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# SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

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**Bill No:** SB 820                      **Hearing Date:** April 25, 2023  
**Author:** Alvarado-Gil  
**Version:** April 10, 2023  
**Urgency:** No                                      **Fiscal:** Yes  
**Consultant:** AB

**Subject:** *Cannabis: enforcement: seizure of property*

## HISTORY

**Source:** Rural County Representatives of California

**Prior Legislation:** AB 2728 (Smith, 2022), not heard in Senate Judiciary  
AB 1138 (B. Rubio), Ch. 530, Stats. of 2021  
AB 2122 (B. Rubio, 2020), not heard in Senate Judiciary  
AB 2094 (Jones-Sawyer, 2020), not heard in Assembly B&P  
AB 2866 (Cooper, 2018), not heard in Assembly Public Safety  
SB 443 (Mitchell), Ch. 831, Stats. of 2016

**Support:** Peace Officers Research Association of California (PORAC); Rural County Representatives of California (RCRC)

**Opposition:** Drug Policy Alliance; Ella Baker Center for Human Rights; California NORML; San Francisco Public Defender

## PURPOSE

*The purpose of this bill is to authorize the Department of Cannabis Control or any local jurisdiction to seize specified property where unlicensed commercial cannabis activity is conducted and any vehicles used to conceal or transport cannabis products for a person engaging in that conduct. The bill also establishes related notice requirements and provides for forfeiture proceedings.*

*Existing law* enacts the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA) to provide for a comprehensive regulatory framework for the cultivation, distribution, transport, storage, manufacturing, processing, and sale of medicinal and adult-use cannabis. (Business and Professions Code (BPC) §§ 26000 *et seq.*)

*Existing law* Establishes the Department of Cannabis Control (DCC) within the Business, Consumer Services, and Housing Agency (previously established as the Bureau of Cannabis Control, the Bureau of Marijuana Control, the Bureau of Medical Cannabis Regulation, and the Bureau of Medical Marijuana Regulation), for purposes of administering and enforcing MAUCRSA. (BPC § 26010)

*Existing law* provides for twenty total types of cannabis licenses including subtypes for cultivation, manufacturing, testing, retail, distribution, and microbusiness; requires each licensee except for testing laboratories to clearly designate whether their license is for adult-use or medicinal cannabis. (BPC § 26050)

*Existing law* establishes grounds for disciplinary action against cannabis licensees, including failures to comply with MAUCRSA as well as local laws and ordinances, and provides that the DCC may suspend, revoke, place on probation, or otherwise discipline licensees. (BPC §§ 26030, 26031)

*Existing law* authorizes the DCC to issue a citation to a licensee or unlicensed person for violating MAUCRSA or regulations adopted pursuant to MAUCRSA, and allows the Department to assess an administrative fine of up to \$5,000 per violation by a licensee and up to \$30,000 per violation by an unlicensed person. (BPC § 26031.5)

*Existing law* provides that the actions of a licensee, its employees, and its agents are not unlawful under state law and shall not be an offense subject to arrest, prosecution, or other sanction under state law, or be subject to a civil fine or be a basis for seizure or forfeiture of assets under state law if they are all of the following:

- Permitted pursuant to a state license
- Permitted pursuant to a local authorization, license or permit issued by the local jurisdiction
- Conducted in accordance with specified requirements and regulations (BPC § 26032(a).)

*Existing law* provides that the actions of a person who, in good faith, allows his or her property to be used by a licensee, its employees, and its agents, as permitted pursuant to a state license and, if required by the applicable local ordinances, a local license or permit, are not unlawful under state law and shall not be an offense subject to arrest, prosecution, or other sanction under state law, or be subject to a civil fine or be a basis for seizure or forfeiture of assets under state law. (BPC § 26032(b).)

*Existing law* provides that a person engaging in commercial activity without a state license as required by existing law shall be subject to civil penalties of up to three times the amount of the license fee for each violation, as specified. (BPC § 26038.)

*Existing law* provides that a peace officer, including a peace officer with the DCC, may seize cannabis and cannabis products in specified circumstances. (BPC § 26039.4.)

