submits an application to the department on or before March 31, 2023.

(4) Until September 30, 2022, the department may, in its sole discretion, issue a provisional license to a cultivation license applicant, provided that the applicant meets the following requirements:

(A) The applicant is not a cultivation license applicant for a premises that exceeds 20,000 square feet of total canopy for outdoor cultivation.

(B) Issuing the license would not cause the applicant to hold multiple cultivation licenses on contiguous premises to exceed one acre of total canopy for outdoor cultivation, or 22,000 square feet for mixed-light or indoor cultivation.

(C) The cultivation license applicant satisfies all of the requirements in subparagraphs (A) to (D), inclusive, of paragraph (1).

(D) The cultivation license applicant submits an application to the department on or before June 30, 2022.

(b) A provisional license issued pursuant to this section shall be valid for no more than 12 months from the date it was issued or renewed. If the department issues or renews a provisional license, it shall include the outstanding items needed to qualify for an annual license specific to the licensee.

(c) The department may, in its sole discretion, renew a provisional license until it issues or denies the provisional licensee's annual license, subject to the requirements of this section.

(d) For a renewal of a provisional license beginning July 1, 2022, through June 30, 2023, the department shall not renew a provisional license unless the following criteria are met:

(1) For cultivation licenses, to illustrate progress with compliance with Chapter 6 (commencing with Section 1600) of Division 2 of the Fish and Game Code, one of the following documents:

(A) A final streambed alteration agreement issued by the Department of Fish and Wildlife.

(B) A draft streambed alteration agreement provided by the Department of Fish and Wildlife and signed and returned to the Department of Fish and Wildlife by the provisional licensee.

(C) Written verification by the Department of Fish and Wildlife that the provisional licensee has submitted a complete notification described in Section 1602 of the Fish and Game Code.

(D) Written verification by the Department of Fish and Wildlife that a streambed alteration agreement is not needed.

(2) If compliance with the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) is not yet complete, a determination from the department that one of the following requirements has been met:

(A) The lead agency is in the process of preparing a site-specific initial study, addendum, or checklist pursuant to Section 15063, 15164, 15168, or 15183 of Title 14 of the California Code of Regulations to demonstrate whether it is consistent with a previously circulated and adopted negative declaration, mitigated negative declaration, or environmental impact report.

(B) If a local jurisdiction is the lead agency, the lead agency has made substantial progress during the previous 12-month licensure term toward completing project-specific environmental review by drafting, preparing, or circulating for public review an environmental document pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(C) If the department is the lead agency, information requested by the department of the provisional licensee that demonstrates the furtherance of environmental review.

(D) Information submitted to the department by the provisional licensee applicant that demonstrates evidence of substantial progress toward compliance with the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) during the previous 12-month licensure term.

(e) On or after July 1, 2023, the department shall not renew a provisional license unless the following criteria are met:

(1) For cultivation licenses, to illustrate progress with compliance with Chapter 6 (commencing with Section 1600) of Division 2 of the Fish and Game Code, one of the following documents:

(A) A final streambed alteration agreement issued by the Department of Fish and Wildlife.

(B) A draft streambed alteration agreement provided by the Department of Fish and Wildlife and signed and returned to the Department of Fish and Wildlife by the provisional licensee.

(C) Written verification from the Department of Fish and Wildlife that a streambed alteration agreement is not needed.

(2) If compliance with the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) is not yet complete, to illustrate progress with compliance, a determination from the department that one of the following has been met:

(A) The lead agency for the license has prepared and circulated for public review a negative declaration or a mitigated negative declaration.

(B) The lead agency for the license has determined that an environmental impact report is required pursuant to Section 21157 of the Public Resources Code and has either made substantial progress in preparing that environmental impact report or has a contract or contracts with consultants in place for the preparation of that environmental impact report.

(C) The lead agency has certified to the department that it has conducted a reasonably comprehensive site-specific review and has reviewed, prepared, and deemed complete an initial study, addendum, or checklist pursuant to Section 15063, 15164, 15168, or 15183 of Title 14 of the California Code of Regulations, which demonstrates consistency with a previously circulated and adopted negative declaration, mitigated negative declaration, or environmental impact report, in preparation for approval of an annual license.

(D) The lead agency for the license has reviewed, prepared, and deemed complete a notice of exemption pursuant to Section 21108 or 21152 of the Public Resources Code, except for ministerial projects not subject to the California Environmental Quality Act pursuant to paragraph (1) of subdivision (b) of Section 21080 of the Public Resources Code.

(f) A provisional license authorizing cultivation activities shall not be renewed if the department is notified of either or both of the following:

(1) The State Water Resources Control Board has notified the department that the provisional licensee is not in compliance with subdivision (a) or (b) of Section 26060.1 or the principles, guidelines, and requirements established pursuant to Section 13149 of the Water Code.

(2) The Department of Fish and Wildlife has notified the department that the provisional licensee is not in compliance with any final streambed alteration agreement, any conditions set forth in a signed draft streambed alteration agreement, or a condition established pursuant to subdivision (a) or paragraphs (1) and (2) of subdivision (b) of Section 26060.1.

(g) (1) After January 1, 2023, the department shall not renew a license pursuant to this section for cultivation activities if renewing the license would cause a licensee to hold multiple cultivation licenses on contiguous premises to exceed one acre of total canopy for outdoor cultivation or 22,000 square feet for mixed-light or indoor cultivation.

(2) After January 1, 2024, no provisional license that causes a licensee to hold multiple cultivation licenses on contiguous premises to exceed one acre of total canopy for outdoor cultivation or 22,000 square feet for mixed-light or indoor cultivation shall be in effect.

