

ASSEMBLY BILL

No. 2312

Introduced by Assembly Member Ammiano

February 24, 2012

An act to amend Sections 11362.775, 11362.81, and 11362.83 of, and to add Article 2.8 (commencing with Section 11362.84) to Chapter 6 of Division 10 of, the Health and Safety Code, and to add Chapter 4 (commencing with Section 7294) to Part 1.7 of Division 2 of the Revenue and Taxation Code, relating to controlled substances, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 2312, as introduced, Ammiano. Controlled substances.

(1) Existing law provides that qualified patients, persons with valid identification cards, and the designated primary caregivers of qualified patients and persons with identification cards who associate within the State of California in order to cultivate marijuana for medical purposes, collectively or cooperatively, shall not, solely on that basis, be subject to state criminal sanctions for the possession, sale, transport, or other proscribed acts relating to marijuana.

This bill instead authorizes qualified patients, persons with valid identification cards, and the designated primary caregivers of qualified patients and persons with identification cards, to associate within the State of California as collectives, cooperatives, and other business entities to cultivate, acquire, process, possess, transport, test, sell, and distribute marijuana for medical purposes. The bill would provide that these persons shall not be subject to arrest, prosecution, or specified sanctions for possessing, selling, transporting, or engaging in other

proscribed acts relating to marijuana, unless they are not in compliance with the registration requirements described in this bill.

(2) Existing law makes it a misdemeanor offense to, among other things, fraudulently use or obtain a medical marijuana identification card.

This bill also would make it a misdemeanor offense to knowingly produce, issue, utilize, or sell a falsified, forged, or fraudulent physician's recommendation for medical marijuana. By creating a new crime, the bill would impose a state-mandated local program.

(3) Existing law, the Compassionate Use Act of 1996, an initiative measure, prohibits prosecution for the possession or cultivation of marijuana of a patient or a patient's primary caregiver who possesses or cultivates marijuana for the personal medical purposes of the patient upon the written or oral recommendation or approval of a physician. Existing law, the Medical Marijuana Program Act, exempts 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.

This bill would establish the Medical Marijuana Regulation and Control Act for the purposes of regulating and controlling medical marijuana activities. The bill would establish the Board of Medical Marijuana Enforcement in the Department of Consumer Affairs, and require the board to perform specified duties relating to the regulation of medical marijuana facilities, as defined. The governing body of the board would consist of 9 members, appointed by the Governor, the Senate Committee on Rules, and the Speaker of the Assembly. The duties of the board would include, but not be limited to, issuing or denying registration applications, establishing fees for administering these provisions, adopting regulations in connection with these provisions, and issuing fines and penalties for the violation of these provisions.

The bill would preempt local laws regarding the regulation and control of medical marijuana and would prohibit a medical marijuana facility, as defined, from operating without state-approved registration, except as specified. The bill would generally require a city or county to permit no fewer than one medical marijuana dispensary, as defined, per 50,000 residents, provided that a city or county would be permitted to opt out of this requirement, pursuant to certain procedures. The bill would exempt from the bill's provisions individual patients and caregivers

cultivating marijuana at their residences who do not sell or charge for the cultivation.

The bill would require the board to make available mandatory registration application forms no later than July 1, 2013, and to make a thorough investigation to determine whether the applicant meets specified criteria. The bill would require that all registration applications be approved unless the applicant fails to meet the criteria. The bill would require a registration application to be approved or denied no later than 180 days after the application is filed with the board, and, if the board fails to act within this time, would require that the application be deemed approved. The bill would require a person applying for the renewal of an existing registration to apply no less than 60 days prior to the expiration, and would require the board to act upon a timely filed registration renewal application no later than 10 days prior to the expiration of the registration.

This bill would create the Medical Marijuana Fund and would require that all moneys collected pursuant to the act be deposited into the Medical Marijuana Fund and would, except for moneys derived from penalties, continuously appropriate moneys in the fund for the purposes of implementing, enforcing, and administering the program.

(4) Existing law authorizes the board of supervisors of a county and the governing body of a city to levy, increase, or extend a transactions and use tax at a rate of 0.25%, or a multiple thereof, at a combined rate not to exceed 2% if approved by the required vote of the board or governing body and the required vote of qualified voters.

This bill would additionally authorize the board of supervisors of a county and the governing body of a city to levy, increase, or extend a transactions and use tax on the sale of or storage, use, or other consumption of, medical marijuana or medical marijuana-infused products for general and specified purposes, as provided, at a combined rate not to exceed 2.5%. This bill would authorize the board of supervisors to levy, increase, or extend the tax at a rate of ____ percent, or a multiple thereof. This bill would authorize the governing body of a city to levy, increase, or extend the tax at a rate of ____ percent, or a multiple thereof.