*Existing law* generally provides for seizure and forfeiture of property related to alcoholic beverages. (BPC §25350 et. seq.)

*Existing law* specifies which alcoholic beverages and related instruments may be seized by the government, and provides that the Department of Alcoholic Beverage Control may seize any implements, instruments, vehicles, and personal property in the place or building, or within any yard or enclosure, where any unlicensed still or parts thereof are found. (BPC §§25350, 25352.)

*Existing law* establishes the Uniform Controlled Substances Act and lists cannabis as a Schedule 1 controlled substance. (Health and Safety Code (HSC) §§11053, 11054(d)(13).)

*Existing law* establishes an asset forfeiture procedure for drug-related cases, and describes the items and property that are subject to drug asset forfeiture. (HSC §11469-11495, generally, and §11470.)

*Existing law* specifies detailed procedures for a drug forfeiture action, including: the filing of a petition for forfeiture within one year of seizure, notice of seizure, publication of notice, the right to a jury trial, and a motion for return of property. (Health & Saf. Code, § 11488.4.)

*This bill* provides that the DCC or any local jurisdiction may seize implements, instruments, vehicles, currency, or personal property in the place or building, or within any yard or enclosure, where commercial cannabis activity is conducted without a license.

*This bill* provides that the DCC or any local jurisdiction may seize an automobile or other vehicle used to conceal, convey, carry, deliver or transport cannabis or cannabis products by or for a person engaging in commercial cannabis activity without a license.

*This bill* provides that when property is seized pursuant to its provisions, the property shall be subjected to a forfeiture proceeding in the superior court, as provided, and these forfeitures are hereby declared to be statutory forfeitures.

*This bill* provides that notice of the seizure and of the intended forfeiture proceeding shall be filed with the clerk of the court and shall be served on all persons, firms, or corporations having a right title, or interest in the property seized. If the owner or owners are unknown or cannot be found, notice of the seizure and intended forfeiture proceedings shall be made upon those owners by publication, as specified, in the county where the seizure was made.

*This bill* provides that within 20 days after service of the notice of seizure and intended forfeiture proceedings, or within 20 days after the date of publication, the owner or owners of the property seized may file a verified answer to the fact of the alleged use of the property. The claimant of a right, title, or interest in the property seized may make a verified answer to establish the claimant's claim, as specified. An extension of time shall not be granted for the purpose of making the verified answer.

*This bill* provides that if, at the end of 20 days after the notice has been mailed or published there is no verified answer on file, the court shall hear evidence upon the fact of use of the property alleged to have been used in conjunction with unlicensed commercial cannabis activity, and upon proof thereof shall order the property forfeited to the State of California.

*This bill* provides that if a verified answer has been filed, the forfeiture proceeding may be set for hearing on a day within 30 days from the date of filing, and notice of this proceeding shall be given to the owner or owners filing verified answers.

*This bill* provides that at the time set for the hearing, an owner who has verified answers on file may show by competent evidence that the property was not in fact used in the manner alleged.

*This bill* provides that if the fact is determined that property was not used as alleged, the court shall order the property released to the owner or owners of the property.

*This bill* provides that at the time set for the hearing the claimant of a right, title or interest in the property under a lien, mortgage, or conditional sales contract that is officially of record may prove that the lien, mortgage, or conditional sales contract is bona fide and was created after a reasonable investigation of the moral responsibility, character, and reputation of the lienholder, mortgagee, or vendor and without any knowledge that the property was being, or was to be, used in the manner alleged.

*This bill* provides that if the lienholder, mortgagee, or vendor proves the required facts, the court shall order the property released to them if the amount due to them is equal to, or in excess of, the value of the property. If the amount due to them is less than the value of the property, the property shall be sold at public auction by the department or the local jurisdiction, and the remainder of the proceeds of the sale, after payment of the balance due on the purchase price, mortgage, or lien, shall be distributed as specified.

