

AMENDED IN ASSEMBLY MARCH 31, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1300

Introduced by Assembly Member Blumenfield

February 18, 2011

An act to amend ~~Section 11362.768~~ Sections 11362.7, 11362.76, and 11362.83 of the Health and Safety Code, relating to medical marijuana.

LEGISLATIVE COUNSEL'S DIGEST

AB 1300, as amended, Blumenfield. Medical marijuana.

Existing law establishes the Medical Marijuana Program to exempt certain qualified patients who hold an identification card issued pursuant to the program, and the caregivers of those persons from certain state criminal sanctions related to the possession, cultivation, transportation, processing, or use of limited amounts of marijuana, as specified. The program prohibits certain entities, including a medical marijuana cooperative or collective, from being located within a 600-foot radius of a school. Existing law also specifically provides that these provisions governing the program do not prevent a city or other local governing body from adopting and enforcing laws consistent with the program.

This bill would define a cooperative or collective for purposes of the program. The bill would also revise the latter provision described above to additionally provide that these provisions shall not prevent a city or other local governing body from adopting local ordinances that regulate the location, operation, or establishment of a medical marijuana cooperative or collective, or from the civil or criminal enforcement of those local ordinances.

~~Existing law prohibits a medical marijuana cooperative, collective, dispensary, operator, establishment, or provider authorized by law to possess, cultivate, or distribute medical marijuana that has a storefront or mobile retail outlet which ordinarily requires a local business license from being located within a 600-foot radius of any public or private school providing instruction in kindergarten or grades 1 to 12, inclusive, except as specified. Existing law provides that nothing in these provisions prohibits a city, county, or city and county from adopting ordinances that further restrict the location or establishment of these medical marijuana establishments.~~

~~This bill would make a technical, nonsubstantive change to these provisions.~~

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

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

- 1 *SECTION 1. Section 11362.7 of the Health and Safety Code*
- 2 *is amended to read:*
- 3 11362.7. For purposes of this article, the following definitions
- 4 shall apply:
- 5 (a) “Attending physician” means an individual who possesses
- 6 a license in good standing to practice medicine or osteopathy issued
- 7 by the Medical Board of California or the Osteopathic Medical
- 8 Board of California and who has taken responsibility for an aspect
- 9 of the medical care, treatment, diagnosis, counseling, or referral
- 10 of a patient and who has conducted a medical examination of that
- 11 patient before recording in the patient’s medical record the
- 12 physician’s assessment of whether the patient has a serious medical
- 13 condition and whether the medical use of marijuana is appropriate.
- 14 (b) “Cooperative or collective,” for purposes of this article,
- 15 means a location where qualified patients, persons with a valid
- 16 identification card, or the designated primary caregivers of
- 17 qualified patients and persons with identification cards associate
- 18 within this state in order to collectively or cooperatively cultivate
- 19 marijuana for medical purposes.
- 20 ~~(b)~~
- 21 (c) “Department” means the State Department of *Public Health*
- 22 *Services.*
- 23 ~~(e)~~

1 (d) “Person with an identification card” means an individual
2 who is a qualified patient who has applied for and received a valid
3 identification card pursuant to this article.

4 ~~(d)~~

5 (e) “Primary caregiver” means the individual, designated by a
6 qualified patient or by a person with an identification card, who
7 has consistently assumed responsibility for the housing, health, or
8 safety of that patient or person, and may include any of the
9 following:

10 (1) In any case in which a qualified patient or person with an
11 identification card receives medical care or supportive services,
12 or both, from a clinic licensed pursuant to Chapter 1 (commencing
13 with Section 1200) of Division 2, a health care facility licensed
14 pursuant to Chapter 2 (commencing with Section 1250) of Division
15 2, a residential care facility for persons with chronic life-threatening
16 illness licensed pursuant to Chapter 3.01 (commencing with Section
17 1568.01) of Division 2, a residential care facility for the elderly
18 licensed pursuant to Chapter 3.2 (commencing with Section 1569)
19 of Division 2, a hospice, or a home health agency licensed pursuant
20 to Chapter 8 (commencing with Section 1725) of Division 2, the
21 owner or operator, or no more than three employees who are
22 designated by the owner or operator, of the clinic, facility, hospice,
23 or home health agency, if designated as a primary caregiver by
24 that qualified patient or person with an identification card.

25 (2) An individual who has been designated as a primary
26 caregiver by more than one qualified patient or person with an
27 identification card, if every qualified patient or person with an
28 identification card who has designated that individual as a primary
29 caregiver resides in the same city or county as the primary
30 caregiver.

31 (3) An individual who has been designated as a primary
32 caregiver by a qualified patient or person with an identification
33 card who resides in a city or county other than that of the primary
34 caregiver, if the individual has not been designated as a primary
35 caregiver by any other qualified patient or person with an
36 identification card.

37 ~~(e)~~

38 (f) A primary caregiver shall be at least 18 years of age, unless
39 the primary caregiver is the parent of a minor child who is a
40 qualified patient or a person with an identification card or the

1 primary caregiver is a person otherwise entitled to make medical
 2 decisions under state law pursuant to Sections 6922, 7002, 7050,
 3 or 7120 of the Family Code.

4 ~~(f)~~

5 (g) “Qualified patient” means a person who is entitled to the
 6 protections of Section 11362.5, but who does not have an
 7 identification card issued pursuant to this article.

8 ~~(g)~~

9 (h) “Identification card” means a document issued by the ~~State~~
 10 ~~Department of Health Services~~ *department* that document identifies
 11 a person authorized to engage in the medical use of marijuana and
 12 the person’s designated primary caregiver, if any.