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: yes. Fiscal committee: yes.
State-mandated local program: yes.

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

1 SECTION 1. This act shall be known, and may be cited, as the
2 Medical Marijuana Regulation and Control Act.

3 SEC. 2. (a) The Legislature finds and declares all of the
4 following:

5 (1) In 1996, the people of the State of California enacted the
6 Compassionate Use Act of 1996, codified in Section 11362.5 of
7 the Health and Safety Code. The people of the State of California
8 declared that their purpose in enacting the measure was, among
9 other things, “[t]o ensure that seriously ill Californians have the
10 right to obtain and use marijuana for medical purposes where that
11 medical use is deemed appropriate and has been recommended by
12 a physician who has determined that the person’s health would
13 benefit from the use of marijuana in the treatment of cancer,
14 anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis,
15 migraine, or any other illness for which marijuana provides relief.”

16 (2) The Compassionate Use Act of 1996 called on state
17 government to implement a plan for the safe and affordable
18 distribution of marijuana to all patients in medical need of
19 marijuana.

20 (3) In 2003, the Legislature enacted the Medical Marijuana
21 Program Act (MMPA), codified in Article 2.5 (commencing with
22 Section 11362.7) of Chapter 6 of Division 10 of the Health and
23 Safety Code. Under the guidance of the MMPA, approximately
24 60 California cities and counties have created medical marijuana
25 access ordinances that can act as a guide for the state. However,
26 many other cities and counties are calling for more guidance and
27 regulation from the state and have passed bans or moratoria on
28 medical marijuana cultivation and distribution while awaiting such
29 guidance.

30 (4) Greater certainty and uniformity are urgently needed
31 regarding the rights and obligations of medical marijuana facilities,
32 and for the imposition and enforcement of regulations to prevent
33 unlawful cultivation and the diversion of marijuana to nonmedical
34 use.

1 (5) Despite the passage of the Compassionate Use Act of 1996
2 and the MMPA, because there is no effective statewide system for
3 regulating and controlling medical marijuana, local law
4 enforcement officials have been confronted with uncertainty about
5 the legality of some medical marijuana cultivation and distribution
6 activities, and many cities and counties have passed local
7 ordinances that in some cases ban the cultivation or distribution
8 of medical marijuana.

9 (6) Marijuana has widely accepted medical applications that
10 make it inappropriate to classify it as a Schedule I controlled
11 substance in the State of California. Furthermore, current marijuana
12 laws require costly, mandatory felony penalties for minor marijuana
13 offenses, imposing excessive legal costs in minor medical
14 marijuana cases and unduly burdening the state's law enforcement
15 and prison system.

16 (7) For the protection of all Californians, the state must act to
17 regulate and control medical marijuana. Cities and counties should
18 be allowed to impose reasonable local taxes and enact reasonable
19 zoning regulations and other restrictions applicable to the
20 cultivation and distribution of medical marijuana based on local
21 needs.

22 (8) A state board shall be created to regulate and control the
23 mandatory registration of all individuals and entities involved in
24 the commercial cultivation, processing, manufacturing, testing,
25 transportation, distribution, and sale of medical marijuana in this
26 state.

27 (9) The provisions of this act are enacted pursuant to the powers
28 reserved to the State of California under the Tenth Amendment to
29 the United States Constitution.

30 (b) It is therefore the intent of the Legislature, in enacting this
31 act, to accomplish all of the following:

32 (1) To establish a statewide system for regulating and controlling
33 medical marijuana activities by creating a state board to enact and
34 enforce regulations governing the cultivation, processing,
35 manufacturing, testing, transportation, distribution, and sale of
36 medical marijuana.

37 (2) To allow cities and counties to enact reasonable zoning
38 regulations or other restrictions applicable to the cultivation,
39 processing, manufacturing, testing, and distribution of medical
40 marijuana based on local needs.

1 (3) To prohibit the issuance and use of fraudulent or forged
2 physician’s recommendations for medical marijuana.

3 (4) To establish the Board of Medical Marijuana Enforcement
4 to be located within the Department of Consumer Affairs to provide
5 a governmental agency that will ensure the strict, honest, impartial,
6 and uniform administration and enforcement of the medical
7 marijuana laws throughout the state.

8 (5) To fulfill the promise of the Compassionate Use Act of 1996
9 to “implement a plan for the safe and affordable distribution of
10 marijuana to all patients in medical need of marijuana.”

11 (6) To support the creation of a more appropriate schedule for
12 marijuana that recognizes its medical use in the State of California.

