



Medicinal Cannabis Patients' Right of Access Act (SB1186) - How Jurisdictions & Businesses Can Prepare

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Free Webinar



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About the Speakers



Omar Figueroa, Esq.

[Omar Figueroa](#) is the Founder and Principal Attorney of the Law Offices of Omar Figueroa, one of the leading cannabis licensing, regulatory compliance, and intellectual property law firms in California. With more than twenty four years of experience at the vanguard of cannabis law in the Golden State, he is widely respected as an industry expert. He frequently speaks at events and has taught several continuing legal education (CLE) seminars related to cannabis law and legal ethics.

Omar is the author of numerous legal reference works on [California Cannabis Laws and Regulations](#) as well as [New York Cannabis Laws and Regulations](#).

Omar is a graduate of Yale College, Stanford Law School, and the Trial Lawyers College. He has also completed an Executive Education program for directors of corporate boards at the Wharton School in Philadelphia.

Omar is a Director of the [National Cannabis Industry Association](#) and the Sebastopol Center for the Arts. He is also a volunteer Chapter Leader of the Sonoma County ACLU Chapter. He is also a Founding Lifetime Member and former Director of the [International Cannabis Bar Association](#), a Lifetime Member of the [NORML Legal Committee](#), and recognized with the [Distinguished Counsel's Award](#) by NORML. Omar was named as a Super Lawyers honoree in the field of cannabis law in 2022 and 2023.



About the Speakers



Lauren Mendelsohn, Esq.

Lauren Mendelsohn is a Senior Associate Attorney at the [Law Offices of Omar Figueroa](#), a boutique Sonoma County-based law firm focusing on the cannabis, hemp, and psychedelic industries. She is an activist at heart who enjoys helping individuals and businesses navigate regulatory regimes and the justice system. She was named a 2020, 2021, and 2022 Northern California Rising Star by Super Lawyers®, and a “Lawyer of Distinction” by Sonoma Magazine in 2021 and 2022.

Lauren focuses on cannabis permitting and licensing, regulatory compliance, business formations and transactions, intellectual property, government affairs, and post-conviction relief. She frequently speaks at conferences and CLE seminars.

Lauren currently sits on the Board of Directors of [California NORML](#), the [Sonoma County Cannabis Alliance](#), and [Círculos Inc.](#) She is also a leader of the [Sonoma County Chapter of the ACLU of Northern California](#). Previously, Lauren served as a Director for the [International Cannabis Bar Association](#) and [Students for Sensible Drug Policy \(SSDP\)](#). Lauren earned her J.D. from the University of California, Irvine School of Law and her B.S. in Psychology from the University of Maryland.



Special Guest

Ellen Komp has been a hemp/marijuana activist and author since 1991. She was a volunteer petitioner for the California Hemp Initiative (1993, 1994) and Proposition 215 (1995). She worked at HempWorld magazine, the first trade journal for the hemp industry, and co-founded The 215 Reporter, the first journal covering California's medical marijuana law and its aftermath.

Ellen was a Program Associate at The Lindesmith Center in San Francisco (now Drug Policy Alliance) and sat on the Humboldt County medical marijuana task force, resulting in a county ordinance to implement SB420. Since 2008, she has been Deputy Director of [California NORML](#), working on legislation, policy, outreach and communications. She is the author of "Token' Women: A 4,000-Year Herstory."



Ellen Komp



Outline

- SB 1186: Background
- What does the law say?
- Implications for jurisdictions
 - LJRAGP
- Implications for businesses
- Implication for patients and caregivers
- Q & A



Where cannabis businesses are allowed

Cannabis use is legal in California. But cities and counties can prohibit cannabis businesses, like retail. As a result, the state is a patchwork of areas where it is and is not legal to establish a cannabis business.

44%

of cities and counties allow at least one type of cannabis business

(237 out of 539)

56%

of cities and counties do not allow any type of cannabis business

(302 out of 539)

61%

of cities and counties do not allow any retail cannabis business

(327 out of 539)



County	Population	Dispensaries (Type 10)	Delivery (Type 9)	Microbusiness With Retail	Total Licenses	Per 100,000
Los Angeles	10 million	313	142	51	506	5.1
San Diego	3.3 million	62	4	5	71	2.2
Orange	3.2 million	44	14	0	58	1.8
Riverside	2.4 million	124	10	39	173	7.2
San Bernardino	2.2 million	25	21	6	52	2.4
Santa Clara	1.9 million	8	2	8	18	0.9
Alameda	1.7 million	34	120	61	215	12.6
Sacramento	1.6 million	36	72	12	120	7.5
Contra Costa	1.2 million	15	3	3	21	1.8
Fresno	1 million	15	2	0	17	1.7
Kern	906,000	2	9	1	12	1.3
San Francisco	866,000	68	14	4	86	9.9
Ventura	845,000	24	5	2	31	3.7
San Joaquin	771,000	12	7	1	20	2.6
San Mateo	762,000	9	11	0	20	2.6
Total	32.6 million	791	436	193	1420	4.4