13 ~~(h)~~

14 (i) “Serious medical condition” means all of the following
 15 medical conditions:

- 16 (1) Acquired immune deficiency syndrome (AIDS).
- 17 (2) Anorexia.
- 18 (3) Arthritis.
- 19 (4) Cachexia.
- 20 (5) Cancer.
- 21 (6) Chronic pain.
- 22 (7) Glaucoma.
- 23 (8) Migraine.
- 24 (9) Persistent muscle spasms, including, but not limited to,
 25 spasms associated with multiple sclerosis.
- 26 (10) Seizures, including, but not limited to, seizures associated
 27 with epilepsy.
- 28 (11) Severe nausea.
- 29 (12) Any other chronic or persistent medical symptom that
 30 either:
- 31 (A) Substantially limits the ability of the person to conduct one
 32 or more major life activities as defined in the Americans with
 33 Disabilities Act of 1990 (Public Law 101-336).
- 34 (B) If not alleviated, may cause serious harm to the patient’s
 35 safety or physical or mental health.

36 ~~(i)~~

37 (j) “Written documentation” means accurate reproductions of
 38 those portions of a patient’s medical records that have been created
 39 by the attending physician, that contain the information required
 40 by paragraph (2) of subdivision (a) of Section 11362.715, and that

1 the patient may submit to a county health department or the
2 county's designee as part of an application for an identification
3 card.

4 *SEC. 2. Section 11362.76 of the Health and Safety Code is*
5 *amended to read:*

6 11362.76. (a) A person who possesses an identification card
7 shall:

8 (1) Within seven days, notify the county health department or
9 the county's designee of any change in the person's attending
10 physician or designated primary caregiver, if any.

11 (2) Annually submit to the county health department or the
12 county's designee the following:

13 (A) Updated written documentation of the person's serious
14 medical condition.

15 (B) The name and duties of the person's designated primary
16 caregiver, if any, for the forthcoming year.

17 (b) If a person who possesses an identification card fails to
18 comply with this section, the card shall be deemed expired. If an
19 identification card expires, the identification card of any designated
20 primary caregiver of the person shall also expire.

21 (c) If the designated primary caregiver has been changed, the
22 previous primary caregiver shall return his or her identification
23 card to the department or to the county health department or the
24 county's designee.

25 (d) If the owner or operator or an employee of the owner or
26 operator of a provider has been designated as a primary caregiver
27 pursuant to paragraph (1) of subdivision ~~(d)~~ (e) of Section 11362.7,
28 of the qualified patient or person with an identification card, the
29 owner or operator shall notify the county health department or the
30 county's designee, pursuant to Section 11362.715, if a change in
31 the designated primary caregiver has occurred.

32 *SEC. 3. Section 11362.83 of the Health and Safety Code is*
33 *amended to read:*

34 11362.83. Nothing in this article shall prevent a city or other
35 local governing body from *adopting and enforcing any of the*
36 *following:*

37 (a) *Adopting local ordinances that regulate the location,*
38 *operation, or establishment of a medical marijuana cooperative*
39 *or collective.*

1 (b) *The civil and criminal enforcement of local ordinances*
2 *described in subdivision (a).* laws

3 (c) *Enacting other laws* consistent with this article.

4 SECTION 1. Section 11362.768 of the Health and Safety Code
5 is amended to read:

6 11362.768. ~~(a) This section shall apply to individuals specified~~
7 ~~in subdivision (b) of Section 11362.765.~~

8 ~~(b) No medical marijuana cooperative, collective, dispensary,~~
9 ~~operator, establishment, or provider who possesses, cultivates, or~~
10 ~~distributes medical marijuana pursuant to this article shall be~~
11 ~~located within a 600-foot radius of a school.~~

12 ~~(c) The distance specified in this section shall be the horizontal~~
13 ~~distance measured in a straight line from the property line of the~~
14 ~~school to the closest property line of the lot on which the medical~~
15 ~~marijuana cooperative, collective, dispensary, operator,~~
16 ~~establishment, or provider is to be located without regard to~~
17 ~~intervening structures.~~

18 ~~(d) This section shall not apply to a medical marijuana~~
19 ~~cooperative, collective, dispensary, operator, establishment, or~~
20 ~~provider that is also a licensed residential medical or elder care~~
21 ~~facility.~~

22 ~~(e) This section shall apply only to a medical marijuana~~
23 ~~cooperative, collective, dispensary, operator, establishment, or~~
24 ~~provider that is authorized by law to possess, cultivate, or distribute~~
25 ~~medical marijuana and that has a storefront or mobile retail outlet~~
26 ~~that ordinarily requires a local business license.~~

27 ~~(f) Nothing in this section shall prohibit a city, county, or city~~
28 ~~and county from adopting ordinances or policies that further restrict~~
29 ~~the location or establishment of a medical marijuana cooperative,~~
30 ~~collective, dispensary, operator, establishment, or provider.~~

31 ~~(g) Nothing in this section shall preempt local ordinances,~~
32 ~~adopted prior to January 1, 2011, that regulate the location or~~
33 ~~establishment of a medical marijuana cooperative, collective,~~
34 ~~dispensary, operator, establishment, or provider.~~

35 ~~(h) For the purposes of this section, “school” means any public~~
36 ~~or private school providing instruction in kindergarten or grades~~
37 ~~1 to 12, inclusive, but does not include any private school in which~~
38 ~~education is primarily conducted in private homes.~~

O