

AMENDED IN ASSEMBLY MAY 10, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 2312

Introduced by Assembly Member Ammiano
(Coauthors: Assembly Members Chesbro, Huffman, and Skinner)
(Coauthor: Senator Leno)

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 amended, 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

1 unlawful cultivation and the diversion of marijuana to nonmedical
2 use.

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

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

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

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

29 (9) The provisions of this act are enacted pursuant to the powers
30 reserved to the State of California *and its people* under the Tenth
31 Amendment to the United States Constitution.

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

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

39 (2) To allow cities and counties to enact reasonable zoning
40 regulations or other restrictions applicable to the cultivation,

1 processing, manufacturing, testing, and distribution of medical
2 marijuana based on local needs.

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

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

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

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

15 (7) *To establish a statewide registration process to identify for*
16 *law enforcement which individuals and entities are exempt from*
17 *state law criminal penalties.*

18 ~~(7)~~

19 (8) To reduce the cost of medical marijuana enforcement by
20 providing law enforcement guidelines to more easily determine
21 whether or not a person is acting in conformance with the state's
22 medical marijuana laws and by providing courts and prosecutors
23 flexibility in the punishment of minor marijuana offenses.

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

26 11362.775. Qualified patients, persons with valid identification
27 cards, and the designated primary caregivers of qualified patients
28 and persons with identification cards, may associate within the
29 State of California as collectives, cooperatives, and other business
30 entities to cultivate, acquire, process, possess, transport, test, sell,
31 and distribute marijuana for medical purposes, and shall not be
32 subject to arrest, prosecution, or sanctions under Section 11357,
33 11358, 11359, 11360, 11366, 11366.5, 11379.6, or 11570 on the
34 basis of that fact, unless those persons are not in compliance with
35 the registration requirements of Section 11362.91. This section
36 applies to all members of an entity formed pursuant to this section
37 regardless of whether those members contribute to any of the
38 activities of the entity. *This section applies regardless of whether*
39 *the registration procedure described in Section 11362.91 is being*
40 *implemented.*

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

3 11362.81. (a) A person specified in subdivision (b) shall be
4 subject to the following penalties:

5 (1) For the first offense, imprisonment in the county jail for no
6 more than six months or a fine not to exceed one thousand dollars
7 (\$1,000), or both.

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

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

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

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

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

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

26 (5) A person who knowingly produces, issues, utilizes, or sells
27 a falsified, forged, or fraudulent physician's recommendation for
28 medical marijuana.

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

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

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

1 11362.83. Nothing in this article shall prevent a city or other
2 local governing body from adopting and enforcing any of the
3 following:

4 (a) Adopting local ordinances that regulate the location,
5 operation, or establishment of a medical marijuana cooperative or
6 collective, consistent with this article and Article 2.8 (commencing
7 with Section 11362.84).

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

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

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

14
15 Article 2.8. Medical Marijuana Regulation and Control

16
17 11362.84. For purposes of this article, the following definitions
18 apply:

19 (a) “Act” means the Medical Marijuana Regulation and Control
20 Act.

21 (b) “Board” means the Board of Medical Marijuana
22 Enforcement.

23 (c) “Executive director” means the Executive Director of the
24 Board of Medical Marijuana Enforcement.

25 (d) “Financial institution” means a bank, savings and loan
26 association, or credit union chartered under the laws of this state
27 or the United States.

28 (e) “Fund” means the Medical Marijuana Fund.

29 (f) “Mandatory registrant” means a person required to register
30 with the board pursuant to the provisions of this article.

31 (g) “Mandatory registration” means a registration issued by the
32 board pursuant to this article.

33 (h) “Medical marijuana dispensary” means any facility, building,
34 structure, or location where medical marijuana is sold to qualified
35 patients, primary caregivers, or persons with identification cards
36 issued pursuant to Article 2.5 (commencing with Section 11362.7).

37 (i) “Medical marijuana facility” means any facility, building,
38 structure, or location where medical marijuana is grown, processed,
39 stored, manufactured, tested, or sold, other than a ~~private residence~~
40 ~~where medical marijuana is grown for personal~~ *location or building*

1 *in which a patient or a patient's primary caregiver is growing*
2 *medical marijuana for the patient's own medical use and not for*
3 *sale.*

4 (j) *"Medical marijuana industry union" means a labor union,*
5 *which has at its core retail, agriculture, food and processing, or*
6 *textiles, whose members work in the medical marijuana industry.*

7 (j)

8 (k) "Person" includes any individual, partnership, joint venture,
9 association, limited liability company, corporation, estate, trust,
10 receiver, syndicate, or any other group or combination thereof
11 acting as a unit.

12 11362.85. This article shall not apply to, and shall have no
13 diminishing effect on, the rights and protections currently granted
14 to individual patients and primary caregivers pursuant to Section
15 11362.5 or Article 2.5 (commencing with Section 11362.7).

