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AB-1448 Cannabis: enforcement by local jurisdictions. (2023-2024)

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Assembly Bill No. 1448

CHAPTER 843

An act to amend Section 26038 of the Business and Professions Code, relating to cannabis.

[Approved by Governor October 13, 2023. Filed with Secretary of State October 13, 2023.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1448, Wallis. Cannabis: enforcement by local jurisdictions.

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 within the Business, Consumer Services, and Housing Agency to administer the act, and requires the department to be under the supervision and control of a director.

Under MAUCRSA, a person engaging in commercial cannabis activity without a license is subject to civil penalties, as specified. MAUCRSA requires, in an action for civil penalties brought by the Attorney General, a county counsel, a city attorney, or a city prosecutor, the penalty first be used to reimburse the prosecuting agency for specified costs of bringing the action, with the remainder, if any, to be deposited in the General Fund.

This bill would recast those provisions to require, in an action brought by a county counsel, city attorney, or city prosecutor, the penalty first be used to reimburse the prosecuting agency for specified costs in bringing the action, with 50% of the remainder, if any, paid to the county or city, as applicable, and the other 50% to be deposited into the General Fund.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

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

SECTION 1. Section 26038 of the Business and Professions Code is amended to read:

26038. (a) (1) A person engaging in commercial cannabis activity without a license as required by this division shall be subject to civil penalties of up to three times the amount of the license fee for each violation. Each day of operation shall constitute a separate violation of this section.

(2) (A) A person aiding and abetting unlicensed commercial cannabis activity shall be subject to civil penalties of up to three times the amount of the license fee for each violation, but in no case shall the penalty exceed thirty thousand dollars (\$30,000) for each violation. Each day of operation of unlicensed commercial cannabis activity that a person is found to have aided and abetted shall constitute a separate violation of this section.

(B) For the purposes of this section, in order to prove that a person aided and abetted an unlicensed cannabis activity, all of the following shall be demonstrated:

(i) The person was an owner, officer, controlling shareholder, or in a similar position of authority allowing them to make command or control decisions regarding the operations and management of the unlicensed cannabis activity or the property in which the activity is taking place.

(ii) The person had actual knowledge that the cannabis activity was unlicensed and that the cannabis activity required a license.

(iii) The person provided substantial assistance or encouragement to the unlicensed cannabis activity.

(iv) The person's conduct was a substantial factor in furthering the unlicensed cannabis activity.

(3) (A) A person who has management or control of a commercial property, or a commercial building, room, space, or enclosure, either as an owner, lessee, agent, employee, or mortgagee, who knowingly rents, leases, or makes available for use, with or without compensation, the commercial property, building, room, space, or enclosure for the purpose of the unlicensed commercial cultivation, manufacture, storage, sale, or distribution of cannabis shall be subject to civil penalties of up to ten thousand dollars (\$10,000) for each violation. Each day of violation shall constitute a separate violation of this section.

(B) For purposes of this paragraph, in order to prove that a person knowingly rented, leased, or made available the commercial property for unlawful commercial cannabis activity, it shall be demonstrated that the person had actual knowledge that the cannabis-related activity was for commercial purposes, required a license, and was unlicensed. The presence of a lawful amount of cannabis, cannabis products, or cannabis plants, subject to Sections 11362.1 and 11362.45 of the Health and Safety Code, shall not be evidence of actual knowledge.

(4) In assessing a penalty, a court shall give due consideration to the appropriateness of the amount of the civil penalty with respect to factors the court determines to be relevant, including the following:

(A) The gravity of the violation by the licensee or person.

(B) The good faith of the licensee or person.

(C) The licensee's or person's history of previous violations.

(D) Whether, and to what extent, the licensee or person profited from the unlicensed cannabis activity.

(5) Cannabis associated with a violation described in this subdivision may be destroyed in accordance with Section 11479 of the Health and Safety Code. The person in violation shall be responsible for the cost of the destruction of cannabis associated with their violation.

(b) An action for civil penalties brought against a person pursuant to this division shall not be commenced unless the action is filed within three years from the date of the violation.

(c) (1) Actions for civil penalties pursuant to paragraph (1) of subdivision (a) may be brought by the Attorney General on behalf of the people, on behalf of the department, or on behalf of the participating agency, or by a city or county counsel or city prosecutor.

(2) Actions for civil penalties pursuant to paragraph (2) of subdivision (a) shall be brought exclusively by the Attorney General on behalf of the people, on behalf of the department, or on behalf of the participating agency, or by a city or county counsel or city prosecutor in a city or county having a population in excess of 750,000.

(3) Actions for civil penalties pursuant to paragraph (3) of subdivision (a) shall be brought exclusively by the Attorney General on behalf of the people, on behalf of the department, or on behalf of the participating agency, or by a city or county counsel, or city prosecutor.

(d) (1) All civil penalties imposed and collected pursuant to this section by a court shall be deposited into the General Fund except as provided in this subdivision.

(2) If an action for civil penalties is brought against a person pursuant to this division by the Attorney General on behalf of the people or on behalf of the department or a participating agency, the penalty shall first be used to reimburse the Attorney General and the department or the participating agency for the costs of investigating and prosecuting the action, including expert fees and reasonable attorney's fees, with the remainder, if any, to be deposited into the General Fund.

(3) If the action is brought by a county counsel, the penalty shall first be used to reimburse the county counsel for the costs of bringing the action for civil penalties, with one-half of the remainder, if any, to be paid to the treasurer of the county in which the

judgment was entered and one-half deposited into the General Fund.

(4) If the action is brought by a city attorney or city prosecutor, the penalty collected shall first be used to reimburse the city attorney or city prosecutor for the costs of bringing the action for civil penalties, with one-half of the remainder, if any, to be paid to the treasurer of the city in which the complaining attorney has jurisdiction and one-half deposited into the General Fund.

(e) Notwithstanding subdivision (a), criminal penalties shall continue to apply to an unlicensed person engaging in commercial cannabis activity in violation of this division.

(f) (1) This section does not limit, preempt, or otherwise affect any other state or local law, rule, regulation, or ordinance applicable to the conduct described in subdivision (a), or otherwise relating to commercial cannabis activities.

(2) This section is meant to further the intent of the Control, Regulate and Tax Adult Use of Marijuana Act of 2016 (AUMA), which allows local governments to reasonably regulate the cultivation of nonmedical cannabis for personal use by adults 21 years of age and older through zoning and other local laws.