*This bill* provides that upon a judgement in favor of the forfeiture, the property shall be sold at public auction by the DCC or local jurisdiction. The proceeds of that sale shall be distributed as follows:

- To the DCC or local jurisdiction for all expenditures made or incurred by it in connection with the seizure, forfeiture, and sale of the property, including expenditures for any necessary repairs, storage, or transportation of any property seized.
- The remaining funds shall be distributed as follows:
  - In the case of property seized by the DCC, the funds shall be paid to the Treasurer for deposit into the Cannabis Control Fund.
  - In the case of property seized by a local jurisdiction, the funds shall be paid one-half to the local jurisdiction and one-half to the Treasurer for deposit into the Cannabis Control Fund.
  - All revenue deposited in the Cannabis Control Fund pursuant to this bill shall be available, upon appropriation of the Legislature, exclusively to carry out the provisions of the California Cannabis Equity Act.

*This bill* provides that the remedies or penalties provided in its provisions are cumulative to the remedies or penalties available under other law.

## COMMENTS

### 1. Need for This Bill

According to the Author:

We are almost seven years post implementation of Prop 64 and still seeing the negative impacts of illegal cannabis cultivation on the legal market. Unlicensed cannabis farms put the law-abiding growers, those who pay required fees and taxes, at a great disadvantage. Additionally, the impact on the legal market has had a disproportionate effect on social equity retailers. SB 820 is a solution to ensure the

integrity of the legal cannabis market, and to encourage licensed cultivation. The Cannabis Equity Act is a pivotal piece of legislation to prioritize the historic nature of communities negatively impacted by cannabis criminalization. The intent of SB 820 is to dis-incentivize illegal grows while protecting dedicated dollars for the Cannabis Control Fund - social equity funds to reinvest in the legal, regulated cannabis market.

## 2. Cannabis Regulation in California

After several attempts to improve the state's regulation of cannabis, the Legislature passed the Medical Cannabis Regulation and Safety Act (MCRSA) in 2015. MCRSA established, for the first time, a comprehensive statewide licensing and regulatory framework for the cultivation, manufacture, transportation, testing, distribution, and sale of medicinal cannabis to be administered by the newly established Bureau of Cannabis Control within Department of Consumer Affairs, the Department of Public Health, and the Department of Food and Agriculture, with implementation relying on each agency's area of expertise. While entrusting state agencies to promulgate extensive regulations governing the implementation of the state's cannabis laws, MCRSA fully preserved local control. Under MCRSA, local governments may establish their own ordinances to regulate medicinal cannabis activity. Local jurisdictions could also choose to ban cannabis establishments altogether.

Not long after the Legislature enacted MCRSA, California voters passed Proposition 64, the Adult Use of Marijuana Act (AUMA). The passage of the AUMA legalized cannabis for non-medicinal adult use in a private home or licensed business, allowed adults 21 and over to possess and give away up to approximately one ounce of cannabis and up to eight grams of concentrate, and permitted the personal cultivation of up to six plants. The law sustained prohibitions against smoking in or operating a vehicle while under the effects of cannabis, possessing cannabis at a school or other child oriented facility while kids are present, growing in an unlocked or public place, and providing cannabis to minors. In 2021, the State's various cannabis authorities were consolidated into a single department vested with authority for all cannabis licensing, regulatory and enforcement activities.<sup>1</sup>

Despite the existence and regulation of a legal cannabis industry in California following the approval of Proposition 64, the illicit cannabis industry persists. One recent study estimated that the black market still accounts for roughly two-thirds of the state's cannabis sales.<sup>2</sup> And according to materials provided by the Author:

In 2021, the California Department of Fish and Wildlife eradicated 2.6 million illegal cannabis plants, seized 794 firearms, removed over 32,000 pounds of trash from public lands, and removed 404 illegal water diversions. Moreover, the Unified Cannabis Enforcement Taskforce seized a combined total of \$9.5 million in cash, and a retail value of over \$1.3 billion in seized cannabis product in 2021 and 2022.<sup>3</sup>

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<sup>1</sup> AB 141 (Committee on Budget, Ch.70, Stats. of 2021.)