Source: California Department of Cannabis Control licensing data

State	Dispensaries	Per 100K	As Of
Alaska	165	22.3	Feb. 1, 2023
Oregon	819	19.3	Feb. 15, 2023
Colorado	1,056	18.2	Mar. 1, 2023
Washington	521	6.7	Nov. 16, 2022
Massachusetts	276	4.0	Mar. 23, 2023
Nevada	100	3.2	Mar. 10, 2023
California	1,122	2.8	Mar. 23, 2023

Sources: Alaska Alcohol and Marijuana Control Office; Oregon Liquor and Cannabis Commission; Colorado Marijuana Enforcement Division; Washington State Liquor and Cannabis Board; Massachusetts Cannabis Control Commission; Nevada Cannabis Compliance Board; California Department of Cannabis Control.

Source: <https://www.cannabisbusinesstimes.com/news/california-retail-access-supply-chain-logjam/>



Background

- Local control provisions baked into Prop. 64 have resulted in a lack of access to licensed cannabis retail outlets
 - Inhospitable for consumers, patients, legal businesses, communities
- Non-storefront cannabis retail (i.e. “delivery”) operations have a minimal impact on the surrounding area while still serving a critical need
- SB1186 introduced by Senator Scott Wiener (D - San Francisco) in 2022
 - Amends/adds language to the California Business & Professions Code
 - Supported by a number of patients’ rights and cannabis organizations, including California NORML
 - Adopted and signed into law - September 2022



What Does the Law Say?

BPC § 26320

SEC. 2. Chapter 26 (commencing with Section 26320) is added to Division 10 of the Business and Professions Code, to read:

CHAPTER 26. Medicinal Cannabis Patients' Right of Access Act

26320. The Legislature finds and declares as follows:

(a) Access to medicinal cannabis is an integral aspect of access to health care, and eliminating barriers to medicinal cannabis access is essential to promoting and preserving the health of Californians for whom physicians have recommended the use of cannabis or cannabis products.

(b) It is the policy of the state and the intent of the Legislature to ensure that Californians throughout the state have timely and convenient access to safe, effective, and affordable medicinal cannabis.



What Does the Law Say?

BPC § 26321

26321. (a) This act shall be known, and may be cited, as the Medicinal Cannabis Patients' Right of Access Act.

(b) For purposes of this chapter:

(1) "Medicinal cannabis" means medicinal cannabis or medicinal cannabis products, as those terms are defined in paragraph (1) of subdivision (ai) of Section 26001.

(2) "Medicinal cannabis business" means a retailer authorized to engage in the retail sale by delivery of medicinal cannabis to medicinal cannabis patients pursuant to an M-license.

(3) "Medicinal cannabis patient" means a qualified patient, as defined in Section 11362.7 of the Health and Safety Code, who possesses a physician's recommendation that complies with Article 25 (commencing with Section 2525) of Chapter 5 of Division 2, or a qualified patient or primary caregiver for a qualified patient issued a valid identification card pursuant to Section 11362.71 of the Health and Safety Code.

(4) "Regulation" means a local ordinance, regulation, policy, or practice.



What Does the Law Say?

BPC § 26322(a)

26322. (a) A local jurisdiction shall not adopt or enforce any regulation that prohibits the retail sale by delivery within the local jurisdiction of medicinal cannabis to medicinal cannabis patients or their primary caregivers, or that otherwise has the effect of prohibiting the retail sale by delivery within the local jurisdiction of medicinal cannabis to medicinal cannabis patients or their primary caregivers by licensed medicinal cannabis businesses in a timely and readily accessible manner, and in types and quantities that are sufficient to meet demand from medicinal cannabis patients within the local jurisdiction, including, but not limited to, regulation of any of the following that has the effect of prohibiting the retail sale by delivery of medicinal cannabis:

- (1) The number of medicinal cannabis businesses authorized to deliver medicinal cannabis in the local jurisdiction.
- (2) The operating hours of medicinal cannabis businesses.
- (3) The number or frequency of sales by delivery of medicinal cannabis.
- (4) The types or quantities of medicinal cannabis authorized to be sold by delivery.
- (5) The establishment of physical premises from which retail sale by delivery of medicinal cannabis within the jurisdiction is conducted by a licensed nonstorefront retailer, except that this paragraph shall not be construed to require the establishment of additional physical premises in a local jurisdiction that allowed medicinal cannabis retail as of January 1, 2022, and in which at least one physical premises engaged in the retail sale of medicinal cannabis, whether storefront or delivery, is already established.



