

ASSEMBLY BILL

No. 390

Introduced by Assembly Member Ammiano

February 23, 2009

An act to add Section 22394.1 to, and to add Chapter 14.5 (commencing with Section 25400) to Division 9 of, the Business and Professions Code, to amend Section 68152 of the Government Code, to amend Sections 11014.5, 11054, 11357, 11364.5, 11370, 11470, 11479, 11488, 11532, 11703, and 11705 of, to add Division 10.3 (commencing with Section 11720) to, and to repeal Sections 11358, 11359, 11360, 11361, and 11485 of, the Health and Safety Code, to add Part 14.6 (commencing with Section 34001) to Division 2 of the Revenue and Taxation Code, to amend Sections 23222 and 40000.15 of the Vehicle Code, and to amend Section 18901.3 of the Welfare and Institutions Code, relating to marijuana.

LEGISLATIVE COUNSEL'S DIGEST

AB 390, as introduced, Ammiano. Marijuana Control, Regulation, and Education Act.

Existing state law provides that every person who possesses, sells, transports, or cultivates marijuana, concentrated cannabis, or derivatives of marijuana, except as authorized by law, is guilty of one or more crimes.

This bill would remove marijuana and its derivatives from existing statutes defining and regulating controlled substances. It would instead legalize the possession, sale, cultivation, and other conduct relating to marijuana and its derivatives by persons 21 years of age and older, except as specified. It would set up a wholesale and retail marijuana sales regulation program, including special fees to fund drug abuse

prevention programs, as specified, to commence after regulations concerning the program have been issued, and federal law permits possession and sale consistent with the program. It would ban local and state assistance in enforcing inconsistent federal and other laws relating to marijuana, and would provide specified infraction penalties for violations of these new marijuana laws and regulations, as specified. It would make other conforming changes.

By creating various infractions for violations of regulations and laws created by this act, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

- 1 SECTION 1. It is the intent of the Legislature in enacting this,
- 2 the Marijuana Control, Regulation, and Education Act, to do all
- 3 of the following:
- 4 (a) To legalize marijuana and its derivatives.
- 5 (b) To remove all existing civil and criminal penalties for adults
- 6 21 years of age or older who cultivate, possess, transport, sell, or
- 7 use marijuana, without impacting existing laws proscribing
- 8 dangerous activities while under the influence of marijuana, or
- 9 certain conduct that exposes younger persons to marijuana.
- 10 (c) To ensure that the proper regulatory apparatus for marijuana
- 11 sale and cultivation is ready when permitted by the federal
- 12 government.
- 13 (d) To raise funds and to discourage substance abuse by the
- 14 imposition of a substantial fee on the legal sale of marijuana, the
- 15 proceeds of which will support drug education and awareness.
- 16 (e) To impose a set of regulations and laws concerning marijuana
- 17 comparable to those imposed on alcohol.
- 18 (f) To impose substantial fines for violations of the
- 19 noncommercial regulations and laws concerning marijuana, which

1 will be applicable until and after commercial marijuana is available
2 by virtue of future changes in federal law.

3 (g) To prevent state and local agencies from supporting any
4 prosecution for federal or other crimes relating to marijuana that
5 are inconsistent with those provided in this bill.

6 (h) To exclude from the fees and regulations imposed by this
7 act marijuana that is for uses other than smoking or ingestion, and
8 to exclude medicinal marijuana from fees under these provisions.

9 (i) To encourage the federal government to reconsider its
10 policies concerning marijuana, and to change its laws accordingly.

11 SEC. 2. Section 23394.1 is added to the Business and
12 Professions Code, to read:

13 23394.1. An off-sale general license, as provided for in Section
14 23394, also authorizes the sale, to consumers only and not for
15 resale, of marijuana, concentrated cannabis, or any of its derivatives
16 pursuant to the provisions of Chapter 14.5 (commencing with
17 Section 25400) of this division.

18 SEC. 3. Chapter 14.5 (commencing with Section 25400) is
19 added to Division 9 of the Business and Professions Code, to read:

20

21 CHAPTER 14.5. COMMERCIAL MARIJUANA PRODUCTION AND
22 SALE

23

24 25400. For purposes of this chapter, “marijuana” means all
25 parts of the plant *Cannabis sativa* L., whether growing or not; the
26 seeds thereof; the resin extracted from any part of the plant;
27 concentrated cannabis; and every compound, manufacture, salt,
28 derivative, mixture, or preparation of the plant, its seeds or resin.
29 It does not include the mature stalks of the plant, fiber produced
30 from the stalks, oil or cake made from the seeds of the plant, any
31 other compound, manufacture, salt, derivative, mixture, or
32 preparation of the mature stalks (except the resin extracted
33 therefrom), fiber, oil, or cake, or the sterilized seed of the plant
34 that is incapable of germination.

35 25401. (a) The department shall license commercial cultivators
36 of marijuana. The fee for the license shall be set at an amount that
37 will reasonably cover to costs of assuring compliance with the
38 regulations to be issued, but may not exceed five thousand dollars
39 (\$5,000) for an initial application, or two thousand five hundred
40 dollars (\$2,500) per year for each annual renewal.

1 (b) Regulations adopted by the department pursuant to this
2 chapter shall require background checks of applicants be conducted.
3 At the request of the department, the Attorney General or any local
4 agency shall provide summary criminal history information to the
5 department as provided in Sections 11105 and 13300 of the Penal
6 Code.

7 25402. The department shall, with consideration for the risks
8 posed by cultivation of a valuable crop with public health
9 implications that is subject to significant fees, issue and enforce
10 regulations concerning commercial cultivators of marijuana that
11 provide for all of the following:

12 (a) Adequate security to reasonably protect against unauthorized
13 access to the marijuana crop at all stages of cultivation, harvesting,
14 drying, processing, packing, and delivery to licensed sales outlets
15 or wholesalers. Each licensee shall be required to provide a detailed
16 crop security plan, along with satisfactory proof of the financial
17 ability of the licensee to provide for that security.

18 (b) Appropriate employment rules, including the rule that a
19 person under 21 years of age may not have access to marijuana
20 during cultivation, storage, drying, packing, or at any other time.

21 (c) Safeguards to assure that a person under 21 years of age may
22 not transport marijuana on behalf of a commercial buyer or
23 commercial seller.

24 (d) Restrictions to ensure that marijuana is not used or consumed
25 on the premises of a commercial cultivator.

26 (e) An inspection and tracking system to reasonably ensure that
27 all marijuana produced by the cultivator that is eventually sold is
28 assessed pursuant to Part 14.6 (commencing with Section 34001)
29 of Division 2 of the Revenue and Taxation Code.

30 (f) Recordkeeping consistent with the regulatory needs of the
31 department.

32 25403. (a) The department shall license marijuana wholesalers,
33 who shall be allowed to package and prepare marijuana for sale,
34 and who shall be authorized to sell marijuana to licensed sales
35 outlets. The fee for the license shall be set in an amount that will
36 reasonably cover the costs of compliance with the regulations to
37 be issued, but may not exceed five thousand dollars (\$5,000) for
38 an initial application, or two thousand five hundred dollars (\$2,500)
39 per year for each annual renewal.

1 (b) The department shall issue regulations that include a
2 requirement that all applicants for licensure receive background
3 checks. At the request of the department, the Attorney General or
4 any local agency shall provide summary criminal history
5 information to the department as provided in Sections 11105 and
6 13300 of the Penal Code.

7 25404. The department shall, with consideration for the risks
8 posed by a valuable commodity with public health implications
9 that is subject to significant fees, issue and enforce regulations
10 concerning the sale and packaging of marijuana by wholesale
11 licensees. Those regulations shall provide for all of the following:

12 (a) Adequate security to reasonably protect against unauthorized
13 access to marijuana at all stages of the wholesaler's possession of
14 the marijuana, including receiving, processing, packing, storage,
15 and delivery to licensed sales outlets. Each wholesaler shall be
16 required to provide a detailed product security plan, along with
17 satisfactory proof of the financial ability of the licensee to provide
18 for that security.

19 (b) Appropriate employment rules, including the rule that a
20 person under 21 years of age may not have access to marijuana
21 during receiving, processing, packing, storage, and delivery or at
22 any other time.

23 (c) Safeguards to assure that a person under 21 years of age may
24 not transport marijuana on behalf of a commercial buyer or
25 commercial seller.

26 (d) Restrictions to ensure that marijuana is not used or consumed
27 on the premises of a wholesaler.

28 (e) An inspection and tracking system to reasonably ensure that
29 all marijuana received by the wholesaler that is eventually sold is
30 assessed pursuant to Part 14.6 (commencing with Section 34001)
31 of Division 2 of the Revenue and Taxation Code.

32 (f) Recordkeeping consistent with the regulatory needs of the
33 department.

34 25405. The department shall issue and enforce regulations
35 concerning the sale of marijuana by off-sale general licensees.
36 Those regulations shall provide for all of the following:

37 (a) An inspection and tracking system to ensure that marijuana
38 may not be sold by a licensee if that marijuana has not been made
39 subject to an assessment provided for in Part 14.6 (commencing

1 with Section 34001) of Division 2 of the Revenue and Taxation
2 Code.

3 (b) Marijuana shall be kept behind a counter in an area not
4 directly accessible to any customer, and shall be stored in a case
5 that is locked between sales.

6 (c) Marijuana may not be sold to anyone under 21 years of age.

7 (d) Punishments for violations in actions against licensees that
8 are in substantial accord with those applicable to the regulation of
9 alcohol sales, including heavy penalties for permitting persons
10 under 21 years of age to purchase these products and other
11 appropriate regulatory provisions concerning such matters as the
12 time of sale, deliveries, and signage. It is the intent of the people
13 in enacting this act that the regulation of marijuana sales be
14 consistent with the statutory guidance regarding alcohol sales in
15 Chapter 16 (commencing with Section 25600), to the extent that
16 consistency is feasible.

17 (e) Recordkeeping consistent with the regulatory needs of the
18 department.

19 25406. Beginning 30 days after the operative date of the
20 regulations issued pursuant to this chapter, or 30 days after the
21 date when federal law permits the possession and sale of marijuana
22 consistent with this chapter, whichever is latest, the department
23 shall begin to enforce the provisions of this chapter.