<sup>2</sup> "A New Report Explains How California Screwed Up Marijuana Legalization." 5 May 2022. Reason Magazine. [A New Report Explains How California Screwed Up Marijuana Legalization \(reason.com\)](https://reason.com/news/a-new-report-explains-how-california-screwed-up-marijuana-legalization)

<sup>3</sup> "California Department of Fish and Wildlife releases cannabis enforcement numbers for 2021." <https://cannabis.ca.gov/2022/02/cdfw-releases-cannabis-enforcement-numbers-for-2021/> ; "California Department of Cannabis Control releases cannabis enforcement operation statistics for 2021 and 2022, reports surge in efforts to dismantle illicit market." <https://cannabis.ca.gov/2023/03/enforcement-update/#:~:text=DCC-led%20search%20warrant%20operations,2021%20and%2056%20in%202022>

Enforcement against unlicensed and other illicit cannabis activity has attracted significant legislative attention. A task force was recently established through the 2022-23 Budget process to promote communication between state and local entities engaged in the regulation of commercial cannabis activity and facilitate cooperation to enforce applicable state and local laws. Several pieces of legislation this year and in recent sessions have focused on increasing civil penalties on unlicensed operators, bolstering local enforcement efforts, and preventing illegal use of natural resources.<sup>4</sup>

### 3. Existing Civil Forfeiture Frameworks

Forfeiture generally follows one of two legal routes: criminal or civil. While all forfeitures are technically triggered by illegal conduct, they are classified as civil or criminal based on the type of procedure which ends in confiscation of the subject property. The law typically uses the term “seizure” to refer to the taking and holding of evidence that may be associated with a crime in order to use those items as proof in a later criminal trial. Cash proceeds from a drug deal, for example, may be “seized” at the time of an arrest. Forfeiture, by contrast, is typically done after the trial has resulted in a conviction. Forfeiture refers to the process by which the cash proceeds are distributed to law enforcement and other entities within the jurisdiction.

In civil forfeitures, the guilt or innocence of the property owner is irrelevant – it is enough that the property was involved in the unlawful behavior to which forfeiture attaches. Civil asset forfeiture has allowed the government to seize and keep cash, cars, real estate, and any other property suspected of being connected to criminal activity even if the owner is never convicted of a crime. For this reason, statutes imposing forfeitures are not favored and are to be strictly construed in favor of the persons against whom they are sought to be imposed. This disfavor applies notwithstanding the strong governmental interest in stemming illegal drug transactions.<sup>5</sup> California currently has two major statutory civil forfeiture processes relevant to this bill, one that relates to alcoholic beverages and one that relates to controlled substances.

In 1955, an amendment to California’s state constitution created the Department of Alcoholic Beverage Control (ABC), vesting it with the power to regulate the manufacture and sale of alcoholic beverages, which had rested with the State Board of Equalization since the repeal of prohibition. Related changes to state law set forth a new framework for the regulation of alcoholic beverages in California code, among which was a process providing for the seizure and forfeiture of alcohol-related assets and property.<sup>6</sup> Under that law, ABC may seize an array of specified alcoholic beverages, as well as “any unlicensed still” and “any implements, instruments, vehicles and personal property in the place or building, or within any yard or enclosure, where any unlicensed still or parts thereof are found.”<sup>7</sup> Existing law states that any property seized pursuant to these provisions is forfeited to the state, unless a person petitions the department that specific property was illegally or erroneously seized, in which case a hearing is granted to that person.<sup>8</sup> The law requires that notice of the seizure and of the intended forfeiture proceeding be served on persons and entities with an interest in the property seized, and sets forth the rules and processes related to the forfeiture proceeding.<sup>9</sup> Presumably, as illicit alcohol

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<sup>4</sup> See AB 1126 (Lackey, 2023); AB 1448 (Wallis, 2023); AB 1171 (B. Rubio, 2023); SB 753 (Caballero, 2023)

<sup>5</sup> *People v. \$10,153.38 in United States Currency* (2009) 179 Cal.App.4th 1520, 1525-1526.

<sup>6</sup> Business and Professions Code § 25350 et. seq.

<sup>7</sup> Business and Professions Code §§ 23530, 23532.

<sup>8</sup> Business and Professions Code §§ 25353, 25356, 25357.

