What do bills mean for pot industry?

On Oct. 9, Gov. Jerry Brown signed into law Senate Bill 643, Assembly Bil and Assembly Bill 243, collectively known as the Medical Marijuana Regulation and Safety Act (MMRSA). The laws give Calif a comprehensive regulatory framework for the production, transportation and sale of medical marijuana.

Previously, medical marijuana was governed by the Compassionate Use Act of 1996 and the Medical Marijuana Program Act Under them, qualified patients and their primary caregivers gained an affirmative defense to criminal prosecution for marijuan use, possession and related crimes. Federal interference has nevertheless been ongoing since 1996, as state laws do not affirmatively regulate marijuana. The MMRSA changes that and should provide a platform for better federal-state interaction o the issue. As Brown stated, the new laws send “a clear and certain signal to our federal counterparts that California is implementing robust controls not only on paper, but in practice.”

Regulation of the industry under the MMRSA is vested in a to-be-formed Bureau of Marijuana Regulation in the Department o Consumer Affairs, and includes oversight from the Department of Food and Agriculture, the Department of Public Health, Department of Pesticides Regulation, Department of Fish and Wildlife, and State Water Resources Controlled Board. Each agency will be responsible for licensing or administering a specific part of the laws.

Cannabis production, distribution and dispensing activities will require a state license and a local “permit, license, or other authorization.” The MMRSA establishes 17 state licenses, categorized in 12 types, for cultivation, manufacture, testing, dispensary, transporter and distributor. Licensees may only hold two categories of licenses, subject to restrictions. Medical marijuana businesses in operation and in good standing with their municipality as of Jan. 1, 2016, will have priority for state licensure. The laws suggest licensing will begin as early as Jan. 1, 2018.

The MMRSA changes the structure and operations of marijuana businesses. Specifically, it breaks up the existing closed loop vertical integration model in which marijuana collectives cultivate their own crop and manufacture products for distribution to t membership. The MMRSA instead implements a producer-distributor model, similar to the alcoholic beverage industry. The g for this are to ensure consumer safety and to maximize collection of tax revenue.

The new model will require licensed cultivators to sell their crop to a licensed distributor, who will transport the raw cannabis t licensed laboratory for testing. Once certified, the cannabis will be processed and packaged by a distributor. The distributor w sell the cannabis to a licensed dispensary, for resale to qualified end users. Manufacturers will also be involved in the supply to produce marijuana products, such as concentrated oils and edibles.

A marijuana business cannot hold both licenses for cultivation and dispensary unless it falls into one of the two exceptions for vertical integration. The first exception is for marijuana businesses in good standing and in operation prior to July 1, 2015, in a that mandates vertical integration. The second is for those who obtain a special class of license — a Type 10A — that allows three dispensary locations, one manufacturing location, and up to four acres of cultivation across the state.

Although MMRSA has provided much needed clarity to the commercial cannabis industry, several questions remain.

First, is the marijuana industry now for profit? The MMRSA lacks a specific reference to nonprofit status and allows for profit

business entities to hold licenses. Opinions vary as to whether the MMRSA displaces the Compassionate Use Act, which doe allow profit making enterprises. Expect the Legislature to address this in a cleanup bill in 2016.

Second, what will become of Proposition D, the 2013 voter referendum that established a framework for dispensaries in Los Angeles? Medical marijuana businesses in Los Angeles might be left high and dry when licenses are issued. The MMRSA requires an applicant have a "local permit, license, or other authorization" before obtaining a state license. Prop. D notoriously avoids regulating the marijuana industry, providing only affirmative defenses to criminal prosecution. To comply with MMRSA' local approval requirement in MMRSA, the voters in Los Angeles will likely be asked to amend or replace Prop. D to conform the new state regulatory model.

Third, will the MMRSA survive a personal use initiative in 2016? Industry stakeholders and government officials expect at leas one marijuana initiative to qualify for the ballot in November 2016. That initiative could allow medical and recreational marijua coexist — like in the state of Colorado. Or it could repeal medical marijuana all together, leaving only a recreational program intact. This is what happened in the state of Washington.

Finally, is California open for business to out-of-state investors? As the largest state market of marijuana patients, California i being flooded by out-of-state investment interest because the MMRSA departs from the trend in other states of mandating long-standing residency to participate in a state-regulated marijuana business. The MMRSA allows any person, regardless of residency status, to pursue a state license. As a result, investors from across the country and even internationally are scramb to meet existing California marijuana industry participants in hopes of partnering to secure a state license in 2018.

Of course, even with all this progress at the state level, marijuana remains illegal under federal law and the federal governme could shutter the entire industry with a change of policy and enforcement tactics. In the meantime, the MMRSA provides clari the commercial cannabis industry and strikes a balance between the needs of patients, operators, law enforcement, municipa officials, and the environment.

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