13 (7) To reduce the cost of medical marijuana enforcement by
14 providing law enforcement guidelines to more easily determine
15 whether or not a person is acting in conformance with the state’s
16 medical marijuana laws and by providing courts and prosecutors
17 flexibility in the punishment of minor marijuana offenses.

18 SEC. 3. Section 11362.775 of the Health and Safety Code is
19 amended to read:

20 11362.775. Qualified patients, persons with valid identification
21 cards, and the designated primary caregivers of qualified patients
22 and persons with identification cards, ~~who may~~ associate within
23 the State of California ~~in order collectively or cooperatively as~~
24 *collectives, cooperatives, and other business entities* to cultivate,
25 *acquire, process, possess, transport, test, sell, and distribute*
26 *marijuana for medical purposes, and shall not solely on the basis*
27 ~~of that fact~~ *be subject to state criminal arrest, prosecution, or*
28 *sanctions under Section 11357, 11358, 11359, 11360, 11366,*
29 *11366.5, 11379.6, or 11570 on the basis of that fact, unless those*
30 *persons are not in compliance with the registration requirements*
31 *of Section 11362.91. This section applies to all members of an*
32 *entity formed pursuant to this section regardless of whether those*
33 *members contribute to any of the activities of the entity.*

34 SEC. 4. Section 11362.81 of the Health and Safety Code is
35 amended to read:

36 11362.81. (a) A person specified in subdivision (b) shall be
37 subject to the following penalties:

38 (1) For the first offense, imprisonment in the county jail for no
39 more than six months or a fine not to exceed one thousand dollars
40 (\$1,000), or both.

1 (2) For a second or subsequent offense, imprisonment in the
2 county jail for no more than one year, or a fine not to exceed one
3 thousand dollars (\$1,000), or both.

4 (b) Subdivision (a) applies to any of the following:

5 (1) A person who fraudulently represents a medical condition
6 or fraudulently provides any material misinformation to a
7 physician, county health department or the county's designee, or
8 state or local law enforcement agency or officer, for the purpose
9 of falsely obtaining an identification card.

10 (2) A person who steals or fraudulently uses any person's
11 identification card in order to acquire, possess, cultivate, transport,
12 use, produce, or distribute marijuana.

13 (3) A person who counterfeits, tampers with, or fraudulently
14 produces an identification card.

15 (4) A person who breaches the confidentiality requirements of
16 this article to information provided to, or contained in the records
17 of, the department or of a county health department or the county's
18 designee pertaining to an identification card program.

19 (5) *A person who knowingly produces, issues, utilizes, or sells*
20 *a falsified, forged, or fraudulent physician's recommendation for*
21 *medical marijuana.*

22 (c) In addition to the penalties prescribed in subdivision (a), any
23 person described in subdivision (b) may be precluded from
24 attempting to obtain, or obtaining or using, an identification card
25 for a period of up to six months at the discretion of the court.

26 (d) In addition to the requirements of this article, the Attorney
27 General shall develop and adopt appropriate guidelines to ensure
28 the security and nondiversion of marijuana grown for medical use
29 by patients qualified under the Compassionate Use Act of 1996.

30 SEC. 5. Section 11362.83 of the Health and Safety Code is
31 amended to read:

32 11362.83. Nothing in this article shall prevent a city or other
33 local governing body from adopting and enforcing any of the
34 following:

35 (a) Adopting local ordinances that regulate the location,
36 operation, or establishment of a medical marijuana cooperative or
37 collective, *consistent with this article and Article 2.8 (commencing*
38 *with Section 11362.84).*

39 (b) The civil and criminal enforcement of local ordinances
40 described in subdivision (a).

1 (c) Enacting other laws consistent with this article.

2 SEC. 6. Article 2.8 (commencing with Section 11362.84) is
3 added to Chapter 6 of Division 10 of the Health and Safety Code,
4 to read:

5
6 Article 2.8. Medical Marijuana Regulation and Control
7

8 11362.84. For purposes of this article, the following definitions
9 apply:

10 (a) "Act" means the Medical Marijuana Regulation and Control
11 Act.

12 (b) "Board" means the Board of Medical Marijuana
13 Enforcement.

14 (c) "Executive director" means the Executive Director of the
15 Board of Medical Marijuana Enforcement.

16 (d) "Financial institution" means a bank, savings and loan
17 association, or credit union chartered under the laws of this state
18 or the United States.

19 (e) "Fund" means the Medical Marijuana Fund.

20 (f) "Mandatory registrant" means a person required to register
21 with the board pursuant to the provisions of this article.