<sup>9</sup> Business and Professions Code §25361 et. seq.

operations in the wake of prohibition have given way to a robust legal alcohol industry, the use of this forfeiture process has been sparse. Evidence on alcohol-related forfeitures is scant, but in 2021, the ABC only received a total of roughly \$860 in forfeited funds between two operations, suggesting relatively minimal alcohol-focused enforcement activities.<sup>10</sup>

The other major forfeiture process in California law, and the one that is far more commonly used, pertains to assets seized from illicit activities relating to controlled substances. The Legislature has set forth several statutory guidelines to ensure the proper utilization of laws permitting the seizure and forfeiture of property related to controlled substances, primarily proscribing the inappropriate use of forfeited assets and funds. Additionally, these provisions grant government officials broad authority to seize a wide array of property and assets, including the controlled substances themselves, all raw materials, products and equipment, written materials and records, money, specified real property, specified vehicles, and all other property that is not real property or a vehicle.<sup>11</sup> In 2016, the Legislature passed Senate Bill 443 (Mitchell, Ch. 831, Stats. of 2016), which revised and curtailed California's drug asset forfeiture laws in order to curb perceived abuses of the system by law enforcement.<sup>12</sup> That measure required a conviction prior to forfeiture in any case where the items seized are cash under \$40,000 or other property such as homes regardless of value. Even with this reform, critics of civil asset forfeiture maintain that the system is still problematic, arguing that it disproportionately impacts the poor, violates various constitutional guarantees and the presumption of innocence, and incentivizes law enforcement overreach and unjust enrichment.

This bill creates a new asset seizure and civil forfeiture framework for property related to unlicensed commercial cannabis activity that mirrors the language of the alcohol seizure and forfeiture framework. Although cannabis remains a Schedule I substance both federally and in California, this bill would create a process distinct from California drug asset forfeiture law, ostensibly because commercial cannabis activity is licensed and regulated in this state similar to alcohol. Additionally, the pursuit of criminal penalties for cannabis activity has largely been eschewed as civil and administrative actions against unlicensed operators have become the preferred method of enforcement.

#### **4. Effect of This Bill**

As mentioned above, existing law does not provide a mechanism for the seizure and forfeiture of property and assets related to unlicensed cannabis activity. Under existing drug asset forfeiture statutes, law enforcement would have to pursue criminal cannabis-related charges in order to lawfully seize assets over \$40,000, and would need to secure a conviction before seizing cash assets under \$40,000.<sup>13</sup> This bill permits any local jurisdiction or the Department of Cannabis Control (DCC) to seize “implements, instruments, vehicles, currency, or personal property in the place or building, or within any yard or enclosure, where commercial cannabis activity is conducted without a license.” Additionally, the bill authorizes a local jurisdiction or the DCC to seize any vehicle used to conceal, convey, carry, deliver or transport cannabis or cannabis products by or for a person engaging in unlicensed commercial cannabis activity. The bill also establishes a forfeiture process modeled after the alcohol asset forfeiture provisions, which

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<sup>10</sup> 2021 DOJ Asset Forfeiture Annual Report. <https://oag.ca.gov/system/files/media/2021-af.pdf>

<sup>11</sup> Business and Professions Code §11470

<sup>12</sup> For instance, see “The Injustice of Civil Asset Forfeiture.” 12 May 2015. The Atlantic.

<https://www.theatlantic.com/politics/archive/2015/05/the-glaring-injustice-of-civil-asset-forfeiture/392999/>

<sup>13</sup> Health and Safety Code §11470.1

requires the government to serve notice on all persons or entities with an interest in the seized property, permits property owners to submit a “verified answer” to the allegations of unlicensed use, and provides for a hearing to determine that the use of the property was in fact unlicensed. The bill provides that upon a judgement in favor of forfeiture, funds forfeited to the state can only be used to carry out the provisions of the California Cannabis Equity Act.<sup>14</sup> In doing so, the bill curtails the incentive of state licensing entities to enforce for the sole purpose of self-funding. However, in the case of property seized by a local jurisdiction, the provides that only half of the funds forfeited go the state, and the other half goes to the local jurisdiction, which does not have restrictions in how the funds must be used.