16 11362.86. A medical marijuana facility shall operate in
17 accordance with this article. Individual patients and caregivers
18 cultivating marijuana at their private residences ~~in accordance with~~
19 ~~local zoning and building codes~~ *for the patient's use* who do not
20 sell or charge for the cultivation of marijuana are not considered
21 medical marijuana facilities, and are exempt from mandatory
22 registration.

23 11362.87. (a) It is the intent of the Legislature that each city,
24 county, and city and county permit the development of sufficient
25 numbers and types of medical marijuana facilities as are
26 commensurate with local needs, consistent with the provisions of
27 this article.

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

32 (c) Except as provided in subdivision (d), (e), or (f), a city or
33 county shall not prohibit the operation of persons registered
34 pursuant to this article or restrict their location or operation to
35 frustrate the provisions of this article, to render the application or
36 enforcement of this article impractical or impossible, or to restrict
37 the location of medical marijuana dispensaries so as to authorize
38 fewer than one medical marijuana dispensary per 50,000 residents.

39 (d) A city or county with a population of at least 50,000 may
40 prohibit the establishment of medical marijuana dispensaries within

1 its jurisdiction, or limit the number of allowed medical marijuana
2 dispensaries to a number below one per 50,000 residents, if an
3 ordinance or regulation authorizing that restriction has been
4 approved by the voters of the city, county, or city and county in
5 accordance with the provisions of Chapter 2 (commencing with
6 Section 9100) or Chapter 3 (commencing with Section 9200) of
7 Division 9 of the Elections Code. In no event may a city, county,
8 or city and county enact legislation that impairs the rights granted
9 to qualified patients and their caregivers pursuant to Section
10 11362.5 or Article 2.5 (commencing with Section 11362.7).

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

17 (f) (1) A legislative body of a city or county with existing
18 medical marijuana regulations may provide to the board a list of
19 regulated persons that it finds to be in good standing under its local
20 medical marijuana regulations in force as of the effective date of
21 the act adding this article, which shall be accompanied by a
22 certified copy of any ordinance regulating the location or operation
23 of medical marijuana facilities in that jurisdiction. These persons
24 shall automatically be deemed successful mandatory registrants
25 for purposes of this article, and shall be exempt from renewal
26 procedures for three years from the effective date of the act adding
27 this article.

28 (2) Any person found to not be in good standing by the
29 legislative body of a city, county, or city and county pursuant to
30 paragraph (1) shall not *automatically* be deemed a successful
31 mandatory-registrants *registrant* for purposes of this article.

32 (g) If a city or county does not enact a medical marijuana
33 dispensary zoning ordinance, medical marijuana dispensaries *and*
34 *facilities* in that jurisdiction shall be wholly regulated by the board
35 pursuant to this article, and medical marijuana dispensaries *and*
36 *facilities* that are mandatory registrants may locate in that
37 jurisdiction in any location that the board finds to be appropriately
38 zoned, subject to the restrictions of Section 11362.768.

39 11362.88. There is within the Department of Consumer Affairs
40 a Board of Medical Marijuana Enforcement. The board shall be

administered by a governing body as prescribed by Section 11362.881 and a civil executive officer, who shall be appointed by, and serve at the pleasure of, the Director of Consumer Affairs, and who shall be known as the Executive Director of the Board of Medical Marijuana Enforcement. Funds for the establishment and support of the board shall be advanced as a loan by the Department of Consumer Affairs and shall be repaid by the initial proceeds from fees collected pursuant to paragraph (7) of subdivision (a) of Section 11362.882.

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

(1) Three members who are residents of California shall be appointed, one of whom shall be appointed by the Governor, one of whom shall be appointed by the Speaker of the Assembly, and one of whom shall be appointed by the Senate Committee on Rules.

~~(1) One member, who is a~~

~~(2) Two members, who are licensed physician physicians and have experience with clinical applications of medical marijuana,~~ shall be appointed by the Governor.

~~(2)~~

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

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

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

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

(6) One member, who is a representative from a medical marijuana industry union, as defined in subdivision (j) of Section 11362.84, shall be appointed by the Speaker of the Assembly.

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

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

4 (d) A majority of the total appointed membership of the
5 governing body of the board shall constitute a quorum. Any action
6 taken by the governing body of the board under this article requires
7 a majority vote of the members present at the meeting of the
8 governing body of the board, with a quorum being present, unless
9 otherwise specifically provided for in this article.

10 (e) The governing body of the board shall elect a chairperson
11 and vice chairperson from among its members and shall meet at
12 least quarterly on call of the executive director, the chairperson,
13 or three members of the governing body of the board.

