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**SENATE COMMITTEE ON PUBLIC SAFETY**

**Senator Nancy Skinner, Chair**

**2017 - 2018 Regular**

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**Bill No:** AB 873      **Hearing Date:** June 12, 2018

**Author:** Lackey

**Version:** April 9, 2018

**Urgency:** No

**Consultant:** GC

**Fiscal:** Yes

**Subject:** *Department of Food and Agriculture: Commercial Cannabis Activity Inspectors: Peace Officer Duties*

## **HISTORY**

Source: Author

Prior Legislation: AB 900 (Benoit), Ch. 190, Stats. of 2005

Support: Unknown

Opposition: None known

Assembly Floor Vote: 77 - 0

## **PURPOSE**

*The purpose of this bill is to specify that persons employed by the California Department of Food and Agriculture (CDFA) and designated by the CDFA Secretary as an investigator whose primary duty is enforcement of commercial cannabis activity is not a peace officer, but has the powers of arrest of a peace officer and the power to serve warrants if they meet specified training requirements.*

*Existing law defines who is a peace officer and specifies the powers of peace officers. (Pen. Code, § 830.11)*

*Existing law specifies categories of people are not peace officers but are authorized to exercise the powers of arrest of a peace officer and the power to serve warrants, as specified, if they receive a course in the exercise of those powers. Included in this classification is a person employed by the Department of Food and Agriculture and designated by the Secretary of Food and Agriculture as an investigator, investigator supervisor, or investigator manager, provided that the person's primary duty is enforcement of, and investigations relating to, specified provisions of law under the purview of the department. (Pen Code, § 830.11)*

*Existing law provides that all persons authorized to exercise powers of arrest of a peace officer do get limited liability for lawful arrests. (Penal Code 847.)*

*Existing law* further provides that:

- 1) An arrest is taking a person into custody, in a case and in the manner authorized by law and that an arrest may be made by a peace officer or a private person. (Penal Code, § 834.)
- 2) An arrest is made by an actual restraint of the person, or by submission to the custody of an officer. The person arrested may be subjected to such restraint as is reasonable for his or her arrest and detention. (Penal Code, § 835.)
- 3) A private person may arrest another person for a public offense committed or attempted in his or her presence, when the person arrested has committed a felony regardless of whether it was committed in his or her presence, and when a felony has been committed and he or she has reasonable cause for believing the person to be arrested has committed it. (Penal Code, § 837.)
- 4) With limited exceptions, a peace officer may arrest a person when the officer has reasonable cause to believe the person to be arrested has committed a public offense in the officer's presence, when the person arrested has committed a felony regardless of whether it was committed in the officer's presence, and when the officer has reasonable cause to believe the person to be arrested has committed a felony. (Penal Code, § 836.)

*Existing law* provides the following:

- 1) Creates the California Department of Food and Agriculture (CDFA), which has specified duties and functions, including preventing fraud and deception in packing or labeling, or in any phase of the marketing, of any agricultural product which is governed by the Food and Agriculture Code; the labeling and marketing of any commodity that is governed by the code, which is sold to producers for use in the production of crops; and other enumerated duties. (Food and Ag. Code, § 101 et seq.)
- 2) Provides that any person in whom the enforcement of any provision of the Food and Agriculture code is vested shall have the authority, as a public officer, to arrest, without a warrant, another person whenever such officer has reasonable cause to believe that the person to be arrested has, in his presence, violated any provision of this code, the violation of which is declared to be a public offense. If such violation is a felony, or if the arresting officer has reasonable cause to believe that the person to be arrested has violated a provision of this code which is declared to be a felony, although no felony has in fact been committed, he or she may make an arrest although the violation or suspected violation did not occur in his presence. (Food and Ag. Code, § 7.)
- 3) Provides that the Department of Food and Agriculture shall enforce provisions of law pertaining to weights and measures, as specified. (Bus. and Prof. Code, § 12001 et seq.)

*This bill* adds to the classification of persons who are not peace officers but who are authorized to exercise the powers of arrest of a peace officer and the power to serve warrants, if trained as specified, a person employed by the Department of Food and Agriculture and designated by the Secretary of Food and Agriculture as an investigator, investigator supervisor, or investigator manager, provided that the person's primary duty is enforcement of, and investigations relating to, commercial cannabis activity.

## COMMENTS

### 1. Need for This Bill

According to the author:

Under the provision of the (Medicinal and Adult-Use Cannabis Regulation and Safety Act ) MAUCRSA enacted through SB 94, the CDFA is responsible for establishing a commercial cannabis cultivation licensing program for both medicinal and adult-use cannabis cultivation.

However, PC Section 830.11(a)(7) does not include Business and Professions Code (BPC) Division 10 (commencing with Section 26000) which allows the Department and its investigators to exercise their application and execution of a search warrant and arrest powers for violations of the program they are mandated to regulate.

If a CDFA investigator observes violations that merit probable cause for a search warrant application without the inclusion of BPC Division 10 into PC 830.11(a)(7), they would not be able to develop, present to a magistrate, secure or serve a search warrant, resulting in the halt of the Department's investigation. Halting an investigation may result in harm to the public, diversion of cannabis to the black-market, and hamper the Department's ability to pursue disciplinary actions against noncompliant or fraudulent licensed cultivators.