24 SEC. 4. Section 68152 of the Government Code is amended
25 to read:

26 68152. The trial court clerk may destroy court records under
27 Section 68153 after notice of destruction and if there is no request
28 and order for transfer of the records, except the comprehensive
29 historical and sample superior court records preserved for research
30 under the California Rules of Court, when the following times
31 have expired after final disposition of the case in the categories
32 listed:

- 33 (a) Adoption: retain permanently.
- 34 (b) Change of name: retain permanently.
- 35 (c) Other civil actions and proceedings, as follows:
 - 36 (1) Except as otherwise specified: 10 years.
 - 37 (2) Where a party appears by a guardian ad litem: 10 years after
38 termination of the court’s jurisdiction.
 - 39 (3) Domestic violence: same period as duration of the restraining
40 or other orders and renewals, then retain the restraining or other

- 1 orders as a judgment; 60 days after expiration of the temporary
2 protective or temporary restraining order.
- 3 (4) Eminent domain: retain permanently.
- 4 (5) Family law, except as otherwise specified: 30 years.
- 5 (6) Harassment: same period as duration of the injunction and
6 renewals, then retain the injunction as a judgment; 60 days after
7 expiration of the temporary restraining order.
- 8 (7) Mental health (Lanterman Developmental Disabilities
9 Services Act and Lanterman-Petris-Short Act): 30 years.
- 10 (8) Paternity: retain permanently.
- 11 (9) Petition, except as otherwise specified: 10 years.
- 12 (10) Real property other than unlawful detainer: retain
13 permanently if the action affects title or an interest in real property.
- 14 (11) Small claims: 10 years.
- 15 (12) Unlawful detainer: one year if judgment is for possession
16 of the premises; 10 years if judgment is for money.
- 17 (d) Notwithstanding subdivision (c), any civil or small claims
18 case in the trial court:
- 19 (1) Involuntarily dismissed by the court for delay in prosecution
20 or failure to comply with state or local rules: one year.
- 21 (2) Voluntarily dismissed by a party without entry of judgment:
22 one year.
- 23 Notation of the dismissal shall be made on the civil index of
24 cases or on a separate dismissal index.
- 25 (e) Criminal.
- 26 (1) Capital felony (murder with special circumstances where
27 the prosecution seeks the death penalty): retain permanently. If
28 the charge is disposed of by acquittal or a sentence less than death,
29 the case shall be reclassified.
- 30 (2) Felony, except as otherwise specified: 75 years.
- 31 (3) Felony, except capital felony, with court records from the
32 initial complaint through the preliminary hearing or plea and for
33 which the case file does not include final sentencing or other final
34 disposition of the case because the case was bound over to the
35 superior court: five years.
- 36 (4) Misdemeanor, except as otherwise specified: five years.
- 37 (5) Misdemeanor alleging a violation of the Vehicle Code,
38 except as otherwise specified: three years.
- 39 (6) Misdemeanor alleging a violation of Section 23103, 23152,
40 or 23153 of the Vehicle Code: 10 years.

1 (7) Misdemeanor alleging a violation of Section 14601, 14601.1,
 2 20002, 23104, 23105, 23109, or 23109.1 of the Vehicle Code: five
 3 years.

4 (8) Misdemeanor alleging a marijuana violation under
 5 subdivision (b), (e), (d), or (e) (a) or (b) of Section 11357 of the
 6 Health and Safety Code, or subdivision (b) of Section 11360 of
 7 the Health and Safety Code in accordance with the procedure set
 8 forth in Section 11361.5 of the Health and Safety Code: records
 9 shall be destroyed two years from the date of conviction or from
 10 the date of arrest if no conviction.

11 (9) Misdemeanor, infraction, or civil action alleging a violation
 12 of the regulation and licensing of dogs under Sections 30951 to
 13 30956, inclusive, of the Food and Agricultural Code or violation
 14 of any other local ordinance: three years.

15 (10) Misdemeanor action resulting in a requirement that the
 16 defendant register as a sex offender pursuant to Section 290 of the
 17 Penal Code: 75 years. This paragraph shall apply to records relating
 18 to a person convicted on or after September 20, 2006.

19 (11) Infraction, except as otherwise specified: three years.

20 (12) Parking infractions, including alleged violations under the
 21 stopping, standing, and parking provisions set forth in Chapter 9
 22 (commencing with Section 22500) of Division 11 of the Vehicle
 23 Code: two years.

24 (f) Habeas corpus: same period as period for retention of the
 25 records in the underlying case category.

26 (g) Juvenile.

27 (1) Dependent (Section 300 of the Welfare and Institutions
 28 Code): upon reaching age 28 or on written request shall be released
 29 to the juvenile five years after jurisdiction over the person has
 30 terminated under subdivision (a) of Section 826 of the Welfare
 31 and Institutions Code. Sealed records shall be destroyed upon court
 32 order five years after the records have been sealed pursuant to
 33 subdivision (c) of Section 389 of the Welfare and Institutions Code.

34 (2) Ward (Section 601 of the Welfare and Institutions Code):
 35 upon reaching age 21 or on written request shall be released to the
 36 juvenile five years after jurisdiction over the person has terminated
 37 under subdivision (a) of Section 826 of the Welfare and Institutions
 38 Code. Sealed records shall be destroyed upon court order five years
 39 after the records have been sealed under subdivision (d) of Section
 40 781 of the Welfare and Institutions Code.

- 1 (3) Ward (Section 602 of the Welfare and Institutions Code):
2 upon reaching age 38 under subdivision (a) of Section 826 of the
3 Welfare and Institutions Code. Sealed records shall be destroyed
4 upon court order when the subject of the record reaches the age
5 of 38 under subdivision (d) of Section 781 of the Welfare and
6 Institutions Code.
- 7 (4) Traffic and some nontraffic misdemeanors and infractions
8 (Section 601 of the Welfare and Institutions Code): upon reaching
9 age 21 or five years after jurisdiction over the person has terminated
10 under subdivision (c) of Section 826 of the Welfare and Institutions
11 Code. May be microfilmed or photocopied.
- 12 (5) Marijuana misdemeanor under subdivision ~~(e)~~ (b) of Section
13 11357 of the Health and Safety Code in accordance with procedures
14 specified in subdivision (a) of Section 11361.5 of the Health and
15 Safety Code: upon reaching age 18 the records shall be destroyed.
- 16 (h) Probate.
- 17 (1) Conservatorship: 10 years after decree of termination.
- 18 (2) Guardianship: 10 years after the age of 18.
- 19 (3) Probate, including probated wills, except as otherwise
20 specified: retain permanently.
- 21 (i) Court records of the appellate division of the superior court:
22 five years.
- 23 (j) Other records.
- 24 (1) Applications in forma pauperis: any time after the disposition
25 of the underlying case.
- 26 (2) Arrest warrant: same period as period for retention of the
27 records in the underlying case category.
- 28 (3) Bench warrant: same period as period for retention of the
29 records in the underlying case category.
- 30 (4) Bond: three years after exoneration and release.
- 31 (5) Coroner's inquest report: same period as period for retention
32 of the records in the underlying case category; if no case, then
33 permanent.
- 34 (6) Court orders not associated with an underlying case, such
35 as orders for destruction of court records for telephone taps, or to
36 destroy drugs, and other miscellaneous court orders: three years.
- 37 (7) Court reporter notes: 10 years after the notes have been taken
38 in criminal and juvenile proceedings and five years after the notes
39 have been taken in all other proceedings, except notes reporting
40 proceedings in capital felony cases (murder with special

1 circumstances where the prosecution seeks the death penalty and
 2 the sentence is death), including notes reporting the preliminary
 3 hearing, which shall be retained permanently, unless the Supreme
 4 Court on request of the court clerk authorizes the destruction.

5 (8) Electronic recordings made as the official record of the oral
 6 proceedings under the California Rules of Court: any time after
 7 final disposition of the case in infraction and misdemeanor
 8 proceedings, 10 years in all other criminal proceedings, and five
 9 years in all other proceedings.

10 (9) Electronic recordings not made as the official record of the
 11 oral proceedings under the California Rules of Court: any time
 12 either before or after final disposition of the case.

13 (10) Index, except as otherwise specified: retain permanently.

14 (11) Index for cases alleging traffic violations: same period as
 15 period for retention of the records in the underlying case category.

16 (12) Judgments within the jurisdiction of the superior court
 17 other than in a limited civil case, misdemeanor case, or infraction
 18 case: retain permanently.

19 (13) Judgments in misdemeanor cases, infraction cases, and
 20 limited civil cases: same period as period for retention of the
 21 records in the underlying case category.

22 (14) Minutes: same period as period for retention of the records
 23 in the underlying case category.

24 (15) Naturalization index: retain permanently.

25 (16) Ninety-day evaluation (under Section 1203.03 of the Penal
 26 Code): same period as period for retention of the records in the
 27 underlying case category, or period for completion or termination
 28 of probation, whichever is longer.

29 (17) Register of actions or docket: same period as period for
 30 retention of the records in the underlying case category, but in no
 31 event less than 10 years for civil and small claims cases.

32 (18) Search warrant: 10 years, except search warrants issued in
 33 connection with a capital felony case defined in paragraph (7),
 34 which shall be retained permanently.

35 (k) Retention of the court records under this section shall be
 36 extended as follows:

37 (1) By order of the court on its own motion, or on application
 38 of a party or an interested member of the public for good cause
 39 shown and on those terms as are just. A fee shall not be charged
 40 for making the application.

1 (2) Upon application and order for renewal of the judgment to
2 the extended time for enforcing the judgment.

3 SEC. 5. Section 11014.5 of the Health and Safety Code is
4 amended to read:

5 11014.5. (a) “Drug paraphernalia” means all equipment,
6 products, and materials of any kind ~~which~~ *that* are designed for
7 use or marketed for use; in planting, propagating, cultivating,
8 growing, harvesting, manufacturing, compounding, converting,
9 producing, processing, preparing, testing, analyzing, packaging,
10 repackaging, storing, containing, concealing, injecting, ingesting,
11 inhaling, or otherwise introducing into the human body a controlled
12 substance in violation of this division. It includes, but is not limited
13 to:

14 (1) Kits designed for use or marketed for use in planting,
15 propagating, cultivating, growing, or harvesting of any species of
16 plant which is a controlled substance or from which a controlled
17 substance can be derived.

18 (2) Kits designed for use or marketed for use in manufacturing,
19 compounding, converting, producing, processing, or preparing
20 controlled substances.

21 (3) Isomerization devices designed for use or marketed for use
22 in increasing the potency of any species of plant which is a
23 controlled substance.

24 (4) Testing equipment designed for use or marketed for use in
25 identifying, or in analyzing the strength, effectiveness, or purity
26 of controlled substances.

27 (5) Scales and balances designed for use or marketed for use in
28 weighing or measuring controlled substances.

29 (6) Containers and other objects designed for use or marketed
30 for use in storing or concealing controlled substances.

31 (7) Hypodermic syringes, needles, and other objects designed
32 for use or marketed for use in parenterally injecting controlled
33 substances into the human body.

