

California Update: New QR Code Certificate Requirements, Uptick in Enforcement Actions, and the Future of California's Cannabis Regulators

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QR Codes for Retailers, Distributors, and Delivery

On February 13, 2020, The Bureau of Cannabis Control's (BCC) emergency rulemaking for Quick Response Code (QR Code) certificate requirements was approved by the Office of Administrative Law. The [new rules](#) are effective immediately. The new rules require licensed commercial cannabis storefront retailers to prominently display their QR Code certificate on their premises. The new rules also requires licensed commercial cannabis distributor and delivery employees to carry a copy of the QR Code certificate while transporting or delivering commercial cannabis goods.

The emergency regulations are designed to help consumers identify licensed cannabis retail stores, assist law enforcement and support the legal cannabis market. Smartphone users are able to use their smartphone camera to scan the displayed QR Code, which automatically links to the BCC's Online License Search and confirms the cannabis retailer's license status. The system also displays the retailer's address and license location to ensure that the information is not counterfeit.

Enforcement Actions Projected to Increase in 2020

The QR Code requirements follow on the heels of a major uptick in enforcement efforts against illegal cannabis businesses in the state. In December and January, the BCC seized more than 10,000 illegal vape pens and over \$560,000 in cannabis products from unlicensed cannabis retailers in Southern California. A random sampling of the cannabis products seized from unlicensed retailers were found to contain undisclosed additives, some of them potentially dangerous, and significantly lower amounts of THC than claimed on the label. These enforcement actions follow the BCC [mailing](#) hundreds of notice letters to landlords of allegedly unlawful cannabis businesses across California informing them that they could be subject to criminal and civil liability.

The BCC is not the only agency increasing enforcement efforts. In December, the California Attorney General, on behalf of the California Department of Food and Agriculture (CDFA), filed a lawsuit against a number of persons and entities, claiming that they had cultivated and processed cannabis without licenses. The lawsuit claims that the defendants are liable for civil penalties of up to three times the amount of the CDFA's nearly \$9,370 license fee per violation, per day, dating back to

December 2018. These sizable penalties are consistent with California's regulatory scheme which authorizes California cannabis agencies to seek penalties of up to \$30,000 per day/violation for unlicensed commercial cannabis activity. The bottom line: being in the illicit market is a major risk, especially now that state regulators are ramping up enforcement actions.

Consolidation of California's Regulatory Agencies and a Push for Tax Reform

In January, California Governor Gavin Newsom issued a press release along with the BCC, CDFA and the Manufactured Cannabis Safety Branch (MCSB) announcing a budget proposal to consolidate all three California cannabis agencies into one single Department of Cannabis Control by July 2021. The new department would have a dedicated enforcement branch, it would also align regulatory functions and create a single point of contact for cannabis licensees and local governments. Governor Newsom also proposed simplifying the industry's tax structure by streamlining the point of collection for various cannabis taxes – requiring the first distributor in the chain of distributors to be responsible for remitting the cultivation tax and retailers to be responsible for remitting the excise tax. On the tax front, additional legislative efforts are underway to provide tax relief to California's burdened cannabis industry. State lawmakers have introduced [Assembly Bill 286](#), a revived effort to cut the state excise tax on cannabis sales from 15% to 11% for three years, while eliminating the cultivation tax for the same period of time. With Governor Newsom signaling an interest in boosting the legal cannabis industry, there is new hope that tax reform efforts may succeed.

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