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AB-128 Cannabis: background checks and cannabis event organizer license type. (2023-2024)

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Assembly Bill No. 128

CHAPTER 46

An act to amend Sections 26050 and 26051.5 of, and to add Section 26010.6 to, 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 July 10, 2023. Filed with Secretary of State July 10, 2023.]

LEGISLATIVE COUNSEL'S DIGEST

AB 128, Committee on Budget. Cannabis: background checks and cannabis event organizer license type.

Existing law, the Control, Regulate and Tax Adult Use of Marijuana Act (AUMA), an initiative measure, 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. MAUCRSA establishes the Department of Cannabis Control, under the supervision and control of a director, to administer and enforce its provisions. MAUCRSA authorizes the director to employ and appoint all employees necessary to properly administer the work of the department, in accordance with civil service laws and regulations. MAUCRSA requires the director to designate the persons employed by the department for purposes of the administration and enforcement of MAUCRSA, and requires the director to ensure that a sufficient number of employees are qualified peace officers for purposes of enforcing MAUCRSA.

This bill would require the Department of Cannabis Control to submit to the Department of Justice fingerprint images and other related information for criminal history information checks of certain employees, prospective employees, contractors, and subcontractors, as specified. The bill would require the Department of Cannabis Control to request from the Department of Justice subsequent notification service for those individuals, as specified.

MAUCRSA authorizes the department to issue state licenses only to qualified applicants. MAUCRSA requires an applicant for a state license to require each owner to submit to the Department of Justice fingerprint images and related information for a criminal history information check, as specified.

This bill would exempt from that requirement an owner who has previously submitted fingerprint images and related information in connection with a valid state license issued by a licensing authority, as specified. The bill would prohibit the Department of Cannabis Control from considering criminal history information from a previous check of that owner when considering whether to issue a subsequent state license.

MAUCRSA authorizes the issuance of a state temporary event license to a licensee authorizing onsite cannabis sales to, and consumption by, persons 21 years of age or older at a county fair event, district agricultural association event, or at another venue expressly approved by a local jurisdiction, as specified.

This bill would add Type 13—Cannabis event organizer to the codified list of license classifications.

This bill would update obsolete MAUCRSA provisions.

Existing law establishes the Cannabis Control Fund to support, among other things, the activities of the department under MAUCRSA, and requires licensing fees and certain other moneys associated with the recovery of investigation and enforcement costs to be deposited in the fund.

This bill would appropriate \$5,000 from the Cannabis Control Fund to the department 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, except as specified.

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 26010.6 is added to the Business and Professions Code, to read:

26010.6. (a) Pursuant to subdivision (u) of Section 11105 of the Penal Code, and except as provided in subdivision (d), the department shall submit to the Department of Justice fingerprint images and related information required by the Department of Justice for an employee, prospective employee, contractor, or subcontractor whose duties include or would include access to criminal offender record information contained in the information systems or records of the department or access to cannabis, cannabis products, or other controlled substances. The Department of Justice shall provide a state- or federal-level response pursuant to subdivision (p) of Section 11105 of the Penal Code, except for peace officers.

(b) Pursuant to subdivision (u) of Section 11105 of the Penal Code, the department shall submit to the Department of Justice fingerprint images and related information required by the Department of Justice for all peace officer employees and prospective peace officer employees of the department. The Department of Justice shall provide a state- or federal-level response pursuant to subdivision (k) of Section 11105 of the Penal Code for peace officers.

(c) The department shall request from the Department of Justice subsequent notification service, as provided pursuant to Section 11105.2 of the Penal Code, for persons listed in subdivisions (a) and (b).

(d) Subdivision (a) does not apply to employees hired on or before June 30, 2023, or to any contract entered into on or before June 30, 2023.

SEC. 2. Section 26050 of the Business and Professions Code is amended to read:

26050. (a) The license classification pursuant to this division shall, at a minimum, be as follows:

- (1) Type 1—Cultivation; Specialty outdoor; Small.
- (2) Type 1A—Cultivation; Specialty indoor; Small.
- (3) Type 1B—Cultivation; Specialty mixed-light; Small.
- (4) Type 1C—Cultivation; Specialty cottage; Small.
- (5) Type 2—Cultivation; Outdoor; Small.
- (6) Type 2A—Cultivation; Indoor; Small.
- (7) Type 2B—Cultivation; Mixed-light; Small.
- (8) Type 3—Cultivation; Outdoor; Medium.
- (9) Type 3A—Cultivation; Indoor; Medium.
- (10) Type 3B—Cultivation; Mixed-light; Medium.
- (11) Type 4—Cultivation; Nursery.

(12) Type 5—Cultivation; Outdoor; Large.

(13) Type 5A—Cultivation; Indoor; Large.

(14) Type 5B—Cultivation; Mixed-light; Large.

(15) Type 6—Manufacturer 1.

(16) Type 7—Manufacturer 2.

(17) Type 8—Testing laboratory.

(18) Type 10—Retailer.