### *Scope of Seizable Property*

One of the major issues raised by the bill is the sheer scope of property that may be seized by enforcement officials. As mentioned above, the operative seizure provision would effectively allow enforcement officials to seize *any* property, regardless of quality or quantity, “in the place or building, or within any yard or enclosure” where unlicensed commercial cannabis activity is conducted. The nearly limitless scope of this provision, delineating seizable items only by their presence in a specified geographic area, would almost certainly lead to unintended consequences and the over-seizure of property. Under this provision, licensing authorities may lawfully seize the cash out of a worker’s wallet simply because the worker was in a place where unlicensed cannabis activity was occurring, and even if the worker had no knowledge that the cannabis activity was unlicensed. The Author and Committee should strongly consider narrowing the scope of seizable property in this provision to avoid these negative outcomes and other potential abuses of power.

The other seizure provision in the bill permits authorities to seize any “automobile or other vehicle used to conceal, convey, carry, delivery, or transport cannabis or cannabis products by or for a person engaging in” unlicensed commercial cannabis activity. This provision is also unreasonably broad and has the potential to ensnare individuals who are unknowingly or only peripherally related to the unlicensed conduct the bill seeks to prevent. That is, an individual engaging in unlicensed cannabis activity may ask an acquaintance – who may or may not know the individual is unlicensed – to transport any amount cannabis to another location. For that conduct alone, this bill permits authorities to lawfully seize the driver’s vehicle and subject it to forfeiture. Given the unique legal role of forfeiture, this process may occur without the driver being afforded significant constitutional protections. Not only does this possible scenario raise concerns about the bill’s disproportionate impact on poorer individuals, it raises significant civil rights concerns. The Author and Committee should strongly consider narrowing the scope of seizable property in this provision as well. Properly defining “unlicensed commercial cannabis activity” would also be one step toward putting reasonable parameters on the scope of seizure permitted by the bill.

### *Forfeiture Provision Issues*

The existing forfeiture process related to unlicensed alcohol activity contains a provision wherein an individual who believes their property has been seized illegally or erroneously may petition the ABC to return that property. A related provision requires that petition to be considered within 60 days after filing, and that an oral hearing be granted to the petitioner upon request. If the property was erroneously or illegally seized, then it may be returned to the owner. This bill, by

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<sup>14</sup> BPC §26240 et. seq.



contrast, contains no such appeals process for individuals who believe their property was seized illegally or wrongfully. Rather, it requires all individuals to go through an identical forfeiture proceeding, which can be as long as 50 days from the date of the seizure, but given the practical timeframe for other forfeiture proceedings, would likely be much longer. No provision in the bill requires that the forfeiture proceeding be set for hearing within a specified timeframe, only that the proceeding “may be set for hearing on a day within 30 days” from the date that individuals file verified answers to the notice of seizure. The potential consequences of a protracted forfeiture process may be significant, especially for poorer individuals. As forfeiture proceedings are quite complex legally, someone such as a worker, like the one described in the wallet seizure scenario above, would undoubtedly have to retain counsel in order to recover their property, adding immeasurable cost to an already costly experience. The Author and Committee should strongly consider adding provisions similar to those contained in the unlicensed alcohol asset forfeiture statute providing an expedited appeal process for individuals who believe their property was wrongly seized.

## 5. Committee Amendments

The Author has agreed to take several amendments to address the issues identified above, including:

- Requiring that enforcement officials, prior to any seizure under the bill, obtain a warrant pursuant to Section 1822.50 of the Code of Civil Procedure.
- Adding specific types of property that may be seized, including the following:
  - Cannabis or cannabis products.
  - Processing equipment for trimming, drying, curing, sorting, weighing, or packaging cannabis.
  - Implements of husbandry.
  - Packaging materials.
  - Hoop houses.
  - Irrigation and water storage equipment.
  - Generators.
  - Lighting equipment
  - Heating, air, and ventilation equipment.
  - Packaged soil and nutrients.
  - Pesticides.
  - Grading equipment.
  - Manufacturing machinery and equipment.
  - Security systems and equipment.
  - Firearms.
  - Fencing.
  - Shelving and storage equipment.
  - Tools.
  - Raised beds and planting pots.
  - Computers and computer accessories related to the unlicensed activity.
  - Currency, negotiable instruments, or securities in excess of \$40,000.
- Defining the unlicensed activity to which the bill applies as “commercial cannabis activity consisting of cultivation, as defined in Section 26001, only if the commercial cannabis activity involves cultivation, harvesting, drying, or processing of more than 50 living cannabis plants.”