22 (g) "Mandatory registration" means a registration issued by the
23 board pursuant to this article.

24 (h) "Medical marijuana dispensary" means any facility, building,
25 structure, or location where medical marijuana is sold to qualified
26 patients, primary caregivers, or persons with identification cards
27 issued pursuant to Article 2.5 (commencing with Section 11362.7).

28 (i) "Medical marijuana facility" means any facility, building,
29 structure, or location where medical marijuana is grown, processed,
30 stored, manufactured, tested, or sold, other than a private residence
31 where medical marijuana is grown for personal use and not for
32 sale.

33 (j) "Person" includes any individual, partnership, joint venture,
34 association, limited liability company, corporation, estate, trust,
35 receiver, syndicate, or any other group or combination thereof
36 acting as a unit.

37 11362.85. This article shall not apply to, and shall have no
38 diminishing effect on, the rights and protections currently granted
39 to individual patients and primary caregivers pursuant to Section
40 11362.5 or Article 2.5 (commencing with Section 11362.7).

1 11362.86. A medical marijuana facility shall operate in
2 accordance with this article. Individual patients and caregivers
3 cultivating marijuana at their private residences in accordance with
4 local zoning and building codes who do not sell or charge for the
5 cultivation of marijuana are not considered medical marijuana
6 facilities, and are exempt from mandatory registration.

7 11362.87. (a) It is the intent of the Legislature that each city,
8 county, and city and county permit the development of sufficient
9 numbers and types of medical marijuana facilities as are
10 commensurate with local needs, consistent with the provisions of
11 this article.

12 (b) Except as provided in subdivision (d), (e), or (f), the
13 provisions of this article shall preempt all local ordinances or
14 regulations relating to the regulation and control of medical
15 marijuana and shall apply equally to a charter city or county.

16 (c) Except as provided in subdivision (d), (e), or (f), a city or
17 county shall not prohibit the operation of persons registered
18 pursuant to this article or restrict their location or operation to
19 frustrate the provisions of this article, to render the application or
20 enforcement of this article impractical or impossible, or to restrict
21 the location of medical marijuana dispensaries so as to authorize
22 fewer than one medical marijuana dispensary per 50,000 residents.

23 (d) A city or county with a population of at least 50,000 may
24 prohibit the establishment of medical marijuana dispensaries within
25 its jurisdiction, or limit the number of allowed medical marijuana
26 dispensaries to a number below one per 50,000 residents, if an
27 ordinance or regulation authorizing that restriction has been
28 approved by the voters of the city, county, or city and county in
29 accordance with the provisions of Chapter 2 (commencing with
30 Section 9100) or Chapter 3 (commencing with Section 9200) of
31 Division 9 of the Elections Code. In no event may a city, county,
32 or city and county enact legislation that impairs the rights granted
33 to qualified patients and their caregivers pursuant to Section
34 11362.5 or Article 2.5 (commencing with Section 11362.7).

35 (e) A city or county with a population of less than 50,000
36 residents may prohibit the establishment of a medical marijuana
37 dispensary within its jurisdiction provided that the legislative body
38 of a city or county make a written finding to the board supported
39 by evidence adduced during at least one public hearing that medical
40 marijuana is reasonably available to its residents by other means.

1 (f) (1) A legislative body of a city or county with existing
2 medical marijuana regulations may provide to the board a list of
3 regulated persons that it finds to be in good standing under its local
4 medical marijuana regulations in force as of the effective date of
5 the act adding this article, which shall be accompanied by a
6 certified copy of any ordinance regulating the location or operation
7 of medical marijuana facilities in that jurisdiction. These persons
8 shall automatically be deemed successful mandatory registrants
9 for purposes of this article, and shall be exempt from renewal
10 procedures for three years from the effective date of the act adding
11 this article.

12 (2) Any person found to not be in good standing by the
13 legislative body of a city, county, or city and county pursuant to
14 paragraph (1) shall not be deemed successful mandatory registrants
15 for purposes of this article.

16 (g) If a city or county does not enact a medical marijuana
17 dispensary zoning ordinance, medical marijuana dispensaries in
18 that jurisdiction shall be wholly regulated by the board pursuant
19 to this article, and medical marijuana dispensaries that are
20 mandatory registrants may locate in that jurisdiction in any location
21 that the board finds to be appropriately zoned, subject to the
22 restrictions of Section 11362.768.