While lead responsibility for pursuing criminal investigation and prosecution of illegal commercial cannabis cultivation resides with law enforcement (i.e., Peace Officers), it is critical for CDFA investigators to effectively coordinate and support their efforts to protect the legal/licensed commercial cannabis marketplace.

This proposal is consistent with the Governor's Office policy and priority of protecting the health and safety of the citizens of California and the environment. It is in accordance with the primary mission of CDFA, which is to promote and protect a safe and healthy food supply and to enhance local and global agricultural trade, through efficient management, innovation and sound science, with a commitment to environmental stewardship. The Legislature clearly demonstrated its support for protecting Californians by recognizing the adverse impacts to the public health and safety of the citizens of California, and to the environment associated with noncompliant or fraudulent licensed cannabis cultivators.

### 2. Medical Cannabis Regulation and Safety Act (MCRSA)

SB 94 (Budget), Chapter 27, Statutes of 2017 was the cannabis trailer bill for the Budget Act of 2017. The bill established a single system of administration for cannabis laws in California. It contained changes related to the Budget Act of 2017 that were necessary for state licensing entities to implement a regulatory framework pursuant to the Medical Cannabis Regulation and Safety Act (MCRSA), established by AB 266 (Bonta, Chapter 689, Statutes of 2015), AB 243 (Wood, Chapter 688, Statutes of 2015), SB 643 (McGuire, Chapter 719, Statutes of 2015), and SB 837 (Committee on Budget and Fiscal Review, Chapter 32, Statutes of 2016), and the Adult Use of Marijuana Act (AUMA) of 2016 (Proposition 64). The bill conformed MCRSA and AUMA into a single system that prioritizing consumer safety, public safety and tax compliance.

Among other things, the bill created agricultural cooperatives, a method for collecting and remitting taxes, a process for testing and packaging, and a process for collecting data related to driving under the influence.

According to the author, the MCRSA failed to authorize CDFA to have authority to pursue criminal investigations and to enforce the governor's priority of protection the health and safety of Californians and the environment by promoting a safety and healthy food supply.

### **3. POST Organizational Study**

Organizational studies are conducted by POST with respect to public officers and feasibility studies are conducted by POST with respect to peace officers. CDFA contracted with POST to conduct a management review of its investigative programs. In September 2003, POST completed the organizational study of the CDFA. In that study, POST recommended that the CDFA "seek legislative amendments to Penal Code Section 803.11 to add CDFA investigators, and seek legal clarification of the powers of a public officer and training required."

The report went on to say:

CDFA investigators are designated as public officers...and are granted the authority to make arrests, without a warrant or issue a citation and release the violator if the offense is committed in their presence or if the offense is a felony, arrest on probable cause...POST staff found that investigators do in fact conduct activities that are considered hazardous during the course of an investigation, and that there have been threats, in some cases near assaults and, unfortunately in one instance, a death...[T]he authority already given CDFA investigators, as public officers, in the Food and Agriculture Code (FAC) and the Business and Professions Code (BPC) is very similar to that of Penal Code Section 830.11. There is no training requirement for public officers in the FAC or the BPC. All investigators agree they do not make physical arrests - they call the local law enforcement agency to assist them in making arrests if it is necessary. Investigators also conduct investigations that result in the need for a search warrant to obtain necessary evidence.

...Although the law in the FAC and the BPC cited above provides the authority to make arrests and issue citations, there is no consistency with the [CDFA] regarding this authority. Some branches allow investigators to issue citations, which is an arrest with a release, while others do not. . . . Several investigators have completed the course prescribed in Penal Code Section 832 at their own expense, while other investigators do not have the training. In order to diminish the exposure to liability, all investigators should be required to complete a course in arrest, search, and seizure pursuant to Penal Code Section 832.

If an investigator has not completed the training, he/she should not be allowed to issue citations until the prescribed training is completed... All investigators have indicated they are hampered in their ability to perform effective investigations because they do not have access to the criminal history of those individuals they are investigating. Access to criminal history information is usually limited to peace officers; however, Penal Code Section...[830.11(c)] enumerates those persons authorized to make arrests and serve warrants in the course and within the scope of their employment, providing they receive a course in the exercise of those powers

pursuant to Penal Code Section 832. If the persons are enumerated in Penal Code Section 830.11, they are entitled to access to criminal histories the same as peace officers. An amendment to Penal Code Section 830.11 to include CDFA investigators would provide access to criminal history information and would also provide authority to serve warrants. The FAC and the BPC do not grant public officers the authority to serve warrants.

...The addition of CDFA investigators to Penal Code Section 830.11 would expand the present capabilities of CDFA investigators, and increase their effectiveness and efficiency in conducting investigations. In addition, it would reduce the potential for liability that now exists. Even though the statutes provide the authority to arrest, CDFA should adopt a written policy that requires a uniformed officer's presence in situations requiring a peace officer, such as an arrest or service of a warrant. The full peace officer support will greatly reduce the probability of resistance and potential injury to investigators.

Committee staff has conferred with POST on the provisions of the present bill and they do not have an objection to the provisions of this legislation.

**-- END --**