34 (8) Objects designed for use or marketed for use in ingesting,
35 inhaling, or otherwise introducing ~~marijuana, cocaine, hashish, or~~
36 ~~hashish oil~~ into the human body, such as:

37 (A) Carburetion tubes and devices.

38 (B) Smoking and carburetion masks.

- 1 (C) Roach clips, meaning objects used to hold burning material;
2 ~~such as a marijuana cigarette~~, that has become too small or too
3 short to be held in the hand.
- 4 (D) Miniature cocaine spoons, and cocaine vials.
- 5 (E) Chamber pipes.
- 6 (F) Carburetor pipes.
- 7 (G) Electric pipes.
- 8 (H) Air-driven pipes.
- 9 (I) Chillums.
- 10 (J) Bongs.
- 11 (K) Ice pipes or chillers.
- 12 (b) For the purposes of this section, the phrase “marketed for
13 use” means advertising, distributing, offering for sale, displaying
14 for sale, or selling in a manner which promotes the use of
15 equipment, products, or materials with controlled substances.
- 16 (c) In determining whether an object is drug paraphernalia, a
17 court or other authority may consider, in addition to all other
18 logically relevant factors, the following:
- 19 (1) Statements by an owner or by anyone in control of the object
20 concerning its use.
- 21 (2) Instructions, oral or written, provided with the object
22 concerning its use for ingesting, inhaling, or otherwise introducing
23 a controlled substance into the human body.
- 24 (3) Descriptive materials accompanying the object which explain
25 or depict its use.
- 26 (4) National and local advertising concerning its use.
- 27 (5) The manner in which the object is displayed for sale.
- 28 (6) Whether the owner, or anyone in control of the object, is a
29 legitimate supplier of like or related items to the community, such
30 as a licensed distributor or dealer of tobacco products.
- 31 (7) Expert testimony concerning its use.
- 32 (d) If any provision of this section or the application thereof to
33 any person or circumstance is held invalid, it is the intent of the
34 Legislature that the invalidity shall not affect other provisions or
35 applications of the section which can be given effect without the
36 invalid provision or application and to this end the provisions of
37 this section are severable.
- 38 SEC. 6. Section 11054 of the Health and Safety Code is
39 amended to read:

1 11054. (a) The controlled substances listed in this section are
2 included in Schedule I.

3 (b) Opiates. Unless specifically excepted or unless listed in
4 another schedule, any of the following opiates, including their
5 isomers, esters, ethers, salts, and salts of isomers, esters, and ethers
6 whenever the existence of those isomers, esters, ethers, and salts
7 is possible within the specific chemical designation:

- 8 (1) Acetylmethadol.
- 9 (2) Allyprodine.
- 10 (3) Alphacetylmethadol (except levoalphacetylmethadol, also
11 known as levo-alpha- acetylmethadol, levomethadyl acetate, or
12 LAAM).
- 13 (4) Alphameprodine.
- 14 (5) Alphamethadol.
- 15 (6) Benzethidine.
- 16 (7) Betacetylmethadol.
- 17 (8) Betameprodine.
- 18 (9) Betamethadol.
- 19 (10) Betaprodine.
- 20 (11) Clonitazene.
- 21 (12) Dextromoramide.
- 22 (13) Diampromide.
- 23 (14) Diethylthiambutene.
- 24 (15) Difenoxin.
- 25 (16) Dimenoxadol.
- 26 (17) Dimepheptanol.
- 27 (18) Dimethylthiambutene.
- 28 (19) Dioxaphetyl butyrate.
- 29 (20) Dipipanone.
- 30 (21) Ethylmethylthiambutene.
- 31 (22) Etonitazene.
- 32 (23) Etoxidine.
- 33 (24) Furethidine.
- 34 (25) Hydroxypethidine.
- 35 (26) Ketobemidone.
- 36 (27) Levomoramide.
- 37 (28) Levophenacetylmorphan.
- 38 (29) Morpheridine.
- 39 (30) Noracymethadol.
- 40 (31) Norlevorphanol.

- 1 (32) Normethadone.
- 2 (33) Norpipanone.
- 3 (34) Phenadoxone.
- 4 (35) Phenampromide.
- 5 (36) Phenomorphan.
- 6 (37) Phenoperidine.
- 7 (38) Piritramide.
- 8 (39) Proheptazine.
- 9 (40) Properidine.
- 10 (41) Propiram.
- 11 (42) Racemoramide.
- 12 (43) Tilidine.
- 13 (44) Trimeperidine.
- 14 (45) Any substance which contains any quantity of
- 15 acetylfentanyl (N-[1-phenethyl-4-piperidinyl] acetanilide) or a
- 16 derivative thereof.
- 17 (46) Any substance which contains any quantity of the thiophene
- 18 analog of acetylfentanyl (N-[1-[2-(2-thienyl)ethyl]-4-piperidinyl]
- 19 acetanilide) or a derivative thereof.
- 20 (47) 1-Methyl-4-Phenyl-4-Propionoxypiperidine (MPPP).
- 21 (48) 1-(2-Phenethyl)-4-Phenyl-4-Acetyloxypiperidine (PEPAP).
- 22 (c) Opium derivatives. Unless specifically excepted or unless
- 23 listed in another schedule, any of the following opium derivatives,
- 24 its salts, isomers, and salts of isomers whenever the existence of
- 25 those salts, isomers, and salts of isomers is possible within the
- 26 specific chemical designation:
- 27 (1) Acetorphine.
- 28 (2) Acetyldihydrocodeine.
- 29 (3) Benzylmorphine.
- 30 (4) Codeine methylbromide.
- 31 (5) Codeine-N-Oxide.
- 32 (6) Cyprenorphine.
- 33 (7) Desomorphine.
- 34 (8) Dihydromorphine.
- 35 (9) Drotebanol.
- 36 (10) Etorphine (except hydrochloride salt).
- 37 (11) Heroin.
- 38 (12) Hydromorphanol.
- 39 (13) Methyldesorphine.
- 40 (14) Methyldihydromorphine.

- 1 (15) Morphine methylbromide.
- 2 (16) Morphine methylsulfonate.
- 3 (17) Morphine-N-Oxide.
- 4 (18) Myrophine.
- 5 (19) Nicocodeine.
- 6 (20) Nicomorphine.
- 7 (21) Normorphine.
- 8 (22) Pholcodine.
- 9 (23) Thebacon.
- 10 (d) Hallucinogenic substances. Unless specifically excepted or
- 11 unless listed in another schedule, any material, compound, mixture,
- 12 or preparation, which contains any quantity of the following
- 13 hallucinogenic substances, or which contains any of its salts,
- 14 isomers, and salts of isomers whenever the existence of those salts,
- 15 isomers, and salts of isomers is possible within the specific
- 16 chemical designation (for purposes of this subdivision only, the
- 17 term “isomer” includes the optical, position, and geometric
- 18 isomers):
- 19 (1) 4-bromo-2,5-dimethoxy-amphetamine—Some trade or other
- 20 names: 4-bromo-2,5-dimethoxy-alpha-methylphenethylamine;
- 21 4-bromo-2,5-DMA.
- 22 (2) 2,5-dimethoxyamphetamine—Some trade or other names:
- 23 2,5-dimethoxy-alpha-methylphenethylamine; 2,5-DMA.
- 24 (3) 4-methoxyamphetamine—Some trade or other names:
- 25 4 - m e t h o x y - a l p h a - m e t h y l p h e n e t h y l a m i n e ,
- 26 paramethoxyamphetamine, PMA.
- 27 (4) 5-methoxy-3,4-methylenedioxy-amphetamine.
- 28 (5) 4-methyl-2,5-dimethoxy-amphetamine—Some trade or other
- 29 names: 4-methyl-2,5-dimethoxy-alpha-methylphenethylamine;
- 30 “DOM”; and “STP.”
- 31 (6) 3,4-methylenedioxy amphetamine.
- 32 (7) 3,4,5-trimethoxy amphetamine.
- 33 (8) Bufotenine—Some trade or other names:
- 34 3 - (b e t a - d i m e t h y l a m i n o e t h y l) - 5 - h y d r o x y i n d o l e ;
- 35 3-(2-dimethylaminoethyl)-5 indolol; N,N-dimethylserolonin,
- 36 5-hydroxy-N,N-dimethyltryptamine; mappine.
- 37 (9) Diethyltryptamine—Some trade or other names:
- 38 N,N-Diethyltryptamine; DET.
- 39 (10) Dimethyltryptamine—Some trade or other names: DMT.

- 1 (11) Ibogaine—Some trade or other names: 7-Ethyl-6,6beta,
2 7,8,9,10,12,13-octahydro-2-methoxy-6,9-methano-5H-pyrido
3 [1',2':1,2] azepino [5,4-b] indole; Tabernantheiboga.
- 4 (12) Lysergic acid diethylamide.
- 5 ~~(13) Marijuana.~~
- 6 (14) Mescaline.
- 7 (15) Peyote—Meaning all parts of the plant presently classified
8 botanically as *Lophophora williamsii* Lemaire, whether growing
9 or not, the seeds thereof, any extract from any part of the plant,
10 and every compound, manufacture, salts, derivative, mixture, or
11 preparation of the plant, its seeds or extracts (interprets 21 U.S.C.
12 Sec. 812(c), Schedule 1(c)(12)).
- 13 (16) N-ethyl-3-piperidyl benzilate.
- 14 (17) N-methyl-3-piperidyl benzilate.
- 15 (18) Psilocybin.
- 16 (19) Psilocyn.
- 17 ~~(20) Tetrahydrocannabinols—Synthetic tetrahydrocannabinols~~
18 ~~not derived from cannabis plants.~~ Synthetic equivalents of the
19 substances contained in the plant, or in the resinous extractives of
20 Cannabis, sp. and/or synthetic substances, derivatives, and their
21 isomers with similar chemical structure and pharmacological
22 activity such as the following: delta 1 cis or trans
23 tetrahydrocannabinol, and their optical isomers; delta 6 cis or trans
24 tetrahydrocannabinol, and their optical isomers; delta 3,4 cis or
25 trans tetrahydrocannabinol, and its optical isomers.
- 26 (Since nomenclature of these substances is not internationally
27 standardized, compounds of these structures, regardless of
28 numerical designation of atomic positions covered).
- 29 (21) Ethylamine analog of phencyclidine—Some trade or other
30 names: N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl)
31 ethylamine, N-(1-phenylcyclohexyl) ethylamine, cyclohexamine,
32 PCE.
- 33 (22) Pyrrolidine analog of phencyclidine—Some trade or other
34 names: 1-(1-phenylcyclohexyl)-pyrrolidine, PCP, PHP.
- 35 (23) Thiophene analog of phencyclidine—Some trade or other
36 names: 1-[1-(2 thienyl)-cyclohexyl]-piperidine, 2-thienyl analog
37 of phencyclidine, TPCP, TCP.
- 38 (e) Depressants. Unless specifically excepted or unless listed
39 in another schedule, any material, compound, mixture, or
40 preparation which contains any quantity of the following substances

1 having a depressant effect on the central nervous system, including
2 its salts, isomers, and salts of isomers whenever the existence of
3 those salts, isomers, and salts of isomers is possible within the
4 specific chemical designation:

5 (1) Mecloqualone.