23 11362.88. There is within the Department of Consumer Affairs
24 a Board of Medical Marijuana Enforcement. The board shall be
25 administered by a governing body as prescribed by Section
26 11362.881 and a civil executive officer, who shall be appointed
27 by, and serve at the pleasure of, the Director of Consumer Affairs,
28 and who shall be known as the Executive Director of the Board
29 of Medical Marijuana Enforcement. Funds for the establishment
30 and support of the board shall be advanced as a loan by the
31 Department of Consumer Affairs and shall be repaid by the initial
32 proceeds from fees collected pursuant to paragraph (7) of
33 subdivision (a) of Section 11362.882.

34 11362.881. (a) The governing body of the board shall consist
35 of nine members appointed as follows:

36 (1) One member, who is a licensed physician, shall be appointed
37 by the Governor.

38 (2) One member, who is a full-time peace officer, shall be
39 appointed by the Governor.

1 (3) Five members who are residents of California shall be
2 appointed. Of these five, three members shall be appointed by the
3 Governor, one shall be appointed by the Speaker of the Assembly,
4 and one shall be appointed by the Senate Committee on Rules.

5 (4) One member, who is a medical marijuana patient advocate,
6 shall be appointed by the Speaker of the Assembly.

7 (5) One member, who is a qualified medical marijuana patient,
8 shall be appointed by the Senate Committee on Rules.

9 (b) In making appointments pursuant to this article, the Senate
10 Committee on Rules and the Speaker of the Assembly shall make
11 good faith efforts to ensure that their appointments reflect the
12 economic, social, and geographic diversity of the state.

13 (c) The authority responsible for appointing a member of the
14 governing body of the board shall appoint each member within 90
15 days of the effective date of the act adding this article.

16 (d) A majority of the total appointed membership of the
17 governing body of the board shall constitute a quorum. Any action
18 taken by the governing body of the board under this article requires
19 a majority vote of the members present at the meeting of the
20 governing body of the board, with a quorum being present, unless
21 otherwise specifically provided for in this article.

22 (e) The governing body of the board shall elect a chairperson
23 and vice chairperson from among its members and shall meet at
24 least quarterly on call of the executive director, the chairperson,
25 or three members of the governing body of the board.

26 (f) The terms of the members of the governing body of the board
27 shall be three calendar years. No member shall serve more than
28 two consecutive full terms. If a vacancy occurs prior to the
29 expiration of the term for the vacated seat, the appointing authority
30 of that vacant seat shall appoint a replacement member for the
31 remainder of the unexpired term on or before 30 days after the
32 occurrence of the vacancy.

33 11362.882. (a) The board shall do all of the following:

34 (1) (A) Approve or deny mandatory registration applications
35 for the cultivation, processing, manufacturing, testing,
36 transportation, distribution, and sale of medical marijuana as
37 provided by state law.

38 (B) Suspend, fine, restrict, or revoke registration upon a violation
39 of this article or a rule or regulation promulgated pursuant to this
40 article.

1 (C) Impose any penalty authorized by this article or any rule or
2 regulation promulgated pursuant to this article.

3 (2) Adopt, amend, and rescind reasonable regulations, special
4 rulings, and findings as necessary for the regulation and control
5 of the cultivation, processing, manufacturing, testing,
6 transportation, distribution, and sale of medical marijuana, and to
7 govern the procedures of the board to exercise the powers and
8 perform the duties conferred upon it by this article, in accordance
9 with the provisions of Chapter 3.5 (commencing with Section
10 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

11 (3) (A) Hear and determine at a public hearing any appeals of
12 a mandatory registration application denial and any complaints
13 against a registered person.

14 (B) Administer oaths and issue subpoenas to require the presence
15 of individuals and the production of papers, books, and records
16 necessary to the determination of any hearing. Any hearing under
17 this section shall be conducted in accordance with Chapter 5
18 (commencing with Section 11500) of Part 1 of Division 3 of Title
19 2 of the Government Code.

20 (4) Maintain the confidentiality of any information obtained
21 from a registered person related to medical marijuana patients or
22 caregivers in strict compliance with the federal Health Insurance
23 Portability and Accountability Act (42 U.S.C. Sec. 1320d et seq.),
24 the Confidentiality of Medical Information Act (Part 2.6
25 (commencing with Section 56) of Division 1 of the Civil Code),
26 and the Insurance Information and Privacy Protection Act (Article
27 6.6 (commencing with Section 791) of Chapter 1 of Part 2 of
28 Division 1 of the Insurance Code).

29 (5) Develop any forms, identification cards, and applications
30 that are necessary or convenient in the reasonable discretion of the
31 board for the administration of this article or any of the rules or
32 regulations promulgated pursuant to this article.

33 (6) Oversee the operation of the Medical Marijuana Fund created
34 pursuant to Section 11362.89.