What Does the Law Say?

BPC § 26322(b)

(b) Nothing in this chapter shall be construed to prohibit the adoption or enforcement of reasonable regulations on retail sale by delivery of medicinal cannabis, including, but not limited to, reasonable regulations related to:

(1) Zoning requirements that are not inconsistent with subdivision (a). If compliance with subdivision (a) would otherwise require a local jurisdiction to authorize a physical premises from which retail sale by delivery of medicinal cannabis within the jurisdiction is conducted, this paragraph shall not be construed to alter that requirement.

(2) Security or public health and safety requirements.

(3) Licensing requirements.

(4) The imposition, collection, and remittance of any applicable state or local taxes upon retail sales occurring within the local jurisdiction.

(5) Regulations consistent with requirements or restrictions imposed on cannabis businesses by this division or regulations issued under this division.

(c) Nothing in this chapter shall be construed to limit or otherwise affect the ability of a local jurisdiction to adopt or enforce any regulations on commercial cannabis operations other than retail sale by delivery of medicinal cannabis in the local jurisdiction.

(d) This section shall become operative on January 1, 2024.



What Does the Law Say?

BPC § 26323

26323. (a) This chapter may be enforced by an action brought pursuant to Chapter 2 (commencing with Section 1084) of Title 1 of Part 3 of the Code of Civil Procedure by any of the following parties, who shall be beneficially interested within the meaning of Section 1086 of the Code of Civil Procedure:

- (1) A medicinal cannabis patient or their primary caregiver who seeks to purchase medicinal cannabis or medicinal cannabis products within the local jurisdiction.
- (2) A medicinal cannabis business that seeks to offer medicinal cannabis for sale within the local jurisdiction.
- (3) The Attorney General.
- (4) Any other party otherwise authorized by law.

(b) This section shall not be construed to limit the availability of any other remedy otherwise available to enforce this chapter. The existence of any other remedy shall not restrict the availability of relief to enforce this chapter under Chapter 2 (commencing with Section 1084) of Title 1 of Part 3 of the Code of Civil Procedure.

(c) This section shall become operative on January 1, 2024.



What Does the Law Say?

BPC §§ 26324, 26325

26324. Nothing in this chapter shall be construed to limit or otherwise affect the ability or right of a local jurisdiction to regulate adult-use cannabis pursuant to Section 26200.

26325. This chapter addresses a matter of statewide concern and not a municipal affair, as that term is used in Section 5 of Article XI of the California Constitution.



Statewide Impact

Where cannabis businesses are allowed

Cannabis use is legal in California. But cities and counties can prohibit cannabis businesses, like retail. As a result, the state is a patchwork of areas where it is and is not legal to establish a cannabis business.

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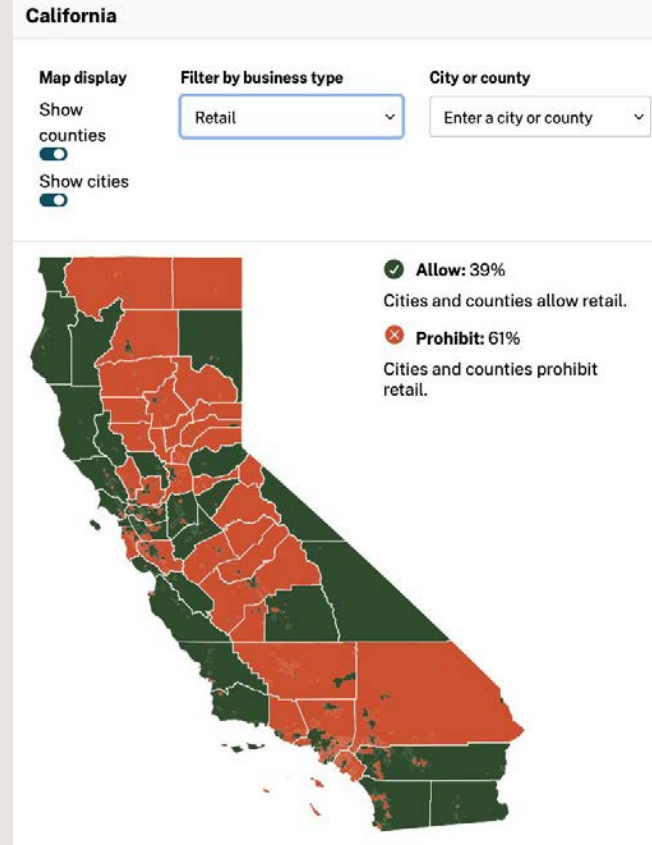
of cities and counties do not allow any type of cannabis business

