

RESOLUTION 11-10-2017

DIGEST

Cannabis Delivery: Ensuring Equal Access

Amends Business and Professions Code section 26200 to resolve any potential conflict with Business and Professions Code section 26090 and allow for equal access to cannabis.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Business and Professions Code section 26200 to resolve any potential conflict with Business and Professions Code section 26090 and allow for access to cannabis. This resolution should be approved in principle because it protects individuals who suffer from conditions that limit their mobility and rely on delivery services to receive cannabis or cannabis products.

Cannabis use and business regulations have been updated several times over the last two years, most recently by Senate Bill No. 94, Cannabis: Medicinal and Adult Use. Under the current law, Business and Professions Code section 26200 appears to conflict with section 26090. Business and Professions Code section 26090, subdivision (c), states that a “local jurisdiction shall not prevent delivery of marijuana or marijuana products on public roads by a licensee acting in compliance with this division and local law as adopted under Section 26200.” Section 26200, however, allows local jurisdictions to “completely prohibit the establishment or operation of one or more types of businesses licensed under this division within the local jurisdiction.” While local jurisdictions should not and will not be required to allow dispensaries and or other cannabis businesses to be physically established and operate out of the locality, local jurisdictions should not be allowed to prevent its residents from receiving cannabis deliveries. This resolution amends section 26200, explicitly limiting local jurisdictions from preventing delivery of marijuana or marijuana products on public roads. This would allow for equal treatment for all cannabis users, including individuals who suffer from conditions that limit their mobility and rely on delivery services in order to receive marijuana or marijuana products.

It is worth noting that one of the major reasons for California’s regulation of cannabis, including Proposition 64 which decriminalized its use, is that cannabis cultivation, distribution, and use is already widespread. There is no reason to believe that localities can, or would actually stop, their residents who are interested in purchasing cannabis from receiving cannabis. Certainly, localities that seek to prevent legal businesses from delivering to its residents, are indirectly favoring the black-market solutions previously in place.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Business and Professions Code section 26200 to read as follows:

1 § 26200

2 (a) Nothing in this division shall be interpreted to supersede or limit the authority of a
3 local jurisdiction to adopt and enforce local ordinances to regulate businesses licensed under this
4 division, including, but not limited to, local zoning and land use requirements, business license
5 requirements, and requirements related to reducing exposure to secondhand smoke, or to
6 completely prohibit the establishment or operation of one or more types of businesses licensed
7 under this division within the local jurisdiction; provided however, that such an ordinance does
8 not prevent delivery of marijuana or marijuana products on public roads.

9 (b) Nothing in this division shall be interpreted to require a licensing authority to
10 undertake local law enforcement responsibilities, enforce local zoning requirements, or enforce
11 local licensing requirements.

12 (c) A local jurisdiction shall notify the bureau upon revocation of any local license,
13 permit, or authorization for a licensee to engage in commercial marijuana activity within the
14 local jurisdiction. Within 10 days of notification, the bureau shall inform the relevant licensing
15 authorities. Within 10 days of being so informed by the bureau, the relevant licensing authorities
16 shall commence proceedings under Chapter 3 (commencing with Section 26030) to determine
17 whether a license issued to the licensee should be suspended or revoked.

18 (d) Notwithstanding paragraph (1) of subdivision (a) of Section 11362.3 of the Health
19 and Safety Code, a local jurisdiction may allow for the smoking, vaporizing, and ingesting of
20 marijuana or marijuana products on the premises of a retailer or microbusiness licensed under
21 this division if:

22 (1) Access to the area where marijuana consumption is allowed is restricted to persons 21
23 years of age and older;

24 (2) Marijuana consumption is not visible from any public place or non-age restricted
25 area; and

26 (3) Sale or consumption of alcohol or tobacco is not allowed on the premises.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Bay Area Lawyers for Individual Freedom

STATEMENT OF REASONS

The Problem: This law appears to conflict with Business and Professions Code section 26090, subdivision (c), which states that a “local jurisdiction shall not prevent delivery of marijuana or marijuana products on public roads by a licensee acting in compliance with this division and local law as adopted under Section 26200.” It creates an ambiguity as to whether or not an individual who lives in a jurisdiction that has banned dispensaries from physically operating within its boundaries is capable of receiving a cannabis delivery from a business lawfully registered and physically operating out of another jurisdiction.

As currently drafted, Business and Professions Code section 26200, subdivision (a), creates an ambiguity when viewed alongside Business and Professions Code section 26090, subdivision (c). Business and Professions Code section 26200, subdivision (a), is moot as to whether a location (“Location A”) can, under Section 26200, prevent "all" deliveries from anywhere if it forbids local deliveries within Location A, or if a license issued in another location (Location B, for example) will satisfy Section 26090.

The Solution: This resolution would resolve the ambiguity created by Business and Professions Code section 26090, subdivision (c), and section 26200, subdivision (a), making it clear that local jurisdictions may regulate cannabis businesses so long as such regulation does not prevent delivery of marijuana or marijuana products on public roads, thereby allowing for equal treatment for all cannabis users, including individuals who suffer from conditions that limit their mobility and rely on delivery services in order to receive marijuana or marijuana products.

IMPACT STATEMENT

This resolution does not affect any other statute or case law other than those expressly identified.

CURRENT OR PRIOR RELATED LEGISLATION

AB 64 (Cooley, Jones-Sawyer, Lackey, and Wood) 2016 - Cannabis: medical and nonmedical: regulation and advertising – Filed with Secretary of State on December 12, 2016.

AB 266 (Bonta) - 2015- Medical Marijuana - Filed by Secretary of State on October 9, 2015

AB 243 (Wood) - 2015 - Medical Marijuana - Filed with Secretary of State on October 09, 2015.

SB 243 (McGuire) - 2016 Medical Marijuana - Filed with Secretary of State on October 09, 2015

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