35 (7) Establish fees for processing all applications, registrations,
36 notices, or reports required to be submitted to the board. The
37 amount of fees shall reflect the direct and indirect costs of the
38 board in the administration and enforcement of this article and
39 shall be assessed on a sliding fee scale to reflect the projected

1 revenue of the particular registrant. Fees assessed pursuant to this
2 paragraph shall be deposited into the Medical Marijuana Fund.

3 (8) Develop zoning standards for purposes of implementing
4 subdivision (g) of Section 11362.87.

5 (b) Regulations promulgated pursuant to paragraph (2) of
6 subdivision (a) shall include, but are not necessarily limited to, the
7 following:

8 (1) Procedures and grounds for issuing, renewing, denying,
9 suspending, issuing fines in connection with, restricting, or
10 revoking a mandatory registration issued pursuant to this article.

11 (2) Civil penalties for violation of the provisions of this article,
12 including fines imposed pursuant to subdivision (g) of Section
13 11362.91.

14 (3) Prohibition of misrepresentation and unfair practices.

15 (4) Best practices guiding advertisements promoting the
16 purchase of medical marijuana.

17 (5) Security requirements for premises subject to mandatory
18 registration pursuant to this article, including lighting, physical
19 security, alarm, and reporting requirements for changes, alterations,
20 or modifications to the premises.

21 (6) Regulations for the storage and transportation of medical
22 marijuana.

23 (7) Requirements for waste disposal and recycling.

24 (8) Best practices relating to the labeling, packaging, and testing
25 of medical marijuana.

26 (9) Guidelines regarding cultivation, including use of pesticides
27 and fungicides and the reduction of environmental impacts.

28 (10) Establishment of exemptions from registration or reduced
29 fees for noncommercial collectives, not-for-profit registrants, and
30 other qualified persons.

31 (11) Protocols to prevent unlawful diversion of marijuana.

32 (12) Any other regulation in furtherance of this article.

33 (c) Nothing in this article shall be construed as authorizing the
34 board to set prices for medical marijuana.

35 11362.89. (a) All moneys collected pursuant to this article
36 shall be deposited in the Medical Marijuana Fund, which is hereby
37 created in the State Treasury.

38 (b) There is hereby established the Medical Marijuana
39 Enforcement Penalty Account within the fund, to receive the
40 penalty amounts collected pursuant to subdivision (g) of Section

1 11362.91 and any other penalty amounts levied pursuant to this
2 article. Moneys in the account shall be available, upon
3 appropriation by the Legislature, for purposes of this article.

4 (c) Notwithstanding Section 16305.7 of the Government Code,
5 the fund shall also include any interest and dividends earned on
6 money in the fund.

7 (d) Notwithstanding Section 13340 of the Government Code,
8 all moneys in the fund, except for moneys in the Medical Marijuana
9 Enforcement Penalty Account, are hereby continuously
10 appropriated, without regard to fiscal year, to the board solely for
11 the purpose of fully funding all costs associated with implementing,
12 enforcing, and administering this article with respect to the purpose
13 for which those moneys were collected. From moneys in the fund,
14 the board shall reimburse the Department of Consumer Affairs for
15 its administrative expenses incurred on behalf of the board.

16 11362.90. All applicable provisions of Division 1 (commencing
17 with Section 100) of the Business and Professions Code shall
18 govern and apply to the conduct of the board.

19 11362.901. Except as specified in Section 11362.881, the
20 executive director shall be the appointing authority of all employees
21 within the board. All heads of divisions and committees and other
22 employees within the board shall be responsible to the executive
23 director for the proper carrying out of the duties and responsibilities
24 of their respective positions.

25 11362.902. The executive director may bring an action to enjoin
26 a violation or a threatened violation of any provision of this article.
27 The action may be brought in the county in which the violation
28 occurred or is threatened to occur. Any proceeding brought
29 pursuant to this section shall conform to the requirements of
30 Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of
31 the Code of Civil Procedure.

32 11362.91. (a) Except as otherwise provided in this article, a
33 medical marijuana facility shall not operate until it has filed a
34 mandatory registration application with the board and the board
35 has approved the mandatory registration application pursuant to
36 this article. For the purpose of regulating the cultivation,
37 processing, manufacturing, testing, transportation, distribution,
38 and sale of medical marijuana, the board, in its reasonable
39 discretion, may establish various classes or types of registrations
40 for specific medical marijuana-related activities, subject to the

1 provisions and restrictions provided by this article. A mandatory
2 registration application or renewal shall be approved unless the
3 board determines that any of the following are true:

4 (1) An applicant, or the medical marijuana facility location for
5 which the applicant is applying for mandatory registration, fails
6 to meet the requirements of this article or any regulation
7 promulgated pursuant to this article.