(h) The department, in its sole discretion, may allow a provisional licensee to move locations after the date provisional licenses can no longer be issued provided that the new location is approved in compliance with California Environmental Quality Act, and Chapter 6 (commencing with Section 1600) of Division 2 of the Fish and Game Code. If all other renewal requirements are satisfied, the department may also renew the license at the new location.

(i) The department may, in its sole discretion, revoke or suspend a provisional license if it determines the licensee failed to actively and diligently pursue requirements for the annual license. The department shall adopt regulations clarifying what constitutes actively and diligently pursuing requirements for the annual license.

(j) The department shall cancel a provisional license upon issuance of an annual license, denial of an annual license, abandonment of an application for licensure, or withdrawal of an application for licensure.

(k) Except as specified in this section, the provisions of this division shall apply to a provisional license in the same manner as to an annual license.

(l) Without limiting any other statutory exemption or categorical exemption, Division 13 (commencing with Section 21000) of the Public Resources Code does not apply to the issuance of a license pursuant to this section by the department, except as otherwise provided in this section.

(m) Refusal by the department to issue a license pursuant to this section or revocation or suspension by the department of a license issued pursuant to this section shall not entitle the applicant or licensee to a hearing or an appeal of the decision. Chapter 2 (commencing with Section 480) of Division 1.5 and Chapter 4 (commencing with Section 26040) of this division and Sections 26031 and 26058 shall not apply to licenses issued pursuant to this section.

(n) For purposes of this section, "streambed alteration agreement" has the same meaning as the term "agreement" is defined in Section 1601 of the Fish and Game Code, which includes both individual agreements and general agreements under Section 1617 of the Fish and Game Code.

(o) The Department may not renew a provisional license after January 1, 2025 and no provisional license shall be effective after January 1, 2026.

(p) This section shall remain in effect only until January 1, 2026, and as of that date is repealed.

(q) It is the intent of the Legislature that no further exemptions from annual licenses be adopted and that any licenses issued under this division after January 1, 2025, be issued in compliance with all relevant environmental laws.

(r) It is the intent of the Legislature that funds appropriated in Item 1115-101-0001 of the Budget Act of 2021 shall be promptly deployed to allow local jurisdictions to meet the deadlines in this Act.

SEC. 2. Section 26249 of the Business and Professions Code is amended to read:

26249. (a) Notwithstanding Sections 26012 and 26180:

(1) On or before January 1, 2022, the department shall develop and implement a program to provide waivers for application fees, licensing fees, and renewal fees required by this division.

(2) On or before January 1, 2023, the department shall develop and implement a program to provide deferrals for application fees, licensing fees, and renewal fees required by this division.

(b) (1) At least 60 percent of the total dollar amount of deferrals of fees pursuant to the program developed and implemented by the department pursuant to subdivision (a) shall be allocated to the deferral of fees for equity applicants and licensees.

(2) At least 60 percent of the total dollar amount of waivers of fees pursuant to the program developed and implemented by the department pursuant to subdivision (a) shall be allocated to the waiver of fees for equity applicants and licensees.

(c) For purposes of this section, "equity applicants and licensees" means applicants and licensees that demonstrate all of the following:

(1) (A) For applicants and licensees in local jurisdictions with local equity programs, that they are locally verified equity applicants and licensees; or

(B) For applicants and licensees in local jurisdictions without local equity programs, that they are local applicants and licensees.

(2) That they, either individually or in combination with other persons who qualify as equity applicants or licensees pursuant to this section, own no less than 50 percent of the business that is in the process of being licensed or is licensed.

(3) That they satisfy one of the following:

(A) They have previously been convicted of an offense related to the sale, possession, use, manufacture, or cultivation of cannabis, under past criminal justice policies implementing cannabis prohibition.

(B) They have previously been arrested for an offense related to the sale, possession, use, manufacture, or cultivation of cannabis, under past criminal justice policies implementing cannabis prohibition.

(C) Residence in a household with a household income less than or equal to 60 percent of the area median income for the applicable local jurisdiction.

(D) Residence in an area with a population disproportionately impacted by past criminal justice policies implementing cannabis prohibition.

(4) The eligibility for those that qualify pursuant to the criteria listed under subparagraphs (A) to (D), inclusive, of paragraph (3) may be further refined by the department through regulations, including, but not limited to, regulations regarding the following:

(A) Criteria regarding the license or licenses an applicant or licensee may seek or hold.

(B) Criteria regarding the time period or length of time in which an applicant or licensee resided in a low-income household for purposes of subparagraph (C) of paragraph (3), or in an area with a population disproportionately impacted by past criminal justice policies implementing cannabis prohibition for purposes of subparagraph (D) of paragraph (3).

(d) The department may adopt regulations, including emergency regulations to implement this section. The adoption, amendment, repeal, or readoption of a regulation authorized by this section is deemed to address an emergency, for purposes of Sections 11346.1 and 11349.6 of the Government Code, and the department is hereby exempted from the requirements of subdivision (b) of Section 11346.1 of the Government Code.

(e) The operation of this section is contingent upon an appropriation in the annual Budget Act or another statute for purposes of this section.

SEC. 3. The sum of ten thousand dollars (\$10,000) is hereby appropriated from the General Fund to the Department of Cannabis Control for purposes of implementing this act.

SEC. 4. The Legislature finds and declares that this act furthers the purposes and intent of the Control, Regulate and Tax Adult Use of Marijuana Act.

SEC. 5. This act is a bill providing for appropriations related to the Budget Bill within the meaning of subdivision (e) of Section 12 of Article IV of the California Constitution, has been identified as related to the budget in the Budget Bill, and shall take effect immediately.