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61%

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Implications for Jurisdictions

- Must allow medical non-storefront cannabis retail businesses by January 1, 2024 or face potential lawsuits.
- Many jurisdictions may need to amend their municipal codes.
- Wide range of regulatory options.
 - Opportunity to go beyond medical delivery only to adult-use delivery as well
 - Opportunity to regulate storefront dispensaries, both adult and medical, in addition to other types of cannabis businesses
 - Opportunity to explore other types of commercial cannabis experiences such as consumption lounges and cannabis events
- Grant opportunities (LJAGP)



Local Jurisdiction Retail Access Grant

- Announced by the Department of Cannabis Control in February 2023
 - Authorized by AB 178 (Ting, 2022)
- State grant funding available to local jurisdictions that do not currently have a cannabis retailer licensing program but plan to adopt one
 - Goals: Increase access to licensed retailers to reduce demand in illicit market, protect consumers from untested/unregulated products, and meet existing demand
- Grant application window open March 10, 2023 - April 28, 2023
 - Priority funding → equity licensing opportunities; gaps in consumer access to retail cannabis; existing business permitting pathways
- More information:

<https://cannabis.ca.gov/about-us/grant-funding/local-jurisdiction-retail-access-grant/>



Implications for Businesses

- Currently-licensed “M” retailers will have standing to file a lawsuit against any jurisdiction that prohibits medical cannabis delivery-only retailers from operating there beginning January 1, 2024.
- Businesses interested in offering cannabis delivery in a jurisdiction that does not currently allow such services should consider engaging in communications with the jurisdiction regarding amending their regulations to allow this use so they can operate, and/or prepare to engage in litigation (mandamus action).



Implications for Patients & Caregivers

- Medical cannabis patients and their primary caregivers who seek to purchase medicinal cannabis or medicinal cannabis products in a jurisdiction that does not allow medical cannabis deliveries to originate there will have standing to file a lawsuit against that jurisdiction beginning on January 1, 2024.
- Patients and caregivers should consider making sure that the patient's recommendation or approval remains current (being a former patient does not confer standing).



Attorneys' Fees

- Upon motion, a court may award attorneys' fees to a successful party against one or more opposing parties in any action which has resulted in the enforcement of an important right affecting the public interest.
- Code of Civil Procedure § 1021.5 provides, in relevant part:

Upon motion, a court may award attorneys' fees to a successful party against one or more opposing parties in any action which has resulted in the enforcement of an important right affecting the public interest if:

- (a) a significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general public or a large class of persons,*
- (b) the necessity and financial burden of private enforcement, or of enforcement by one public entity against another public entity, are such as to make the award appropriate, and*
- (c) such fees should not in the interest of justice be paid out of the recovery, if any.*

- This is the codification of the private attorney general doctrine and complements the equitable doctrine under California law that had been developed prior to the adoption of C.C.P. § 1021.5.



Attorneys' Fees

- The California courts can also exercise their inherent equitable authority to award fees to petitioners who successfully pursue public interest litigation that vindicates important constitutional rights. (*Serrano v. Priest (a/k/a Serrano III)* (1977) 20 Cal.3d 25, 43.) The purpose is to encourage suits that enforce a strong public policy and benefit a broad class of people.
- The inherent equitable authority may be invoked when fees are not available under the statute. (see, e.g. *Best v. California Apprenticeship Council* (1987) 193 Cal.App.3d 1448, 1462 n.12 [fees may not be awarded under § 1021.5 for administrative proceedings that do not result in court “actions”, but they may be awarded under the equitable private attorney general doctrine].)
- The courts have taken a broad view of who is the “successful party” in such a case, limited only by the expressed statutory limitation that public entities are not eligible for the award—unless they successfully prevailed over another public entity. Generally, a party is successful if it achieves some relief from the conditions challenged in the petition or litigation. (*Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1292.) Similarly, the courts have taken a broad view over what “any action” means. (*In re Head* (1986) 42 Cal.3d 223, 233.)

Q & A





Thank you!

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