

Date of Hearing: May 3, 2023

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

AB 1684 (Maienschein) – As Amended March 9, 2023

SUBJECT: Local ordinances: fines and penalties: cannabis.

SUMMARY: Expands existing law that allows local agencies to immediately impose administrative fines or penalties for specified violations that exist as a result of the illegal cultivation of cannabis to also include the illegal manufacturing, processing, distribution, or retail sale of cannabis. Specifically, **this bill:**

- 1) Revises and recasts existing provisions of law that allow local agencies to immediately impose administrative fines or penalties for specified violations that exist as a result of the illegal cultivation of cannabis to allow a local agency to adopt an ordinance that may declare commercial cannabis activity undertaken without a license as required by Division 10 (commencing with Section 26000) of the Business and Professions Code to be a public nuisance and provide for the immediate imposition of administrative fines or penalties for the violation of local zoning restrictions or building, plumbing, electrical, or other similar structural, or health and safety requirements if the violation exists as a result of, or to facilitate, the illegal cultivation, manufacturing, processing, distribution, or retail sale of cannabis.
- 2) Provides that the provisions above shall not be construed to apply to cannabis cultivation that is lawfully undertaken pursuant to Section 11362.1 of the Health and Safety Code or to commercial cannabis activity undertaken pursuant to a license under Division 10 (commencing with Section 26000) of the Business and Professions Code and applicable state regulations.
- 3) Allows, if a local agency adopts an ordinance that provides for the immediate imposition of administrative fines or penalties as outlined above, the ordinance to impose the administrative fines and penalties upon the property owner and upon each owner of the occupant business entity engaging in unlicensed commercial cannabis activity and may hold them jointly and severally liable for the administrative fines and penalties.
- 4) Prohibits administrative fines or penalties that are immediately imposed pursuant to an ordinance adopted under the provisions outlined above from exceeding \$1,000 per violation and \$10,000 per day. This provision shall not be construed to limit the immediate imposition of larger fines that are otherwise authorized by applicable law or to limit administrative fines or penalties that are imposed after notice and a reasonable time to correct pursuant to existing law, as specified.
- 5) Requires an ordinance adopted pursuant to the provisions outlined above to provide for a reasonable period of time for the correction or remedy of the violation prior to the imposition of administrative fines or penalties, as specified, if all of the following are true:
 - a) A tenant is in possession of the property that is the subject of the administrative action.

- b) The rental property owner or agent can provide evidence that the rental or lease agreement prohibits the commercial cannabis activity.
 - c) The rental property owner or agent did not know the tenant was illegally engaging in commercial cannabis activity and no complaint, property inspection, or other information caused the rental property owner or agent to have actual notice of the illegal commercial cannabis activity.
- 6) Allows a local agency that passes an ordinance pursuant to the provisions outlined above to refer cases involving unlicensed commercial cannabis activity to the Attorney General to undertake civil enforcement action pursuant to Chapter 5 (commencing with Section 17200) of Part 2 of Division 7 of, or Section 26038 of, the Business and Professions Code or any other applicable law.

FISCAL EFFECT: None.

COMMENTS:

- 1) **Author's Statement.** According to the author, "The overwhelming majority of all cannabis cultivation, manufacturing, and retail sales in the state remains unlicensed. Cannabis goods that make their way to consumers through illegal channels come from businesses that do not comply with applicable cannabis safety and testing requirements, environmental laws, labor and employment laws, building and fire code requirements, or pay applicable taxes and license fees. Unlicensed commercial cannabis activity poses significant danger to the public, to the environment, and to the viability of the legal marketplace.

"AB 1684 allows for increased administrative enforcement against unlicensed commercial cannabis activities at the local (level) and (creates) opportunities for greater cooperation between local jurisdictions and the Office of the Attorney General in reducing and eliminating unlicensed commercial cannabis activities. Encouraging an administrative enforcement approach will create a more efficient means to discourage and eradicate unlicensed commercial cannabis activities, while avoiding many of the harms inherent in traditional criminal enforcement against illegal cannabis activities."

- 2) **Background.** A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws. This "police power" provides the right to adopt and enforce zoning regulations, as long as they do not conflict with state laws.

Current law allows counties and cities to establish ordinances, and makes violations of ordinances misdemeanors, unless the county or city makes them infractions. The violation of an ordinance may be prosecuted by county or city authorities in the name of the people of the State of California, or redressed by civil action. Current law outlines the following fine structure for ordinance violations, and for building and safety code violations, that are determined to be infractions:

Number of violations within specified time periods	Amount of fine for ordinance violations that are infractions	Amount of fine for building and safety code violations that are infractions
First violation	Fine does not exceed \$100	Fine does not exceed \$100
Second violation within one year of first violation	Fine does not exceed \$200	Fine does not exceed \$500
Third violation within one year of first violation	Fine does not exceed \$500	Fine does not exceed \$1,000

- 3) **Administrative Alternative.** As an alternative to the court process, a local agency can make any violation of any of its ordinances subject to an administrative fine or penalty. This provision was enacted in 1995 to relieve the courts of some of these cases and offer local governments a faster, easier, and less costly means of pursuing remedies for ordinance violations.