6 (2) Methaqualone.

7 (3) Gamma hydroxybutyric acid (also known by other names
8 such as GHB; gamma hydroxy butyrate; 4-hydroxybutyrate;
9 4-hydroxybutanoic acid; sodium oxybate; sodium oxybutyrate),
10 including its immediate precursors, isomers, esters, ethers, salts,
11 and salts of isomers, esters, and ethers, including, but not limited
12 to, gammabutyrolactone, for which an application has not been
13 approved under Section 505 of the Federal Food, Drug, and
14 Cosmetic Act (21 U.S.C. Sec. 355).

15 (f) Unless specifically excepted or unless listed in another
16 schedule, any material, compound, mixture, or preparation which
17 contains any quantity of the following substances having a
18 stimulant effect on the central nervous system, including its
19 isomers:

20 (1) Cocaine base.

21 (2) Fenethylline, including its salts.

22 (3) N-Ethylamphetamine, including its salts.

23 SEC. 7. Section 11357 of the Health and Safety Code is
24 amended to read:

25 ~~11357. (a) Except as authorized by law, every person who~~
26 ~~possesses any concentrated cannabis shall be punished by~~
27 ~~imprisonment in the county jail for a period of not more than one~~
28 ~~year or by a fine of not more than five hundred dollars (\$500), or~~
29 ~~by both such fine and imprisonment, or shall be punished by~~
30 ~~imprisonment in the state prison.~~

31 ~~(b) Except as authorized by law, every person who possesses~~
32 ~~not more than 28.5 grams of marijuana, other than concentrated~~
33 ~~cannabis, is guilty of a misdemeanor and shall be punished by a~~
34 ~~fine of not more than one hundred dollars (\$100). Notwithstanding~~
35 ~~other provisions of law, if such person has been previously~~
36 ~~convicted three or more times of an offense described in this~~
37 ~~subdivision during the two-year period immediately preceding the~~
38 ~~date of commission of the violation to be charged, the previous~~
39 ~~convictions shall also be charged in the accusatory pleading and,~~
40 ~~if found to be true by the jury upon a jury trial or by the court upon~~

1 a court trial or if admitted by the person, the provisions of Sections
 2 1000.1 and 1000.2 of the Penal Code shall be applicable to him,
 3 and the court shall divert and refer him for education, treatment,
 4 or rehabilitation, without a court hearing or determination or the
 5 concurrence of the district attorney, to an appropriate community
 6 program which will accept him. If the person is so diverted and
 7 referred he shall not be subject to the fine specified in this
 8 subdivision. If no community program will accept him, the person
 9 shall be subject to the fine specified in this subdivision. In any
 10 case in which a person is arrested for a violation of this subdivision
 11 and does not demand to be taken before a magistrate, such person
 12 shall be released by the arresting officer upon presentation of
 13 satisfactory evidence of identity and giving his written promise to
 14 appear in court, as provided in Section 853.6 of the Penal Code,
 15 and shall not be subjected to booking.

16 (e) Except as authorized by law, every person who possesses
 17 more than 28.5 grams of marijuana, other than concentrated
 18 cannabis, shall be punished by imprisonment in the county jail for
 19 a period of not more than six months or by a fine of not more than
 20 five hundred dollars (\$500), or by both such fine and imprisonment.

21 (d)
 22 11357. (a) Except as authorized by law, every person 18 years
 23 of age or over who possesses ~~not more than 28.5 grams of~~
 24 ~~marijuana, other than~~ or concentrated cannabis, upon the grounds
 25 of, or within, any school providing instruction in kindergarten or
 26 any of grades 1 through 12 during hours the school is open for
 27 classes or school-related programs is guilty of a misdemeanor and
 28 shall be punished by a fine of not more than five hundred dollars
 29 (\$500), or by imprisonment in the county jail for a period of not
 30 more than 10 days, or both.

31 (e)
 32 (b) Except as authorized by law, every person under the age of
 33 18 who possesses ~~not more than 28.5 grams of marijuana, other~~
 34 ~~than~~ or concentrated cannabis, upon the grounds of, or within, any
 35 school providing instruction in kindergarten or any of grades 1
 36 through 12 during hours the school is open for classes or
 37 school-related programs is guilty of a misdemeanor and shall be
 38 subject to the following dispositions:

39 (1) A fine of not more than two hundred fifty dollars (\$250),
 40 upon a finding that a first offense has been committed.

1 (2) A fine of not more than five hundred dollars (\$500), or
2 commitment to a juvenile hall, ranch, camp, forestry camp, or
3 secure juvenile home for a period of not more than 10 days, or
4 both, upon a finding that a second or subsequent offense has been
5 committed.

6 SEC. 8. Section 11358 of the Health and Safety Code is
7 repealed.

8 ~~11358. Every person who plants, cultivates, harvests, dries, or
9 processes any marijuana or any part thereof, except as otherwise
10 provided by law, shall be punished by imprisonment in the state
11 prison.~~

12 SEC. 9. Section 11359 of the Health and Safety Code is
13 repealed.

14 ~~11359. Every person who possesses for sale any marijuana,
15 except as otherwise provided by law, shall be punished by
16 imprisonment in the state prison.~~

17 SEC. 10. Section 11360 of the Health and Safety Code is
18 repealed.

19 ~~11360. (a) Except as otherwise provided by this section or as
20 authorized by law, every person who transports, imports into this
21 state, sells, furnishes, administers, or gives away, or offers to
22 transport, import into this state, sell, furnish, administer, or give
23 away, or attempts to import into this state or transport any
24 marijuana shall be punished by imprisonment in the state prison
25 for a period of two, three or four years.~~

26 ~~(b) Except as authorized by law, every person who gives away,
27 offers to give away, transports, offers to transport, or attempts to
28 transport not more than 28.5 grams of marijuana, other than
29 concentrated cannabis, is guilty of a misdemeanor and shall be
30 punished by a fine of not more than one hundred dollars (\$100).
31 In any case in which a person is arrested for a violation of this
32 subdivision and does not demand to be taken before a magistrate,
33 such person shall be released by the arresting officer upon
34 presentation of satisfactory evidence of identity and giving his
35 written promise to appear in court, as provided in Section 853.6
36 of the Penal Code, and shall not be subjected to booking.~~

37 SEC. 11. Section 11361 of the Health and Safety Code is
38 repealed.

39 ~~11361. (a) Every person 18 years of age or over who hires,
40 employs, or uses a minor in unlawfully transporting, carrying,~~

1 ~~selling, giving away, preparing for sale, or peddling any marijuana,~~
2 ~~who unlawfully sells, or offers to sell, any marijuana to a minor,~~
3 ~~or who furnishes, administers, or gives, or offers to furnish,~~
4 ~~administer, or give any marijuana to a minor under 14 years of~~
5 ~~age, or who induces a minor to use marijuana in violation of law~~
6 ~~shall be punished by imprisonment in the state prison for a period~~
7 ~~of three, five, or seven years.~~

8 ~~(b) Every person 18 years of age or over who furnishes,~~
9 ~~administers, or gives, or offers to furnish, administer, or give, any~~
10 ~~marijuana to a minor 14 years of age or older shall be punished~~
11 ~~by imprisonment in the state prison for a period of three, four, or~~
12 ~~five years.~~

13 SEC. 12. Section 11364.5 of the Health and Safety Code is
14 amended to read:

15 11364.5. (a) Except as authorized by law, no person shall
16 maintain or operate any place of business in which drug
17 paraphernalia is kept, displayed or offered in any manner, sold,
18 furnished, transferred or given away unless such drug paraphernalia
19 is completely and wholly kept, displayed or offered within a
20 separate room or enclosure to which persons under the age of 18
21 years not accompanied by a parent or legal guardian are excluded.
22 Each entrance to such a room or enclosure shall be signposted in
23 reasonably visible and legible words to the effect that drug
24 paraphernalia is kept, displayed or offered in such room or
25 enclosure and that minors, unless accompanied by a parent or legal
26 guardian, are excluded.

27 (b) Except as authorized by law, no owner, manager, proprietor
28 or other person in charge of any room or enclosure, within any
29 place of business, in which drug paraphernalia is kept, displayed
30 or offered in any manner, sold, furnished, transferred or given
31 away shall permit or allow any person under the age of 18 years
32 to enter, be in, remain in or visit such room or enclosure unless
33 such minor person is accompanied by one of his or her parents or
34 by his or her legal guardian.

35 (c) Unless authorized by law, no person under the age of 18
36 years shall enter, be in, remain in or visit any room or enclosure
37 in any place of business in which drug paraphernalia is kept,
38 displayed or offered in any manner, sold, furnished, transferred or
39 given away unless accompanied by one of his or her parents or by
40 his or her legal guardian.

1 (d) As used in this section, “drug paraphernalia” means all
2 equipment, products, and materials of any kind which are intended
3 for use or designed for use, in planting, propagating, cultivating,
4 growing, harvesting, manufacturing, compounding, converting,
5 producing, processing, preparing, testing, analyzing, packaging,
6 repackaging, storing, containing, concealing, injecting, ingesting,
7 inhaling, or otherwise introducing into the human body a controlled
8 substance. “Drug paraphernalia” includes, but is not limited to, all
9 of the following:

10 (1) Kits intended for use or designed for use in planting,
11 propagating, cultivating, growing or harvesting of any species of
12 plant which is a controlled substance or from which a controlled
13 substance can be derived.

14 (2) Kits intended for use or designed for use in manufacturing,
15 compounding, converting, producing, processing, or preparing
16 controlled substances.

17 (3) Isomerization devices intended for use or designed for use
18 in increasing the potency of any species of plant which is a
19 controlled substance.

20 (4) Testing equipment intended for use or designed for use in
21 identifying, or in analyzing the strength, effectiveness or purity of
22 controlled substances.

23 (5) Scales and balances intended for use or designed for use in
24 weighing or measuring controlled substances.

25 (6) Diluents and adulterants, such as quinine hydrochloride,
26 mannitol, mannite, dextrose, and lactose, intended for use or
27 designed for use in cutting controlled substances.

