

AMENDED IN SENATE MARCH 11, 2008

SENATE BILL

No. 1098

Introduced by Senator Migden

January 14, 2008

~~An act to add Section 11362.84 to the Health and Safety Code, and~~
An act to add Article 1.7 (commencing with Section 7067) to Chapter 8 of Part 1 of Division 2 of the Revenue and Taxation Code, relating to medical marijuana.

LEGISLATIVE COUNSEL'S DIGEST

SB 1098, as amended, Migden. Medical marijuana.

Existing law creates a legal defense for a patient and a patient's primary caregiver against criminal charges of possession or cultivation of marijuana, as specified. Existing law also establishes a medical marijuana program which exempts persons with an identification card and the person's designated primary caregiver from arrest for possession, transportation, delivery, or cultivation of medical marijuana, as specified.

Existing law imposes specified taxes, including sales and use taxes that are administered by the State Board of Equalization, and requires the State Board of Equalization to administer tax amnesty programs, during specified periods.

~~This bill would declare that make legislative findings and declarations relating to a specified decision of the Court of Appeal of California, 3rd Appellate District, made certain findings in a specified decision with respect to those provisions the operation of the medical marijuana program and the sale of marijuana. This bill would require the medical marijuana program to be applied consistently also declare that the application of the law relating to sales and use tax to medical cannabis~~

dispensaries is consistent with the opinion of the appellate court as stated in that decision.

~~Existing law imposes specified taxes, including sales and use taxes that are administered by the State Board of Equalization, and requires the State Board of Equalization to administer tax amnesty programs, during specified periods.~~

This bill would require the State Board of Equalization to administer a tax amnesty program, as specified, for medical cannabis dispensaries, as defined.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. (a) The Legislature finds and declares that on
2 September 12, 2005, the Court of Appeal of California, Third
3 Appellate District, in the matter of People v. Urziceanu (2005)
4 132 Cal.App.4th 747, stated the following:

5 (a)
6 (1) With respect to the Compassionate Use Act (Section 11362.5
7 of the Health and Safety Code), approved by voters in 1996 as
8 Proposition 215:

9 (1)
10 (A) The Compassionate Use Act is a narrowly drafted statute
11 designed to allow a qualified patient and his or her primary
12 caregiver to possess and cultivate marijuana for the patient’s
13 personal use despite the penal laws that outlaw these two acts for
14 all others.

15 (2)
16 (B) Further, the enactment of the Compassionate Use Act did
17 not alter the statutory prohibitions related to marijuana, including
18 those that bar the transportation, possession for sale, and sale of
19 marijuana. When the people of this state passed this act, they
20 declined to decriminalize marijuana on a wholesale basis.

21 (3)
22 (C) As a result, the courts have consistently resisted attempts
23 by advocates of medical marijuana to broaden the scope of these
24 limited specific exceptions, instead directing the proponents of
25 this approach back to the Legislature to address the perceived
26 shortcomings with the Compassionate Use Act.

1 ~~(b)~~
2 (2) With respect to the Medical Marijuana Program (Article 2.5
3 (commencing with Section 11362.7) of Chapter 6 of Division 10
4 of the Health and Safety Code), enacted by the Legislature pursuant
5 to Senate Bill 420 (Chapter 875 of the Statutes of 2003):

6 ~~(1)~~
7 (A) The Medical Marijuana Program represents a dramatic
8 change in the prohibitions on the use, distribution, and cultivation
9 of marijuana for persons who are qualified patients or primary
10 caregivers.

11 ~~(2)~~
12 (B) This law has abrogated the limits expressed in cases that
13 took a restrictive view of the activities allowed by the
14 Compassionate Use Act.

15 ~~(3)~~
16 (C) The Legislature has exempted those qualifying patients and
17 primary caregivers who collectively or cooperatively cultivate
18 marijuana for medical purposes from criminal sanctions for
19 possession for sale, transportation, or furnishing marijuana,
20 maintaining a location for unlawfully selling, giving away, or using
21 controlled substances, managing a location for the storage,
22 distribution of any controlled substance for sale, and the laws
23 declaring the use of property for these purposes a nuisance.

24 ~~(4)~~
25 (D) The Legislature expressly stated that it intended to enhance
26 the access of patients and caregivers to medical marijuana through
27 collective, cooperative cultivation projects, and to address
28 additional issues that were not included within the Compassionate
29 Use Act, and that must be resolved in order to promote the fair
30 and orderly implementation of that act. Further, the Medical
31 Marijuana Program set forth the new affirmative defense allowing
32 collective cultivation of marijuana, expands the defense to penal
33 sections not identified by the Compassionate Use Act, and contains
34 no savings clause. These facts lead to the conclusion that the
35 Medical Marijuana Program must be retroactively applied.