8 (2) An applicant is under 21 years of age.

9 (3) An applicant has failed to provide information reasonably
10 necessary for completion of registration or has knowingly answered
11 a question or request for information falsely on the application
12 form.

13 (4) An applicant, or any of its officers or directors, has been
14 convicted in the previous five years of a violent felony, as specified
15 in subdivision (c) of Section 667.5 of the Penal Code, a serious
16 felony, as specified in subdivision (c) of Section 1192.7 of the
17 Penal Code, a felony offense involving fraud or deceit, or any other
18 felony that, in the board's estimation, would impair the applicant's
19 ability to appropriately operate a medical marijuana facility.

20 (5) An applicant is a licensed physician making patient
21 recommendations for medical marijuana.

22 (6) An applicant, or any of its officers or directors, has been
23 sanctioned by the board for operating an unregistered medical
24 marijuana facility or has had a mandatory registration revoked in
25 the previous three years.

26 (b) No later than July 1, 2013, the board shall make available
27 mandatory registration application forms for all persons subject
28 to mandatory registration. Upon receipt of an application for
29 mandatory registration and the applicable fee, the board shall make
30 a thorough investigation to determine whether the applicant and
31 the premises for which a mandatory registration is applied qualify
32 for registration, and comply with local ordinances and zoning, and
33 whether the provisions of this article have been complied with.
34 The board shall deny an application for mandatory registration if
35 either the applicant or the premises for which a registration is
36 applied do not qualify for registration under this article. A
37 mandatory registration application shall be approved or denied no
38 later than 180 days after a mandatory registration application is
39 filed with the board. If the board fails to act on an application
40 within 180 days, it shall be deemed approved.

1 (c) Each mandatory registration application approved by the
2 board pursuant to this article is separate and distinct. An applicant
3 may apply for a mandatory registration in more than one class of
4 specific medical marijuana activities.

5 (d) All mandatory registration applications that are approved
6 by the board pursuant to this article shall be valid for a period not
7 to exceed two years from the date of approval unless revoked or
8 suspended pursuant to this article or the rules or regulations
9 promulgated pursuant to this article.

10 (e) Ninety days prior to the expiration date of an existing
11 mandatory registration, the board shall notify the person of the
12 expiration date by first-class mail at the person’s address of record
13 with the board. A person shall apply for the renewal of an existing
14 mandatory registration to the board not less than 60 days prior to
15 the expiration. The board, in its discretion and based upon
16 reasonable grounds, may waive the 60-day time requirement set
17 forth in this subdivision. The board shall act upon a timely filed
18 registration renewal application no later than 10 days prior to the
19 expiration of the registration.

20 (f) A medical marijuana facility operating in conformance with
21 local zoning requirements as of the effective date of this article
22 may continue its operations until such time as its application for
23 mandatory registration has been approved or denied.

24 (g) Operating a medical marijuana facility without an approved
25 mandatory registration may result in fines of up to twenty-five
26 thousand dollars (\$25,000), and the board may order the destruction
27 of any marijuana being cultivated or possessed in violation of this
28 article. Any fines collected pursuant to this subdivision shall be
29 deposited into the Medical Marijuana Enforcement Penalty
30 Account established pursuant to subdivision (b) of Section
31 11362.89.

32 11362.92. (a) A person whose mandatory registration
33 application has been approved by the board shall not be subject to
34 arrest, prosecution, or other criminal, civil, or administrative
35 sanctions under state or local law for actions approved by the board
36 in accordance with its registration application, including, as
37 applicable, the cultivation, processing, manufacturing, testing,
38 transportation, distribution, sale, or possession, of medical
39 marijuana.

1 (b) Nothing in this article shall prevent a city, county, or city
2 and county from enforcing a zoning ordinance or law of general
3 application, except as specified in this article.

4 (c) No funds shall be spent by state or local officials to assist
5 federal authorities in enforcing marijuana prohibitions with regard
6 to activities carried out by persons in compliance with the
7 provisions of this article. Nothing in this article shall be construed
8 to limit a law enforcement agency's ability to investigate unlawful
9 activity in relation to a mandatory registrant.

10 11362.93. A financial institution may provide lending services
11 to persons whose mandatory registration application has been
12 approved by the board pursuant to this article and may secure any
13 such loans to those persons with assets of those persons. Any
14 financial institution owning or possessing medical marijuana or
15 warehouse receipts as security for an obligation or as a result of
16 enforcement of a security interest may, after permission has been
17 given by the board, sell the medical marijuana or warehouse
18 receipts to a registrant authorized to sell for resale that medical
19 marijuana or those warehouse receipts.