28 ~~(7) Separation gins and sifters intended for use or designed for~~
29 ~~use in removing twigs and seeds from, or in otherwise cleaning or~~
30 ~~refining, marijuana.~~

31 ~~(8)~~

32 (7) Blenders, bowls, containers, spoons, and mixing devices
33 intended for use or designed for use in compounding controlled
34 substances.

35 ~~(9)~~

36 (8) Capsules, balloons, envelopes, and other containers intended
37 for use or designed for use in packaging small quantities of
38 controlled substances.

39 ~~(10)~~

- 1 (9) Containers and other objects intended for use or designed
- 2 for use in storing or concealing controlled substances.
- 3 ~~(11)~~
- 4 (10) Hypodermic syringes, needles, and other objects intended
- 5 for use or designed for use in parenterally injecting controlled
- 6 substances into the human body.
- 7 ~~(12)~~
- 8 (11) Objects intended for use or designed for use in ingesting,
- 9 inhaling, or otherwise introducing ~~marijuana, cocaine, hashish, or~~
- 10 ~~hashish oil~~ into the human body, such as the following:
- 11 (A) Metal, wooden, acrylic, glass, stone, plastic, or ceramic
- 12 pipes with or without screens, permanent screens, hashish heads,
- 13 or punctured metal bowls.
- 14 (B) Water pipes.
- 15 (C) Carburetion tubes and devices.
- 16 (D) Smoking and carburetion masks.
- 17 (E) Roach clips, meaning objects used to hold burning material;
- 18 ~~such as a marijuana cigarette~~ that has become too small or too
- 19 short to be held in the hand.
- 20 (F) Miniature cocaine spoons, and cocaine vials.
- 21 (G) Chamber pipes.
- 22 (H) Carburetor pipes.
- 23 (I) Electric pipes.
- 24 (J) Air-driven pipes.
- 25 (K) Chillums.
- 26 (L) Bongs.
- 27 (M) Ice pipes or chillers.
- 28 (e) In determining whether an object is drug paraphernalia, a
- 29 court or other authority may consider, in addition to all other
- 30 logically relevant factors, the following:
- 31 (1) Statements by an owner or by anyone in control of the object
- 32 concerning its use.
- 33 (2) Prior convictions, if any, of an owner, or of anyone in control
- 34 of the object, under any state or federal law relating to any
- 35 controlled substance.
- 36 (3) Direct or circumstantial evidence of the intent of an owner,
- 37 or of anyone in control of the object, to deliver it to persons whom
- 38 he or she knows, or should reasonably know, intend to use the
- 39 object to facilitate a violation of this section. The innocence of an
- 40 owner, or of anyone in control of the object, as to a direct violation

1 of this section shall not prevent a finding that the object is intended
2 for use, or designed for use, as drug paraphernalia.

3 (4) Instructions, oral or written, provided with the object
4 concerning its use.

5 (5) Descriptive materials, accompanying the object which
6 explain or depict its use.

7 (6) National and local advertising concerning its use.

8 (7) The manner in which the object is displayed for sale.

9 (8) Whether the owner, or anyone in control of the object, is a
10 legitimate supplier of like or related items to the community, such
11 as a licensed distributor or dealer of tobacco *or marijuana* products.

12 (9) The existence and scope of legitimate uses for the object in
13 the community.

14 (10) Expert testimony concerning its use.

15 (f) This section shall not apply to any of the following:

16 (1) Any pharmacist or other authorized person who sells or
17 furnishes drug paraphernalia described in paragraph (11) of
18 subdivision (d) upon the prescription of a physician, dentist,
19 podiatrist or veterinarian.

20 (2) Any physician, dentist, podiatrist or veterinarian who
21 furnishes or prescribes drug paraphernalia described in paragraph
22 (11) of subdivision (d) to his or her patients.

23 (3) Any manufacturer, wholesaler or retailer licensed by the
24 California State Board of Pharmacy to sell or transfer drug
25 paraphernalia described in paragraph (11) of subdivision (d).

26 (g) Notwithstanding any other provision of law, including
27 Section 11374, violation of this section shall not constitute a
28 criminal offense, but operation of a business in violation of the
29 provisions of this section shall be grounds for revocation or
30 nonrenewal of any license, permit, or other entitlement previously
31 issued by a city, county, or city and county for the privilege of
32 engaging in such business and shall be grounds for denial of any
33 future license, permit, or other entitlement authorizing the conduct
34 of such business or any other business, if the business includes the
35 sale of drug paraphernalia.

36 SEC. 13. Section 11370 of the Health and Safety Code is
37 amended to read:

38 11370. (a) Any person convicted of violating Section 11350,
39 11351, 11351.5, 11352, 11353, 11355, ~~11357, 11359, 11360,~~
40 11361, 11363, 11366, or 11368, or of committing any offense

1 referred to in those sections, shall not, in any case, be granted
2 probation by the trial court or have the execution of the sentence
3 imposed upon him or her suspended by the court, if he or she has
4 been previously convicted of any offense described in subdivision
5 (c).

6 (b) Any person who was 18 years of age or over at the time of
7 the commission of the offense and is convicted for the first time
8 of selling, furnishing, administering, or giving a controlled
9 substance which is (1) specified in subdivision (b), (c), (e), or
10 paragraph (1) of subdivision (f) of Section 11054, specified in
11 paragraph (14), (15), or (20) of subdivision (d) of Section 11054,
12 or specified in subdivision (b) or (c) of Section 11055, or (2) which
13 is a narcotic drug classified in Schedule III, IV, or V, to a minor
14 or inducing a minor to use such a controlled substance in violation
15 of law shall not, in any case, be granted probation by the trial court
16 or have the execution of the sentence imposed upon him or her
17 suspended by the court.

18 (c) Any previous conviction of any of the following offenses,
19 or of an offense under the laws of another state or of the United
20 States which, if committed in this state, would have been
21 punishable as such an offense, shall render a person ineligible for
22 probation or suspension of sentence pursuant to subdivision (a) of
23 this section:

24 (1) Any felony offense described in this division involving a
25 controlled substance specified in subdivision (b), (c), (e), or
26 paragraph (1) of subdivision (f) of Section 11054, specified in
27 paragraph ~~(13)~~, (14), (15), or (20) of subdivision (d) of Section
28 11054, or specified in subdivision (b) or (c) of Section 11055.

29 (2) Any felony offense described in this division involving a
30 narcotic drug classified in Schedule III, IV, or V.

31 (d) The existence of any previous conviction or fact which would
32 make a person ineligible for suspension of sentence or probation
33 under this section shall be alleged in the information or indictment,
34 and either admitted by the defendant in open court, or found to be
35 true by the jury trying the issue of guilt or by the court where guilt
36 is established by a plea of guilty or nolo contendere or by trial by
37 the court sitting without a jury.

38 SEC. 14. Section 11470 of the Health and Safety Code is
39 amended to read:

40 11470. The following are subject to forfeiture:

- 1 (a) All controlled substances which have been manufactured,
2 distributed, dispensed, or acquired in violation of this division.
- 3 (b) All raw materials, products, and equipment of any kind
4 which are used, or intended for use, in manufacturing,
5 compounding, processing, delivering, importing, or exporting any
6 controlled substance in violation of this division.
- 7 (c) All property except real property or a boat, airplane, or any
8 vehicle which is used, or intended for use, as a container for
9 property described in subdivision (a) or (b).
- 10 (d) All books, records, and research products and materials,
11 including formulas, microfilm, tapes, and data which are used, or
12 intended for use, in violation of this division.
- 13 (e) The interest of any registered owner of a boat, airplane, or
14 any vehicle other than an implement of husbandry, as defined in
15 Section 36000 of the Vehicle Code, which has been used as an
16 instrument to facilitate the manufacture of, or possession for sale
17 or sale of 14.25 grams or more of heroin or cocaine base as
18 specified in paragraph (1) of subdivision (f) of Section 11054, or
19 a substance containing 14.25 grams or more of heroin or cocaine
20 base as specified in paragraph (1) of subdivision (f) of Section
21 11054, or 14.25 grams or more of a substance containing heroin
22 or cocaine base as specified in paragraph (1) of subdivision (f) of
23 Section 11054, or 28.5 grams or more of Schedule I controlled
24 substances except ~~marijuana, peyote, or psilocybin~~; 10 pounds dry
25 weight or more of ~~marijuana, peyote, or psilocybin~~; or 28.5 grams
26 or more of cocaine, as specified in paragraph (6) of subdivision
27 (b) of Section 11055, or methamphetamine; or a substance
28 containing 28.5 grams or more of cocaine, as specified in paragraph
29 (6) of subdivision (b) of Section 11055, or methamphetamine; or
30 57 grams or more of a substance containing cocaine, as specified
31 in paragraph (6) of subdivision (b) of Section 11055, or
32 methamphetamine; or 28.5 grams or more of Schedule II controlled
33 substances. No interest in a vehicle which may be lawfully driven
34 on the highway with a class C, class M1, or class M2 license, as
35 prescribed in Section 12804 of the Vehicle Code, may be forfeited
36 under this subdivision if there is a community property interest in
37 the vehicle by a person other than the defendant and the vehicle
38 is the sole class C, class M1, or class M2 vehicle available to the
39 defendant's immediate family.

1 (f) All moneys, negotiable instruments, securities, or other things
2 of value furnished or intended to be furnished by any person in
3 exchange for a controlled substance, all proceeds traceable to such
4 an exchange, and all moneys, negotiable instruments, or securities
5 used or intended to be used to facilitate any violation of Section
6 11351, 11351.5, 11352, 11355, ~~11359, 11360~~, 11378, 11378.5,
7 11379, 11379.5, 11379.6, 11380, 11382, or 11383 of this code, or
8 Section 182 of the Penal Code, or a felony violation of Section
9 11366.8 of this code, insofar as the offense involves manufacture,
10 sale, possession for sale, offer for sale, or offer to manufacture, or
11 conspiracy to commit at least one of those offenses, if the
12 exchange, violation, or other conduct which is the basis for the
13 forfeiture occurred within five years of the seizure of the property,
14 or the filing of a petition under this chapter, or the issuance of an
15 order of forfeiture of the property, whichever comes first.

16 (g) The real property of any property owner who is convicted
17 of violating Section 11366, 11366.5, or 11366.6 with respect to
18 that property. However, property which is used as a family
19 residence or for other lawful purposes, or which is owned by two
20 or more persons, one of whom had no knowledge of its unlawful
21 use, shall not be subject to forfeiture.