36 ~~SEC. 2.—Section 11362.84 is added to the Health and Safety~~
37 ~~Code, to read:~~

38 ~~11362.84.—The provisions of this article shall not be applied~~
39 ~~inconsistently with the opinion of the California Court of Appeal,~~
40 ~~Third Appellate District, in the matter of People v. Urziceanu~~

1 ~~(2005) 132 Cal.App.4th 747, including, but not limited to, its~~
 2 ~~holding that the Medical Marijuana Program’s specific itemization~~
 3 ~~of the marijuana sales law indicates that the act contemplates the~~
 4 ~~formation and operation of medicinal marijuana cooperatives that~~
 5 ~~would receive reimbursement for marijuana and the services~~
 6 ~~provided in conjunction with the provision of that marijuana.~~

7 *(b) The Legislature further finds and declares that the*
 8 *application of the Sales and Use Tax Law (Part 1 (commencing*
 9 *with Section 6001) of Division 2 of the Revenue and Taxation*
 10 *Code) to medical cannabis dispensaries is consistent with the*
 11 *opinion of the California Court of Appeal, Third Appellate District,*
 12 *in the matter of People v. Urziceanu (2005) 132 Cal.App.4th 747,*
 13 *including, but not limited to, the court’s conclusion that the*
 14 *Medical Marijuana Program’s specific itemization of the*
 15 *marijuana sales law indicates that the act contemplates the*
 16 *formation and operation of medicinal marijuana cooperatives that*
 17 *would receive reimbursement for marijuana and the services*
 18 *provided in conjunction with the provision of that marijuana.*

19 ~~SEC. 3.~~

20 SEC. 2. Article 1.7 (commencing with Section 7067) is added
 21 to Chapter 8 of Part 1 of Division 2 of the Revenue and Taxation
 22 Code, to read:

23
 24 Article 1.7. Tax Amnesty
 25

26 7067. (a) Notwithstanding any other law, a medical cannabis
 27 dispensary engaged in business in this state of selling marijuana
 28 for medical purposes that has failed to file a return or report or pay
 29 the tax or amount due as required by this part, shall be relieved of
 30 liability for tax, additions to tax, interest, and penalty on its sales
 31 of tangible personal property made prior to October 1, 2005, if
 32 both of the following occur:

33 (1) The dispensary applies for voluntary disclosure relief in a
 34 form, as prescribed by the board, no later than March 31, 2009.

35 (2) The dispensary begins prospective compliance under this
 36 part. For purposes of this article, a dispensary begins prospective
 37 compliance when the dispensary makes a good faith effort to
 38 comply with the provisions of this part, including obtaining a
 39 seller’s permit and filing returns and remitting amounts due,
 40 subsequent to the effective date of this article. A dispensary has

1 made a good faith effort to comply with the provisions of this part
2 when the dispensary makes a reasonable and honest effort to fulfill
3 its duties and obligations as a seller of tangible personal property
4 and does not intentionally or purposefully misrepresent its tax
5 obligations to the board.

6 (b) If the board finds that the dispensary has failed to make a
7 good faith effort to comply with the provisions of this part, the
8 board may disallow the relief provided by this article. The board
9 shall retain the right to audit dispensaries and assess any tax,
10 penalty, and interest that may be determined to be due in
11 accordance with this part.

12 (c) Nothing in this article shall be construed to allow for a refund
13 to a dispensary of any tax, interest, or penalty paid prior to the
14 effective date of the article, unless otherwise allowed by law.

15 (d) The relief provided by this article shall not apply to any
16 dispensary that has collected sales tax reimbursement prior to
17 October 1, 2005.

18 (e) The board shall separately identify in its records marijuana
19 cannabis dispensaries that apply for voluntary disclosure relief
20 pursuant to this article.

21 (f) For purposes of this article, “medical cannabis dispensary”
22 or “dispensary” means any person or entity that engages in retail
23 sales of marijuana for medical purposes to qualified patients or
24 patients’ primary caregivers pursuant to Sections 11362.5 to
25 11362.83, inclusive, of the Health and Safety Code, commonly
26 referred to as the Compassionate Use Act of 1996 and the Medical
27 Marijuana Program.