(19) Type 11—Distributor.

(20) Type 12—Microbusiness.

(21) Type 13—Cannabis event organizer.

(b) With the exception of testing laboratory licenses, which may be used to test cannabis and cannabis products regardless of whether they are intended for use by individuals who possesses a physician's recommendation, all licenses issued under this division shall bear a clear designation indicating whether the license is for commercial adult-use cannabis activity as distinct from commercial medicinal cannabis activity by prominently affixing an "A" or "M," respectively. Examples of such a designation include, but are not limited to, "A-Type 1" or "M-Type 1." Except as specifically specified in this division, the requirements for A-licenses and M-licenses shall be the same. For testing laboratories, the department shall create a license that indicates a testing laboratory may test both adult-use and medicinal cannabis.

(c) A license issued pursuant to this division shall be valid for 12 months from the date of issuance. The license may be renewed annually.

(d) The department shall establish procedures for the issuance and renewal of licenses.

SEC. 3. Section 26051.5 of the Business and Professions Code is amended to read:

26051.5. (a) An applicant for a state license issued pursuant to this division to conduct commercial cannabis activity, as defined in Section 26001, shall do all of the following:

(1) Except as provided in subparagraph (G), require that each owner electronically submit to the Department of Justice fingerprint images and related information required by the Department of Justice for the purpose of obtaining information as to the existence and content of a record of state or federal convictions and state and federal arrests, and also information as to the existence and content of a record of state or federal convictions and arrests for which the Department of Justice establishes that the person is free on bail or on their own recognizance pending trial or appeal.

(A) Notwithstanding any other law, the department may obtain criminal history information from the Department of Justice and the Federal Bureau of Investigation for an applicant for any state license under this division, including any license established by a licensing authority, as defined in Section 26001, by regulation pursuant to subdivision (b) of Section 26012.

(B) When received, the Department of Justice shall transmit fingerprint images and related information received pursuant to this section to the Federal Bureau of Investigation for the purpose of obtaining a federal criminal history records check. The Department of Justice shall review the information returned from the Federal Bureau of Investigation and compile and disseminate a response to the licensing authority.

(C) The Department of Justice shall provide a response to the licensing authority pursuant to paragraph (1) of subdivision (p) of Section 11105 of the Penal Code.

(D) The licensing authority shall request from the Department of Justice subsequent notification service, as provided pursuant to Section 11105.2 of the Penal Code, for applicants.

(E) The Department of Justice shall charge the applicant a fee sufficient to cover the reasonable cost of processing the requests described in this paragraph.

(F) Notwithstanding any other law, a licensing authority may request and receive from a local or state agency certified records of all arrests and convictions, certified records regarding probation, and any and all other related documentation needed to complete an applicant or licensee investigation. A local or state agency may provide those records to a licensing authority upon request.

(G) If an owner has previously submitted fingerprint images and related information required by the Department of Justice pursuant to this paragraph in connection with a valid state license issued by a licensing authority, both of the following apply:

(i) The owner shall not be required to submit additional fingerprint images and related information pursuant to this paragraph in connection with a subsequent application for a state license.

(ii) The department shall not consider the owner's criminal history information obtained from the fingerprint images and related information that were previously submitted pursuant to this paragraph when considering whether to issue a subsequent state license.

(2) Provide evidence of the legal right to occupy and use the proposed location and provide a statement from the landowner of real property or that landowner's agent where the commercial cannabis activity will occur, as proof to demonstrate the landowner has acknowledged and consented to permit commercial cannabis activities to be conducted on the property by the tenant applicant.

(3) Provide evidence that the proposed location is in compliance with subdivision (b) of Section 26054.

(4) Provide a statement, signed by the applicant under penalty of perjury, that the information provided is complete, true, and accurate.

(5) (A) (i) For an applicant with 20 or more employees, or an applicant with 10 or more employees that submits an application on or after July 1, 2024, provide a notarized statement that the applicant will enter into, or demonstrate that it has already entered into, and will abide by the terms of a labor peace agreement. On and after July 1, 2024, the department shall not renew a license for a licensee with 10 or more employees unless the licensee provides a statement that the licensee has already entered into and will abide by the terms of a labor peace agreement.

(ii) For an applicant with 10 or more employees but less than 20 employees that has not yet entered into a labor peace agreement, provide a notarized statement as a part of its application indicating that the applicant will enter into and abide by the terms of a labor peace agreement within 60 days of employing its 20th employee, or on or before July 1, 2024, whichever is earlier.

(iii) For an applicant with less than 10 employees that has not yet entered into a labor peace agreement, provide a notarized statement as a part of its application indicating that the applicant will enter into and abide by the terms of a labor peace agreement within 60 days of employing its 10th employee or on or before July 1, 2024, whichever is later.

(iv) Nothing in this paragraph shall be construed to limit the authority of the department to revoke or suspend a license for a violation of this paragraph.