22 (h) Subject to the requirements of Section 11488.5 and except
23 as further limited by this subdivision to protect innocent parties
24 who claim a property interest acquired from a defendant, all right,
25 title, and interest in any personal property described in this section
26 shall vest in the state upon commission of the act giving rise to
27 forfeiture under this chapter, if the state or local governmental
28 entity proves a violation of Section 11351, 11351.5, 11352, 11355,
29 ~~11359, 11360~~, 11378, 11378.5, 11379, 11379.5, 11379.6, 11380,
30 11382, or 11383 of this code, or Section 182 of the Penal Code,
31 or a felony violation of Section 11366.8 of this code, insofar as
32 the offense involves the manufacture, sale, possession for sale,
33 offer for sale, offer to manufacture, or conspiracy to commit at
34 least one of those offenses, in accordance with the burden of proof
35 set forth in paragraph (1) of subdivision (i) of Section 11488.4 or,
36 in the case of cash or negotiable instruments in excess of
37 twenty-five thousand dollars (\$25,000), paragraph (4) of
38 subdivision (i) of Section 11488.4.

39 The operation of the special vesting rule established by this
40 subdivision shall be limited to circumstances where its application

1 will not defeat the claim of any person, including a bona fide
2 purchaser or encumbrancer who, pursuant to Section 11488.5,
3 11488.6, or 11489, claims an interest in the property seized,
4 notwithstanding that the interest in the property being claimed was
5 acquired from a defendant whose property interest would otherwise
6 have been subject to divestment pursuant to this subdivision.

7 SEC. 15. Section 11479 of the Health and Safety Code is
8 amended to read:

9 11479. Notwithstanding Sections 11473 and 11473.5, at any
10 time after seizure by a law enforcement agency of a suspected
11 controlled substance, that amount in excess of 10 pounds in gross
12 weight may be destroyed without a court order by the chief of the
13 law enforcement agency or a designated subordinate. Destruction
14 shall not take place pursuant to this section until all of the following
15 requirements are satisfied:

16 (a) At least five random and representative samples have been
17 taken, for evidentiary purposes, from the total amount of suspected
18 controlled substances to be destroyed. These samples shall be in
19 addition to the 10 pounds required above. ~~When the suspected~~
20 ~~controlled substance consists of growing or harvested marijuana~~
21 ~~plants, at least one 10 pound sample (which may include stalks,~~
22 ~~branches, or leaves) and five representative samples consisting of~~
23 ~~leaves or buds shall be retained for evidentiary purposes from the~~
24 ~~total amount of suspected controlled substances to be destroyed.~~

25 (b) Photographs have been taken which reasonably demonstrate
26 the total amount of the suspected controlled substance to be
27 destroyed.

28 (c) The gross weight of the suspected controlled substance has
29 been determined, either by actually weighing the suspected
30 controlled substance or by estimating that weight after dimensional
31 measurement of the total suspected controlled substance.

32 (d) The chief of the law enforcement agency has determined
33 that it is not reasonably possible to preserve the suspected
34 controlled substance in place, or to remove the suspected controlled
35 substance to another location. In making this determination, the
36 difficulty of transporting and storing the suspected controlled
37 substance to another site and the storage facilities may be taken
38 into consideration.

39 Subsequent to any destruction of a suspected controlled substance
40 pursuant to this section, an affidavit shall be filed within 30 days

1 in the court which has jurisdiction over any pending criminal
 2 proceedings pertaining to that suspected controlled substance,
 3 reciting the applicable information required by subdivisions (a),
 4 (b), (c), and (d) together with information establishing the location
 5 of the suspected controlled substance, and specifying the date and
 6 time of the destruction. In the event that there are no criminal
 7 proceedings pending which pertain to that suspected controlled
 8 substance, the affidavit may be filed in any court within the county
 9 which would have jurisdiction over a person against whom those
 10 criminal charges might be filed.

11 SEC. 16. Section 11485 of the Health and Safety Code is
 12 repealed.

13 ~~11485. Any peace officer of this state who, incident to a search~~
 14 ~~under a search warrant issued for a violation of Section 11358 with~~
 15 ~~respect to which no prosecution of a defendant results, seizes~~
 16 ~~personal property suspected of being used in the planting,~~
 17 ~~cultivation, harvesting, drying, processing, or transporting of~~
 18 ~~marijuana, shall, if the seized personal property is not being held~~
 19 ~~for evidence or destroyed as contraband, and if the owner of the~~
 20 ~~property is unknown or has not claimed the property, provide~~
 21 ~~notice regarding the seizure and manner of reclamation of the~~
 22 ~~property to any owner or tenant of real property on which the~~
 23 ~~property was seized. In addition, this notice shall be posted at the~~
 24 ~~location of seizure and shall be published at least once in a~~
 25 ~~newspaper of general circulation in the county in which the~~
 26 ~~property was seized. If, after 90 days following the first publication~~
 27 ~~of the notice, no owner appears and proves his or her ownership,~~
 28 ~~the seized personal property shall be deemed to be abandoned and~~
 29 ~~may be disposed of by sale to the public at public auction as set~~
 30 ~~forth in Article 1 (commencing with Section 2080) of Chapter 4~~
 31 ~~of Title 6 of Part 4 of Division 3 of the Civil Code, or may be~~
 32 ~~disposed of by transfer to a government agency or community~~
 33 ~~service organization. Any profit from the sale or transfer of the~~
 34 ~~property shall be expended for investigative services with respect~~
 35 ~~to crimes involving marijuana.~~

36 SEC. 17. Section 11488 of the Health and Safety Code is
 37 amended to read:

38 11488. (a) Any peace officer of this state, subsequent to
 39 making or attempting to make an arrest for a violation of Section
 40 11351, 11351.5, 11352, 11355, ~~11359, 11360,~~ 11378, 11378.5,

1 11379, 11379.5, 11379.6, or 11382 of this code, or Section 182 of
2 the Penal Code insofar as the offense involves manufacture, sale,
3 purchase for the purpose of sale, possession for sale or offer to
4 manufacture or sell, or conspiracy to commit one of those offenses,
5 may seize any item subject to forfeiture under subdivisions (a) to
6 (f), inclusive, of Section 11470. The peace officer shall also notify
7 the Franchise Tax Board of a seizure where there is reasonable
8 cause to believe that the value of the seized property exceeds five
9 thousand dollars (\$5,000).

10 (b) Receipts for property seized pursuant to this section shall
11 be delivered to any person out of whose possession such property
12 was seized, in accordance with Section 1412 of the Penal Code.
13 In the event property seized was not seized out of anyone's
14 possession, receipt for the property shall be delivered to the
15 individual in possession of the premises at which the property was
16 seized.

17 (c) There shall be a presumption affecting the burden of proof
18 that the person to whom a receipt for property was issued is the
19 owner thereof. This presumption may, however, be rebutted at the
20 forfeiture hearing specified in Section 11488.5.

21 SEC. 18. Section 11532 of the Health and Safety Code is
22 amended to read:

23 11532. (a) It is unlawful for any person to loiter in any public
24 place in a manner and under circumstances manifesting the purpose
25 and with the intent to commit an offense specified in Chapter 6
26 (commencing with Section 11350) and Chapter 6.5 (commencing
27 with Section 11400).

28 (b) Among circumstances that may be considered in determining
29 whether a person has the requisite intent to engage in drug-related
30 activity are that the person:

31 (1) Acts as a "look-out."

32 (2) Transfers small objects or packages for currency in a furtive
33 fashion.

34 (3) Tries to conceal himself or herself or any object that
35 reasonably could be involved in an unlawful drug-related activity.

36 (4) Uses signals or language indicative of summoning purchasers
37 of illegal drugs.

38 (5) Repeatedly beckons to, stops, attempts to stop, or engages
39 in conversations with passersby, whether on foot or in a motor
40 vehicle, indicative of summoning purchasers of illegal drugs.

1 (6) Repeatedly passes to or receives from passersby, whether
2 on foot or in a motor vehicle, money or small objects.

3 (7) Is under the influence of a controlled substance or possesses
4 narcotic or drug paraphernalia. For the purposes of this paragraph,
5 “narcotic or drug paraphernalia” means any device, contrivance,
6 instrument, or apparatus designed or marketed for the use of
7 smoking, injecting, ingesting, or consuming ~~marijuana, hashish,~~
8 PCP; or any controlled substance, including, but not limited to,
9 roach clips, cigarette papers, and rollers designed or marketed for
10 use in smoking a controlled substance.

11 (8) Has been convicted in any court within this state, within
12 five years prior to the arrest under this chapter, of any violation
13 involving the use, possession, or sale of any of the substances
14 referred to in Chapter 6 (commencing with Section 11350) or
15 Chapter 6.5 (commencing with Section 11400), or has been
16 convicted of any violation of those provisions or substantially
17 similar laws of any political subdivision of this state or of any
18 other state.

19 (9) Is currently subject to any order prohibiting his or her
20 presence in any high drug activity geographic area.

21 (10) Has engaged, within six months prior to the date of arrest
22 under this section, in any behavior described in this subdivision,
23 with the exception of paragraph (8), or in any other behavior
24 indicative of illegal drug-related activity.

25 (c) The list of circumstances set forth in subdivision (b) is not
26 exclusive. The circumstances set forth in subdivision (b) should
27 be considered particularly salient if they occur in an area that is
28 known for unlawful drug use and trafficking, or if they occur on
29 or in premises that have been reported to law enforcement as a
30 place suspected of unlawful drug activity. Any other relevant
31 circumstances may be considered in determining whether a person
32 has the requisite intent. Moreover, no one circumstance or
33 combination of circumstances is in itself determinative of intent.
34 Intent must be determined based on an evaluation of the particular
35 circumstances of each case.

36 SEC. 19. Section 11703 of the Health and Safety Code is
37 amended to read:

38 11703. As used in this division:

39 (a) “Marketing of illegal controlled substances” means the
40 possession for sale, sale, or distribution of a specified illegal

1 controlled substance, and shall include all aspects of making such
2 a controlled substance available, including, but not limited to, its
3 manufacture.

4 (b) “Individual user of an illegal controlled substance” means
5 the individual whose use of a specified illegal controlled substance
6 is the basis of an action brought under this division.