- Adding language providing individuals whose property has been seized to petition the DCC within 10 days to return the property on the grounds that it was illegally seized, and requiring consideration of the petition within 60 days of submission. The amendment also requires the department to provide an oral hearing to the petitioner if requested, and to return the property to the petitioner if it was found to be illegally or erroneously seized.
- Adding provisions that permit a property owner to show, by a preponderance of the evidence, one of three facts that would prevent the property from being forfeit:
  - That the property did not in fact fall into the categories of property subject to seizure, described above.
  - That the property was not used, or intended to be used, to facilitate unlicensed commercial cannabis activity.
  - That the owner of the property seized did not own, manage, direct, or control any part of the unlicensed commercial cannabis activity, or have a financial interest in the commercial cannabis activity, as defined.

## 6. Argument in Support

According to the bill's sponsor, the Rural County Representatives of California:

The implementation of the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), including the enforcement challenges surrounding the illicit cannabis market, have been ongoing challenges facing counties and cities for many years. California law currently does not have consequences strong enough to deter the widespread illegal commercial cannabis activities in many communities, including in jurisdictions with extension commercial cannabis activities. [...]

The reality, unfortunately, is that many illicit cannabis operations are able to quickly recover following enforcement actions due to complicit landlords, exploitation of workers, and remaining specialty equipment used for the cultivation, manufacturing, and retail of illegal cannabis. Local jurisdictions often get calls within 24-48 hours after enforcement action that these bad actors are back in business. State and local enforcement efforts have minimal impact without addressing the underlining infrastructure that enable these lucrative illegal operations to bounce back quickly.

Existing law authorizes the seizure of property used in conjunction with the unlicensed manufacture of hard liquor (i.e., moonshining). Unlike drug forfeiture statutes, these laws are adapted to the fact that alcoholic beverages are not inherently unlawful. No criminal conviction is required, and anyone with an interest in the property is given an opportunity to prove in a civil proceeding that the property was not used unlawfully. This model is a needed tool to effectively curtail illicit cannabis operations that undercut a safe and legal marketplace.

SB 820 would bolster enforcement efforts against illicit cannabis operations by authorizing, through a civil enforcement process, the removal of the underlying infrastructure—such as specialized cultivation and manufacturing equipment—used for unlicensed cannabis activities. SB 820 gives law enforcement a way to disrupt the financial resources of unlicensed conspirators that allow illegal cannabis operations to thrive. In addition, the author's amendments before the committee would invest enforcement proceeds in the Cannabis Control Fund to support equity programs for

legal operators that were negatively impacted by the war on drugs. It's vital to not only shut down bad actors but also support licensed cannabis businesses that enhance reliable access to regulated, tested cannabis in the legal market.

## 7. Argument in Opposition

According to the National Organization for the Reform of Marijuana Laws, California Chapter:

We have grave concerns about SB 820, which would authorize the DCC and local jurisdictions to seize assets around all manner of illicit marijuana operations.

Our organization and our allies in criminal justice reform worked for years to reform California's forfeiture laws, which have many constitutional issues, and have historically been misapplied without due process of law, fairness, or reason, and even led to corruption, since law enforcement entities could keep all or part of the proceeds they seized. In addition, the bill does not follow established forfeiture law, H&SC 11480 et seq. Instead it puts new forfeiture language into the Business and Professions code, with the cryptic addition, "The remedies or penalties provided by this section are cumulative to the remedies or penalties available under other law." Significantly, it shifts the burden of proof from the government to the defendant, and allows the forfeiture of property not necessarily related to any cannabis crime.

We do not see the need for a second California code allowing for forfeiture. Other than rewriting SB 820 to match existing law, which seems duplicative, we are currently at a loss to recommend how to fix it.

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