In order to make an ordinance violation subject to an administrative fine or penalty, the local agency must adopt an ordinance specifying the administrative procedures that govern the imposition, enforcement, collection, and administrative review of the fines or penalties. A person may appeal such fines or penalties in Superior Court within 20 days after service of a final administrative order or decision. Local agencies must pursue a civil court proceeding to collect fines and penalties that are not secured via the administrative process.

Current law requires these administrative procedures to grant a person responsible for a continuing violation a reasonable time to remedy the violation before the local agency may impose fines or penalties when the violation pertains to building, plumbing, electrical, or other similar structural and zoning issues that do not create an immediate danger to health or safety.

- 4) **Nuisance Abatement.** Both cities and counties are allowed, via ordinance, to establish administrative procedures for abating nuisances that include the ability to recover abatement costs via special assessments and abatement liens. A public nuisance is generally defined as “Anything which is injurious to health, or is indecent, or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property by an entire community or neighborhood, or by any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin, or any public park, square, street, or highway.” In addition, a city’s legislative body may declare what constitutes a nuisance via ordinance.
- 5) **Fines and Penalties for Cannabis Cultivation.** In response to illegal cannabis growing operations around the state, the Legislature approved AB 2164 (Cooley), Chapter 316, Statutes of 2018. AB 2164 allowed local agencies, via ordinance, to immediately impose administrative fines or penalties for the violation of building, plumbing, electrical, or other similar structural, health and safety, or zoning requirements if the violation exists as a result of, or to facilitate, the illegal cultivation of cannabis. The bill required such an ordinance to

provide for a reasonable period of time for the correction or remedy of the violation before imposing administrative fines or penalties if all of the following are true:

- a) A tenant is in possession of the property that is the subject of the administrative action.
 - b) The rental property owner or agent can provide evidence that the rental or lease agreement prohibits the cultivation of cannabis.
 - c) The rental property owner or agent did not know the tenant was illegally cultivating cannabis and no complaint, property inspection, or other information caused the rental property owner or agent to have actual notice of the illegal cannabis cultivation.
- 6) **Bill Summary.** This bill expands the provisions of AB 2164 by allowing local agencies, via ordinance, to immediately impose administrative fines or penalties for the violation of local zoning restrictions or building, plumbing, electrical, or other similar structural, or health and safety requirements if the violation exists exist as a result of the illegal manufacturing, processing, distribution, or retail sale of cannabis. The bill specifies that such an ordinance may declare commercial cannabis activity undertaken without a license pursuant to existing law to be a public nuisance. The bill specifies that its provisions shall not be construed to apply to cannabis cultivation that is lawfully undertaken pursuant to existing law or to commercial cannabis activity undertaken pursuant to a license.

This bill allows such an ordinance to impose the administrative fines and penalties upon the property owner, and upon each owner of the occupant business entity engaging in unlicensed commercial cannabis activity. The bill prohibits the fines and penalties from exceeding \$1,000 per violation and \$10,000 per day.

This bill maintains the existing requirement to provide for a reasonable period of time for the correction or remedy of a violation before fines or penalties are imposed, if all of the following are true:

- d) A tenant is in possession of the property that is the subject of the administrative action.
- e) The rental property owner or agent can provide evidence that the rental or lease agreement prohibits the commercial cannabis activity.
- f) The rental property owner or agent did not know the tenant was illegally engaging in commercial cannabis activity and no complaint, property inspection, or other information caused the rental property owner or agent to have actual notice of the illegal commercial cannabis activity.

This bill allows a local agency that passes such an ordinance to refer cases involving unlicensed commercial cannabis activity to the Attorney General to undertake civil enforcement action.

This bill is sponsored by the author.

- 7) **Arguments in Support.** Attorney General Rob Bonta, in support, writes, “Existing law allows local jurisdictions, by the adoption of an ordinance, to declare what constitutes a nuisance and to determine what violations of local law may be subject to abatement and administrative fines or penalties. In most jurisdictions, the very existence of an illegal, non-conforming use, including any illegal commercial cannabis operation, is a per se public nuisance that may be subject to enforcement action. While existing law authorizes the immediate imposition of fines for illegal cannabis cultivation, AB 1684 would expand the power of local jurisdictions to immediately impose fines against any type of unlicensed commercial cannabis activity. This will have a greater deterrent effect against those who might otherwise use or allow their property to be used for unlicensed cannabis activity. This proposal is designed to encourage local enforcement agencies to undertake more efficient enforcement strategies and to leverage existing administrative enforcement and cost recovery mechanisms to combat illegal cannabis.

“AB 1684 also encourages communication between local jurisdictions and the Attorney General’s Office to create additional opportunities for civil enforcement action under Business and Professions Code section 26038 and/or section 17200. It does this by expressly stating that cities and counties can refer cases directly to the Office of the Attorney General for civil enforcement actions, strengthening collaboration as an effective approach towards combatting the illicit cannabis market.