(B) Compliance with the terms of an applicable labor peace agreement is a condition of licensure. A licensee seeking renewal of any license shall attest to the department that it remains in compliance with the terms of any applicable labor peace agreement.

(C) Any labor organization, or any current or former employee of the relevant licensee, may report to the department that a licensee has failed to provide a truthful attestation of compliance with subparagraph (B).

(i) The reporting party shall provide documentation, in a form and manner required by the department, to substantiate their allegation before the department considers it. The department shall collaborate with such agencies as it deems relevant to evaluate the report.

(ii) If the department substantiates the validity of a report made pursuant to this subparagraph, the department may suspend, revoke, place on probation with terms and conditions, or otherwise discipline the license and fine the licensee.

(D) (i) Any labor organization, or any current or former employee of the relevant licensee, may file a complaint with the Agricultural Labor Relations Board that an organization with which a licensee has entered into a labor peace agreement is not a bona fide labor organization.

(ii) The Agricultural Labor Relations Board shall consider all relevant evidence provided or obtained in rendering a decision on whether the entity is a bona fide labor organization and issue a report with its findings no later than ninety (90) days from receiving the complaint.

(iii) If the Agricultural Labor Relations Board determines that the entity is not a bona fide labor organization, the labor peace agreement shall be null and void. The department shall promptly notify all licensees that have signed labor peace agreements with the entity that the entity was found not to be a bona fide labor organization and offer those licensees a

reasonable time period, not to exceed 180 days, to enter into a labor peace agreement with a bona fide labor organization. Failure to enter into a labor peace agreement with a bona fide labor organization after that reasonable time period shall be a violation of this section.

(E) For the purposes of this paragraph, all of the following shall apply:

(i) "Employee" does not include a supervisor.

(ii) "Labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists, in whole or in part, for the purpose of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work for employees.

(iii) "Supervisor" means an individual having authority, in the interest of the applicant, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them or to adjust their grievances, or effectively to recommend such action, if, in connection with the foregoing, the exercise of that authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

(6) Provide the applicant's valid seller's permit number issued pursuant to Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code or indicate that the applicant is currently applying for a seller's permit.

(7) Provide any other information required by the department.

(8) For an applicant seeking a cultivation license, provide a statement declaring the applicant is an "agricultural employer," as defined in the Alatorre-Zenovich-Dunlap-Berman Agricultural Labor Relations Act of 1975 (Part 3.5 (commencing with Section 1140) of Division 2 of the Labor Code), to the extent not prohibited by law.

(9) Pay all applicable fees required for licensure by the department.

(10) Provide proof of a bond to cover the costs of destruction of cannabis or cannabis products if necessitated by a violation of licensing requirements.

(11) (A) Provide a statement, upon initial application and application for renewal, that the applicant employs, or will employ within one year of receiving or renewing a license, one supervisor and one employee who have successfully completed a Cal-OSHA 30-hour general industry outreach course offered by a training provider that is authorized by an OSHA Training Institute Education Center to provide the course. This paragraph shall not be construed to alter or amend existing requirements for employers to provide occupational safety and health training to employees.

(B) An applicant with only one employee shall not be subject to subparagraph (A).

(C) For purposes of this paragraph "employee" has the same meaning as provided in subparagraph (B) of paragraph (5) and "supervisor" has the same meaning as provided in subparagraph (C) of paragraph (5).

(b) An applicant shall also include in the application a detailed description of the applicant's operating procedures for all of the following, as required by the department:

(1) Cultivation.

(2) Extraction and infusion methods.

(3) The transportation process.

(4) Inventory procedures.

(5) Quality control procedures.

(6) Security protocols.

(7) For applicants seeking licensure to cultivate, the source or sources of water the applicant will use for cultivation, as provided in subdivisions (a) to (c), inclusive, of Section 26060.1. For purposes of this paragraph, "cultivation" as used in Section 26060.1 shall have the same meaning as defined in Section 26001. The department shall consult with the State Water Resources Control Board and the Department of Fish and Wildlife in the implementation of this paragraph.

(c) The applicant shall also provide a complete detailed diagram of the proposed premises wherein the license privileges will be exercised, with sufficient particularity to enable ready determination of the bounds of the premises, showing all boundaries, dimensions, entrances and exits, interior partitions, walls, rooms, and common or shared entryways, and include a brief statement or description of the principal activity to be conducted therein, and, for licenses permitting cultivation, measurements of

the planned canopy, including aggregate square footage and individual square footage of separate cultivation areas, if any, roads, water crossings, points of diversion, water storage, and all other facilities and infrastructure related to the cultivation.

(d) Provide a complete list of every person with a financial interest in the person applying for the license as required by the department. For purposes of this subdivision, "persons with a financial interest" does not include persons whose only interest in a licensee is an interest in a diversified mutual fund, blind trust, or similar instrument.

SEC. 4. The sum of five thousand dollars (\$5,000) is hereby appropriated from the Cannabis Control Fund to the Department of Cannabis Control for purposes of implementing this act.

SEC. 5. 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. 6. 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.