7 (c) “Level 1 offense” means the possession for sale of less than
8 four ounces or the sale or furnishing of less than one ounce of a
9 specified illegal controlled substance, ~~or the cultivation of at least~~
10 ~~25 plants but less than 50 plants, the furnishing of more than 28.5~~
11 ~~grams, or the possession for sale or sale of up to four pounds, of~~
12 ~~marijuana.~~

13 (d) “Level 2 offense” means the possession for sale of four
14 ounces or more but less than eight ounces of, or the sale or
15 furnishing of one ounce or more but less than two ounces of, a
16 specified illegal controlled substance, ~~or the cultivation of at least~~
17 ~~50 but less than 75 plants, the possession for sale of four pounds~~
18 ~~or more but less than eight pounds, or the sale or furnishing of~~
19 ~~more than one pound but less than five pounds, of marijuana.~~

20 (e) “Level 3 offense” means the possession for sale of eight
21 ounces or more but less than 16 ounces of, or the sale or furnishing
22 of two ounces or more but less than four ounces of, a specified
23 illegal controlled substance, ~~or the cultivation of at least 75 but~~
24 ~~less than 100 plants, the possession for sale of eight pounds or~~
25 ~~more but less than 16 pounds, or the sale or furnishing of more~~
26 ~~than five pounds but less than 10 pounds, of marijuana.~~

27 (f) “Level 4 offense” means the possession for sale of 16 ounces
28 or more of, or the sale or furnishing of four ounces or more of, a
29 specified illegal controlled substance, ~~or the cultivation of 100~~
30 ~~plants or more of, the possession for sale of 16 pounds of, or the~~
31 ~~sale or furnishing of more than 10 pounds of, marijuana.~~

32 (g) “Participate in the marketing of illegal controlled substances”
33 means to transport, import into this state, sell, possess with intent
34 to sell, furnish, administer, or give away, or offer to transport,
35 import into this state, sell, furnish, administer, or give away a
36 specified illegal controlled substance. “Participate in the marketing
37 of illegal controlled substances” shall include the manufacturing
38 of an illegal controlled substance, but shall not include the purchase
39 or receipt of an illegal controlled substance for personal use only.

1 (h) "Person" means an individual, governmental entity,
2 corporation, firm, trust, partnership, or incorporated or
3 unincorporated association, existing under or authorized by the
4 laws of this state, another state, or a foreign country.

5 (i) "Period of illegal use" means, in relation to the individual
6 user of an illegal controlled substance, the time of the individual's
7 first illegal use of an illegal controlled substance to the accrual of
8 the cause of action.

9 (j) "Place of illegal activity" means, in relation to the individual
10 user of an illegal controlled substance, each county in which the
11 individual illegally possesses or uses an illegal controlled substance
12 during the period of the individual's use of an illegal controlled
13 substance.

14 (k) "Place of participation" means, in relation to a defendant in
15 an action brought under this division, each county in which the
16 person participates in the marketing of illegal controlled substances
17 during the period of the person's participation in the marketing of
18 illegal controlled substances.

19 (l) "Specified illegal controlled substance" means cocaine,
20 phencyclidine, heroin, or methamphetamine and any other illegal
21 controlled substance the manufacture, cultivation, importation into
22 this state, transportation, possession for sale, sale, furnishing,
23 administering, or giving away of which is a violation of Section
24 11351, 11351.5, 11352, ~~11358, 11359, 11360~~, 11378.5, 11379.5,
25 or 11383.

26 SEC. 20. Section 11705 of the Health and Safety Code is
27 amended to read:

28 11705. (a) Any one or more of the following persons may
29 bring an action for damages caused by an individual's use of an
30 illegal controlled substance:

31 (1) A parent, legal guardian, child, spouse, or sibling of the
32 individual controlled substance user.

33 (2) An individual who was exposed to an illegal controlled
34 substance in utero.

35 (3) An employer of the individual user of an illegal controlled
36 substance.

37 (4) A medical facility, insurer, employer, or other
38 nongovernmental entity that funds a drug treatment program or
39 employee assistance program for the individual user of an illegal
40 controlled substance or that otherwise expended money on behalf

1 of the individual user of an illegal controlled substance. No public
2 agency other than a public agency medical facility shall have a
3 cause of action under this division.

4 (5) A person injured as a result of the willful, reckless, or
5 negligent actions of an individual user of an illegal controlled
6 substance.

7 (b) A person entitled to bring an action under this section may
8 seek damages from one or more of the following:

9 (1) A person who sold, administered, or furnished an illegal
10 controlled substance to the individual user of the illegal controlled
11 substance.

12 (2) A person who knowingly participated in the marketing of
13 illegal controlled substances, if all of the following apply:

14 (A) The place of illegal activity by the individual user of an
15 illegal controlled substance is within the city, city and county, or
16 unincorporated area of the county in which the defendant's place
17 of participation is situated.

18 (B) The defendant's participation in the marketing of illegal
19 controlled substances was connected with the same type of
20 specified illegal controlled substance used by the individual user
21 of an illegal controlled substance, and the defendant has been
22 convicted of an offense for that type of specified illegal controlled
23 substance.

24 (C) The defendant participated in the marketing of illegal
25 controlled substances at any time during the period the individual
26 user of an illegal controlled substance illegally used the controlled
27 substance.

28 (D) The underlying offense for the conviction of the specified
29 illegal controlled substance occurred in the same county as the
30 individual user's place of use.

31 (c) As used in subdivision (b), ~~knowingly~~ "*knowingly*
32 participated in the marketing of illegal controlled substances"
33 means a conviction for transporting, importing into this state,
34 selling, possessing with intent to sell, furnishing, administering,
35 or giving away, or offering to transport, import into this state, sell,
36 furnish, administer, or give away a specified illegal controlled
37 substance ~~or a quantity of marijuana~~ specified in subdivision ~~(e);~~
38 ~~(f), (g), or (h)~~ (c), (d), (e), or (f) of Section 11703, which are
39 separate in time.

1 (d) A person entitled to bring an action under this section may
2 recover all of the following damages:

3 (1) Economic damages, including, but not limited to, the cost
4 of treatment and rehabilitation, medical expenses, loss of economic
5 or educational potential, loss of productivity, absenteeism, support
6 expenses, accidents or injury, and any other pecuniary loss
7 proximately caused by the use of an illegal controlled substance.

8 (2) Noneconomic damages, including, but not limited to,
9 physical and emotional pain, suffering, physical impairment,
10 emotional distress, medical anguish, disfigurement, loss of
11 enjoyment, loss of companionship, services and consortium, and
12 other nonpecuniary losses proximately caused by an individual's
13 use of an illegal controlled substance.

14 (3) Exemplary damages.

15 (4) Reasonable attorney fees.

16 (5) Costs of suit, including, but not limited to, reasonable
17 expenses for expert testimony.

18 SEC. 21. Division 10.3 (commencing with Section 11720) is
19 added to the Health and Safety Code, to read:

20

21

DIVISION 10.3. MARIJUANA

22

23 11720. For purposes of this division, "marijuana" means all
24 parts of the plant *Cannabis sativa* L., whether growing or not; the
25 seeds thereof; the resin extracted from any part of the plant;
26 concentrated cannabis; and every compound, manufacture, salt,
27 derivative, mixture, or preparation of the plant, its seeds or resin.
28 It does not include the mature stalks of the plant, fiber produced
29 from the stalks, oil or cake made from the seeds of the plant, any
30 other compound, manufacture, salt, derivative, mixture, or
31 preparation of the mature stalks (except the resin extracted
32 therefrom), fiber, oil, or cake, or the sterilized seed of the plant
33 that is incapable of germination.

34 11721. It is lawful and not a violation of California law for a
35 person 21 years of age or older to possess or transport marijuana.

36 11722. (a) It is lawful and not a violation of California law to
37 sell marijuana to a person 21 years of age or older as provided in
38 Chapter 14.5 (commencing with Section 25400) of Division 9 of
39 the Business and Professions Code. Any sale of marijuana by a
40 person not licensed as provided therein after the date determined

1 by Section 25406 of the Business and Professions Code is a
2 violation of this division.

3 (b) Until the date specified by subdivision (a), it is lawful and
4 not a violation of California law to sell marijuana to a person 21
5 years of age or older.

6 11723. (a) It is lawful and not a violation of California law
7 for a person 21 years of age or older to smoke or ingest marijuana
8 in one's home, or in any private residence, or upon the grounds of
9 that home or residence not visible from any public place or
10 neighboring property, with the consent of a resident 21 years of
11 age or older.

12 (b) It is an infraction to smoke or ingest marijuana in a public
13 place.

14 11724. (a) It is lawful and not a violation of California law,
15 except as provided in subdivision (f) of Section 647 of the Penal
16 Code, or in Section 11729, for a person 21 years of age or older
17 to be under the influence of marijuana.

18 11725. It is unlawful for a person not licensed pursuant to
19 Chapter 14.5 (commencing with Section 25400) of Division 9 of
20 the Business and Professions Code to cultivate marijuana, except
21 in compliance with the following requirements:

22 (a) Marijuana may be cultivated only by persons 21 years of
23 age or older.

24 (b) Marijuana may be cultivated only in a location in the home
25 or yard in which the marijuana is not visible from any public place.
26 For purposes of this paragraph, "public place" does not include
27 air space, or any place from which a viewer would violate the
28 cultivator's legitimate expectation of privacy.

29 (c) Each person 21 years of age or older may have in cultivation
30 no more than 10 mature plants at any given time.

31 (d) A licensed nursery may cultivate seedlings for sale to persons
32 21 years of age or older, but shall destroy any seedling if it has not
33 been purchased by a consumer before it reaches maturity.

34 (e) Aside from the sale of seedlings by a licensed nursery,
35 marijuana cultivated pursuant to this section may not be sold.

36 (f) The presence of persons younger than 21 years of age in a
37 household does not affect the lawfulness of the cultivation of
38 marijuana under this division.

39 11726. (a) Unlawful cultivation of marijuana is an infraction,
40 punishable by a fine of up to one hundred dollars (\$100).

1 (b) Providing or selling marijuana to, or purchasing or
 2 cultivating marijuana for a person under 21 years of age is an
 3 infraction, punishable by a fine of up to one hundred dollars (\$100).
 4 However, this division is not intended to preclude prosecution
 5 under Section 272 of the Penal Code, or any similar provision,
 6 where appropriate.

7 (c) Possession or use of marijuana by a person under 21 years
 8 of age is an infraction, punishable by a fine of up to one hundred
 9 dollars (\$100).

10 (d) Any other violation of this division is an infraction,
 11 punishable by a fine of up to one hundred dollars (\$100).

12 11727. Notwithstanding any other law, it is lawful and not a
 13 violation of California law to possess, transport, or sell the mature
 14 stalks of the plant *Cannabis sativa* L., fiber produced from the
 15 stalks, oil or cake made from the seeds of the plant, any other
 16 compound, manufacture, salt, derivative, mixture, or preparation
 17 of the mature stalks (except the resin extracted therefrom, which
 18 is regulated as marijuana), fiber, oil, or cake, or the sterilized seed
 19 of the plant that is incapable of germination.

20 11728. State or local funds may not be expended on, and state
 21 or local law enforcement or other personnel may not assist in, the
 22 enforcement of any federal or other laws that are inconsistent with
 23 this division, or provide for greater sanctions for conduct prohibited
 24 by this division.