20 SEC. 7. Chapter 4 (commencing with Section 7294) is added
21 to Part 1.7 of Division 2 of the Revenue and Taxation Code, to
22 read:

23
24 CHAPTER 4. LOCAL MEDICAL MARIJUANA TAXES

25
26 Article 1. Counties Medical Marijuana Tax

27
28 7294. Notwithstanding any other law, the board of supervisors
29 of any county may levy, increase, or extend a transactions and use
30 tax on the sale of medical marijuana or medical marijuana-infused
31 products for general purposes at a rate of ____ percent, or a
32 multiple thereof, if the ordinance proposing that tax is approved
33 by a two-thirds vote of all members of the board of supervisors
34 and the tax is approved by a majority vote of the qualified voters
35 of the county voting in an election on the issue. The board of
36 supervisors may levy, increase, or extend more than one
37 transactions and use tax under this section, if the adoption of each
38 tax is in the manner prescribed in this section. The transactions
39 and use tax shall conform to Part 1.6 (commencing with Section
40 7251).

1 7294.5. (a) Notwithstanding any other law, the board of
2 supervisors of any county may levy, increase, or extend a
3 transactions and use tax on medical marijuana or medical
4 marijuana-infused products for specific purposes. The tax may be
5 levied, increased, or extended at a rate of ____ percent, or a
6 multiple thereof, for the purpose for which it is established, if all
7 of the following requirements are met:

8 (1) The ordinance proposing that tax is approved by a two-thirds
9 vote of all members of the board of supervisors and is subsequently
10 approved by a two-thirds vote of the qualified voters of the county
11 voting in an election on the issue.

12 (2) The transactions and use tax conforms to the Transactions
13 and Use Tax Law Part 1.6 (commencing with Section 7251).

14 (3) The ordinance includes an expenditure plan describing the
15 specific projects for which the revenues from the tax may be
16 expended.

17 (b) A county shall be deemed to be an authority for purposes
18 of Chapter 1 (commencing with Section 55800) of Part 3 of
19 Division 2 of Title 5 of the Government Code.

20 7294.6. Notwithstanding any other law, the combined rate of
21 all taxes imposed in any county pursuant to this article and pursuant
22 to Article 2 (commencing with Section 7295) shall not exceed the
23 rate of 2.5 percent.

24

25 Article 2. Cities Medical Marijuana Tax

26

27 7295. Notwithstanding any other law, the governing body of
28 any city may levy, increase, or extend a transactions and use tax
29 on the sale of medical marijuana or medical marijuana-infused
30 products for general purposes at a rate of ____ percent, or a
31 multiple thereof, if the ordinance proposing that tax is approved
32 by a two-thirds vote of all members of that governing body and
33 the tax is approved by a majority vote of the qualified voters of
34 the city voting in an election on the issue. The governing body
35 may levy, increase, or extend more than one transactions and use
36 tax under this section, if the adoption of each tax is in the manner
37 prescribed in this section. The transactions and use tax shall
38 conform to Part 1.6 (commencing with Section 7251).

39 7295.5. Notwithstanding any other law, the governing body
40 of any city may levy, increase, or extend a transactions and use

1 tax on the sale of medical marijuana or medical marijuana-infused
2 products for specific purposes. The tax may be levied, increased,
3 or extended at a rate of ____ percent, or a multiple thereof, for the
4 purpose for which it is established, if all of the following
5 requirements are met:

6 (a) The ordinance proposing that tax is approved by a two-thirds
7 vote of all members of the governing body and is subsequently
8 approved by a two-thirds vote of the qualified voters of the city
9 voting in an election on the issue.

10 (b) The transactions and use tax conforms to the Transactions
11 and Use Tax Law Part 1.6 (commencing with Section 7251).

12 (c) The ordinance includes an expenditure plan describing the
13 specific projects for which the revenues from the tax may be
14 expended.

15 7295.6. (a) The authority of a city to impose transactions and
16 use taxes under Sections 7295 and 7295.5 shall not exceed the rate
17 of 1 percent.

18 (b) An ordinance proposing a tax shall contain a provision that
19 any person subject to a transactions and use tax under a county
20 ordinance shall be entitled to credit against the payment of taxes
21 due under that ordinance in the amount of transactions and use tax
22 due to any city in the county.

23 SEC. 8. The provisions of this article are severable. If any
24 provision of this article or its application is held invalid, that
25 invalidity shall not affect other provisions or applications that can
26 be given effect without the invalid provision or application.

27 SEC. 9. 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.