“Additionally, AB 1684 places a limit on fines that may be immediately imposed to ensure that fines are applied uniformly across the state. While the Government Code places no express cap on fines that may be imposed by county ordinances, there are limits on the amounts of fines that may be imposed by cities and for misdemeanors generally (a violation of a city or county ordinance is a misdemeanor unless made an infraction by local ordinance). Fairness and the principles of substantive due process require that fines imposed for misdemeanor violations of a county ordinance should be subject to the same limitations. This is particularly the case where fines are immediately imposed. The overwhelming majority of counties have limits on fines that may be imposed pursuant to Government Code section 53069.4 that are more stringent than the cap on immediately imposed fines contained in this bill. Finally, AB 1684 would not restrict the amount of fines that a local jurisdiction could impose after providing an opportunity to correct the violation and where the period for voluntary compliance has passed. Ultimately, this provision of the bill is intended to assist local jurisdictions in achieving expedited enforcement against unlicensed commercial cannabis operators, and at the same time, protect against the imposition of excessive fines.

“California has the largest safe, legal, and regulated cannabis market in the world, but, unfortunately, illegal and unlicensed cannabis operations continue to proliferate. This important bill will encourage an administrative enforcement approach that will create a more efficient means to discourage and eradicate unlicensed commercial cannabis activities, while avoiding many of the harms inherent in traditional criminal enforcement.” (*citations omitted*)

- 8) **Arguments in Opposition.** California NORML writes, “We write in opposition to AB 1864 (Maienschein). This bill seeks to broaden a bill that should never have become law, AB 2164 (2017/18). As the Senate Floor analysis for that bill stated:

‘AUMA makes unlicensed commercial cannabis activity a crime punishable by civil penalties of up to three times the cost of a license per day of violation. State regulations

provide a tiered system of penalty assessment that take into account multiple factors when assessing fines such as the nature and severity of the criminal act, prior disciplinary record, and actual or potential harm to the public, among others. However, fines can be imposed above these amounts up to the maximum under the law, allowing for fines for illegal cultivation to be assessed at over \$210,000 per day. Even the smallest operations can be assessed over \$3,600 per day. These fines are in addition to criminal prosecution, if necessary... It is unclear whether the extra fines authorized by this bill will significantly change the behavior of scofflaws. In addition, it is unclear why violations associated with illegal cannabis cultivation should be treated differently from the same violations that stem from another cause. Is the additional authority in AB 2164 needed?’

“For every other crime, the law requires administrative procedures to grant a person responsible for a continuing violation a reasonable time to remedy the violation before the local agency may impose fines or penalties when the violation pertains to building, plumbing, electrical, or other similar structural and zoning issues that do not create an immediate danger to health or safety. However, AB 2164 erased those procedures for the crime of cannabis cultivation only. Since the law passed, our legal committee attorneys have reported numerous cases of small-time growers being fined hundreds of thousands of dollars, with the fines beginning on the day of notice, rather than the violators being given a period of time in which to abate the violation.

“AB 1684 would continue to allow local governments to fine immediately for cannabis cultivation, while limiting fines to \$1000 or \$10,000 per day. We have seen numerous instances where such fines are imposed per cannabis plant, so that a 10-plant garden in violation of a local ordinance could be charged \$1000 per plant and \$10,000 per day, starting on the day notice is issued. Although Prop. 64 protected people’s right to grow 6-plant cannabis gardens, local ordinances throughout the state have severely limited where those plants could be grown, leaving people with only a single plant in violation of local ordinances and subject to fines.

“AB 1684 is one of numerous bills this year seeking to give law enforcement and local governments more tools to prosecute and fine unlicensed cannabis activities, on top of the many that already exist. I think everyone agrees that the real problem, as described in the press accounts cited in the rationale for these bills, are grows with thousands of plants on acres of property that are breaking environmental and worker protection laws, as well as being in violation of laws requiring licensing of cannabis cultivation. The problem with this bill is that it isn’t directed at such large grows, and rather is likely to be applied to personal gardens, small-time operators who can’t afford to get licensed in our current overregulated scheme, those who may be growing for their or others’ medical use, which local governments have sought to clamp down on despite existing protections in state law for medical gardens.

“One concern we have would be addressed by adding the word ‘unlicensed’ or ‘illegal’ before ‘commercial cannabis activity’ in (E)(ii):

(E) An ordinance ~~that provides for the immediate imposition of administrative fines or penalties as allowed in~~ adopted pursuant to subparagraph (B), ~~that ordinance~~ (B) shall provide for a reasonable period of time for the correction or remedy of the violation prior to the imposition of administrative fines or penalties as required in subparagraph (A) if all of the following are true:

- (i) A tenant is in possession of the property that is the subject of the administrative action.
- (ii) The rental property owner or agent can provide evidence that the rental or lease agreement prohibits the ~~cultivation of cannabis~~. **[UNLICENSED / ILLEGAL]** commercial cannabis activity.

“This would help insure that licensed cannabis activities and innocent landowners are not affected.”

REGISTERED SUPPORT / OPPOSITION:

Support

Attorney General Rob Bonta

Opposition

California NORML

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