25 11729. This division may not be construed to affect or limit
 26 any criminal statute that forbids impairment while engaging in
 27 dangerous activities like driving, or that penalizes bringing
 28 marijuana to a school enrolling pupils in kindergarten or any of
 29 grades 1 to 12, inclusive.

30 11730. This division may not be construed to affect the rights
 31 of employers concerning employees who use marijuana.

32 SEC. 22. Part 14.6 (commencing with Section 34001) is added
 33 to Division 2 of the Revenue and Taxation Code, to read:

34
 35 PART 14.6. MARIJUANA FEES

36
 37 CHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS

38
 39 34001. It is the intent of the people in enacting this part to
 40 discourage drug use and to raise revenue for drug education and

1 drug awareness programs by enacting a supplemental fee on
2 marijuana.

3 34002. This part shall be known and may be cited as the
4 “Marijuana Supplemental Fee Law.”

5 34003. Except where the context otherwise requires, the
6 definitions set forth in Part 1 (commencing with Section 6001)
7 govern the construction of this part.

8 34004. For purposes of this part:

9 (a) “Marijuana” includes all marijuana, concentrated cannabis,
10 and their derivatives, except that marijuana containing less than
11 one-half of 1 percent tetrahydrocannabinol by weight is not subject
12 to this supplemental fee. However, no fee shall be imposed under
13 this part on marijuana used medicinally with a doctor’s
14 recommendation as specified in Section 11362.5 of the Health and
15 Safety Code.

16 (b) “Retailer” means any retailer licensed pursuant to Section
17 23394.1 of the Business and Professions Code who sells marijuana
18 at retail.

19

20

CHAPTER 2. IMPOSITION OF FEE

21

22 34011. Until a different fee is determined pursuant to Section
23 34032 there is hereby imposed a fee of fifty dollars (\$50) per ounce
24 (avoirdupois) for the sale of marijuana sold at retail in this state
25 on or after the date determined by Section 25406 of the Business
26 and Professions Code.

27

28

CHAPTER 3. COLLECTION AND ADMINISTRATION

29

30 34021. To the extent feasible or practicable, the provisions of
31 Chapter 5 (commencing with Section 6451), Chapter 6
32 (commencing with Section 6701), Chapter 7 (commencing with
33 Section 6901), and Chapter 8 (commencing with Section 7051) of
34 Part 1 shall govern returns and payments, determinations,
35 collections of fees, overpayments and refunds, and administration
36 under this part.

37 34022. The board shall enforce this part and may prescribe,
38 adopt, and enforce rules and regulations relating to the
39 administration and enforcement of this part. The board may

1 prescribe the extent to which any ruling and regulation shall be
2 applied without retroactive effect.

3

4

CHAPTER 4.

5

DISPOSITION OF PROCEEDS AND ADJUSTMENT OF THE FEE

6

7

34031. Any amount required to be paid to the state under this
8 part shall be paid to the board in the form of a remittance payable
9 to the State Board of Equalization. The board shall transmit the
10 payments to the Treasurer to be deposited in the Drug Abuse
11 Prevention Supplemental Funding Account, which is hereby created
12 in the General Fund. Upon appropriation by the Legislature, the
13 moneys in the fund shall be expended exclusively for drug
14 education, awareness, and rehabilitation programs under the
15 jurisdiction of the Department of Alcohol and Drug Programs, or
16 any successor to that agency.

17

34032. The fee imposed pursuant to Chapter 2 shall be annually
18 reviewed by the Department of Alcohol and Drug Programs, or
19 any successor to that agency, to determine whether a fee less than
20 that specified in Chapter 2 will provide sufficient resources to
21 support its drug education, awareness, and rehabilitation programs.
22 Based on this annual review, the Department of Alcohol and Drug
23 Programs shall adjust that fee to an amount not to exceed fifty
24 dollars (\$50) per ounce (avoirdupois) of marijuana that is necessary
25 to fund its drug education, awareness, and rehabilitation programs,
26 and that amount shall be collected in place of the fee specified in
27 Chapter 2.

28

SEC. 23. Section 23222 of the Vehicle Code is amended to
29 read:

30

23222. ~~(a)~~ No person shall have in his or her possession on
31 his or her person, while driving a motor vehicle upon a highway
32 or on lands, as described in subdivision (b) of Section 23220, any
33 bottle, can, or other receptacle, containing any alcoholic beverage
34 which has been opened, or a seal broken, or the contents of which
35 have been partially removed.

36

~~(b) Except as authorized by law, every person who possesses,
37 while driving a motor vehicle upon a highway or on lands, as
38 described in subdivision (b) of Section 23220, not more than one
39 avoirdupois ounce of marijuana, other than concentrated cannabis
40 as defined by Section 11006.5 of the Health and Safety Code, is~~

1 guilty of a misdemeanor and shall be punished by a fine of not
2 more than one hundred dollars (\$100). Notwithstanding any other
3 provision of law, if the person has been previously convicted three
4 or more times of an offense described in this subdivision during
5 the two-year period immediately preceding the date of commission
6 of the violation to be charged, the previous convictions shall also
7 be charged in the accusatory pleading and, if found to be true by
8 the jury upon a jury trial or by the court upon a court trial or if
9 admitted by the person, Sections 1000.1 and 1000.2 of the Penal
10 Code are applicable to the person, and the court shall divert and
11 refer the person for education, treatment, or rehabilitation, without
12 a court hearing or determination or the concurrence of the district
13 attorney, to an appropriate community program which will accept
14 the person. If the person is so diverted and referred, the person is
15 not subject to the fine specified in this subdivision. In any case in
16 which a person is arrested for a violation of this subdivision and
17 does not demand to be taken before a magistrate, the person shall
18 be released by the arresting officer upon presentation of satisfactory
19 evidence of identity and giving his or her written promise to appear
20 in court, as provided in Section 40500, and shall not be subjected
21 to booking.

22 SEC. 24. Section 40000.15 of the Vehicle Code is amended to
23 read:

24 40000.15. A violation of any of the following provisions shall
25 constitute a misdemeanor, and not an infraction:

26 Subdivision (g), (j), (k), (l), or (m) of Section 22658, relating to
27 unlawfully towed or stored vehicles.

28 Sections 23103 and 23104, relating to reckless driving.

29 Section 23109, relating to speed contests or exhibitions.

30 Subdivision (a) of Section 23110, relating to throwing at vehicles.

31 Section 23152, relating to driving under the influence.

32 ~~Subdivision (b) of Section 23222, relating to possession of~~
33 ~~marijuana.~~

34 Subdivision (a) or (b) of Section 23224, relating to persons under
35 21 years of age knowingly driving, or being a passenger in, a motor
36 vehicle carrying any alcoholic beverage.

37 Section 23253, relating to directions on toll highways or
38 vehicular crossings.

39 Section 23332, relating to trespassing.

40 Section 24002.5, relating to unlawful operation of a farm vehicle.

1 Section 24011.3, relating to vehicle bumper strength notices.

2 Section 27150.1, relating to sale of exhaust systems.

3 Section 27362, relating to child passenger seat restraints.

4 Section 28050, relating to true mileage driven.

5 Section 28050.5, relating to nonfunctional odometers.

6 Section 28051, relating to resetting odometers.

7 Section 28051.5, relating to devices to reset odometers.

8 Subdivision (d) of Section 28150, relating to possessing four or
9 more jamming devices.

10 SEC. 25. Section 18901.3 of the Welfare and Institutions Code
11 is amended to read:

12 18901.3. (a) Subject to the limitations of subdivision (b),
13 pursuant to Section 115(d)(1)(A) of Public Law 104-193 (21 U.S.C.
14 Sec. 862a(d)(1)(A)), California opts out of the provisions of Section
15 115(a)(2) of Public Law 104-193 (21 U.S.C. Sec. 862a(a)(2)). A
16 convicted drug felon shall be eligible to receive food stamps under
17 this section.

18 (b) Subdivision (a) does not apply to a person who has been
19 convicted of unlawfully transporting, importing into this state,
20 selling, furnishing, administering, giving away, possessing for
21 sale, purchasing for purposes of sale, manufacturing a controlled
22 substance, possessing precursors with the intent to manufacture a
23 controlled substance, ~~or cultivating, harvesting, or processing~~
24 ~~marijuana or any part thereof pursuant to Section 11358 of the~~
25 ~~Health and Safety Code.~~

26 (c) Subdivision (a) does not apply to a person who has been
27 convicted of unlawfully soliciting, inducing, encouraging, or
28 intimidating a minor to participate in any activity listed in
29 subdivision (b).

30 (d) As a condition of eligibility to receive food stamps pursuant
31 to subdivision (a), an applicant convicted of a felony drug offense
32 that is not excluded under subdivision (b) or (c) shall be required
33 to provide proof of one of the following subsequent to the most
34 recent drug-related conviction:

35 (1) Completion of a government-recognized drug treatment
36 program.

37 (2) Participation in a government-recognized drug treatment
38 program.

39 (3) Enrollment in a government-recognized drug treatment
40 program.

1 (4) Placement on a waiting list for a government-recognized
2 drug treatment program.

3 (5) Other evidence that the illegal use of controlled substances
4 has ceased, as established by State Department of Social Services
5 regulations.

6 (e) Notwithstanding the Administrative Procedure Act (Chapter
7 3.5 (commencing with Section 11340) of Part 1 of Division 3 of
8 Title 2 of the Government Code), the department may implement
9 this section through an all-county letter or similar instructions from
10 the director no later than January 1, 2005.

11 (f) The department shall adopt regulations as otherwise
12 necessary to implement this section no later than July 1, 2005.
13 Emergency regulations adopted for implementation of this section
14 may be adopted by the director in accordance with the
15 Administrative Procedure Act. The adoption of emergency
16 regulations shall be deemed to be an emergency and necessary for
17 immediate preservation of the public peace, health and safety, or
18 general welfare. The emergency regulations shall be exempt from
19 review by the Office of Administrative Law. The emergency
20 regulations authorized by this section shall be submitted to the
21 Office of Administrative Law for filing with the Secretary of State
22 and shall remain in effect for no more than 180 days.

23 SEC. 26. The provisions of this act are severable. If any
24 provision of this act or its application is held invalid, that invalidity
25 shall not affect other provisions or applications that can be given
26 effect without the invalid provision or application.

27 SEC. 27. No reimbursement is required by this act pursuant to
28 Section 6 of Article XIII B of the California Constitution because
29 the only costs that may be incurred by a local agency or school
30 district will be incurred because this act creates a new crime or
31 infraction, eliminates a crime or infraction, or changes the penalty
32 for a crime or infraction, within the meaning of Section 17556 of
33 the Government Code, or changes the definition of a crime within
34 the meaning of Section 6 of Article XIII B of the California
35 Constitution.