14 ~~(f) The terms of the members of the governing body of the board~~
15 ~~shall be three calendar years. No member shall serve more than~~
16 ~~two consecutive full terms. If a vacancy occurs prior to the~~
17 ~~expiration of the term for the vacated seat, the appointing authority~~
18 ~~of that vacant seat shall appoint a replacement member for the~~
19 ~~remainder of the unexpired term on or before 30 days after the~~
20 ~~occurrence of the vacancy.~~

21 *(f) The terms of office of the members of the governing body of*
22 *the board shall be as follows:*

23 *(1) Except as provided in paragraph (2), the terms of the*
24 *members of the governing body of the board shall be three calendar*
25 *years, commencing January 1 of the year of appointment. No*
26 *member shall serve more than two consecutive full terms; provided,*
27 *however, that a term or part of a term served pursuant to*
28 *subparagraph (A) or (B) of paragraph (2) shall not be included*
29 *in this limitation.*

30 *(2) The terms of the members of the governing body of the board*
31 *shall be staggered as follows:*

32 *(A) The first members appointed on or after January 1 of the*
33 *year following the effective date of this article pursuant to*
34 *paragraph (1) of subdivision (a) shall serve from the date of*
35 *appointment to the end of that calendar year, plus one additional*
36 *year.*

37 *(B) The first members appointed on or after January 1 of the*
38 *year following the effective date of this article pursuant to*
39 *paragraphs (2) and (3) of subdivision (a) shall serve from the date*

1 of appointment to the end of that calendar year, plus two additional
2 years.

3 (C) The first members appointed on or after January 1 of the
4 year following the effective date of this article pursuant to
5 paragraphs (4) to (6), inclusive, of subdivision (a) shall serve from
6 the date of appointment to the end of that calendar year, plus three
7 additional years.

8 (3) If a vacancy occurs prior to the expiration of the term for
9 the vacated seat, the appointing authority of that vacant seat shall
10 appoint a replacement member for the remainder of the unexpired
11 term within 30 days after the occurrence of the vacancy.

12 (g) Each member of the governing body of the board shall be
13 paid one hundred dollars (\$100) per day plus travel expenses,
14 including expenses for lodging and meals, which are incurred in
15 the attendance at board meetings or in conducting the business of
16 the board. All per diem and expense claims are subject to approval
17 by the executive director.

18 11362.882. (a) The board shall do all of the following:

19 (1) (A) ~~Approve~~ Commencing September 1, 2013, approve or
20 deny mandatory registration applications for the cultivation,
21 processing, manufacturing, testing, transportation, distribution,
22 and sale of medical marijuana as provided by state law.

23 (B) Suspend, fine, restrict, or revoke registration upon a violation
24 of this article or a rule or regulation promulgated pursuant to this
25 article.

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

28 (D) Take any reasonable action with respect to a mandatory
29 registration application in accordance with procedures established
30 pursuant to this article.

31 (2) ~~Adopt~~, Commencing July 1, 2013, adopt, amend, and rescind
32 reasonable regulations, special rulings, and findings as necessary
33 for the regulation and control of the cultivation, processing,
34 manufacturing, testing, transportation, distribution, and sale of
35 medical marijuana, and to govern the procedures of the board to
36 exercise the powers and perform the duties conferred upon it by
37 this article, in accordance with the provisions of Chapter 3.5
38 (commencing with Section 11340) of Part 1 of Division 3 of Title
39 2 of the Government Code.

1 (3) (A) Hear and determine at a public hearing any appeals of
2 a mandatory registration application denial *or renewal application*
3 *denial* and any complaints against a registered person.

4 (B) Administer oaths and issue subpoenas to require the presence
5 of individuals and the production of papers, books, and records
6 necessary to the determination of any hearing. Any hearing under
7 this section shall be conducted in accordance with Chapter 5
8 (commencing with Section 11500) of Part 1 of Division 3 of Title
9 2 of the Government Code.

10 (4) Maintain the confidentiality of any information obtained
11 from a registered person related to medical marijuana patients or
12 caregivers in strict compliance with the federal Health Insurance
13 Portability and Accountability Act (42 U.S.C. Sec. 1320d et seq.),
14 the Confidentiality of Medical Information Act (Part 2.6
15 (commencing with Section 56) of Division 1 of the Civil Code),
16 and the Insurance Information and Privacy Protection Act (Article
17 6.6 (commencing with Section 791) of Chapter 1 of Part 2 of
18 Division 1 of the Insurance Code).

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

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

25 (7) Establish *reasonable* fees for processing all applications,
26 registrations, notices, or reports required to be submitted to the
27 board. The amount of fees shall reflect the direct and indirect costs
28 of the board in the administration and enforcement of this article
29 and shall be assessed on a sliding fee scale to reflect the projected
30 revenue of the particular registrant. Fees assessed pursuant to this
31 paragraph shall be deposited into the Medical Marijuana Fund.

32 (8) ~~Develop~~ *Commencing July 1, 2013, develop* zoning standards
33 for purposes of implementing subdivision (g) of Section 11362.87.

34 (b) Regulations promulgated pursuant to paragraph (2) of
35 subdivision (a) shall *be reasonable and shall* include, but are not
36 necessarily limited to, the following:

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

1 (2) Civil penalties for violation of the provisions of this article,
2 including fines imposed pursuant to subdivision (g) of Section
3 11362.91.

4 (3) Prohibition of misrepresentation and unfair practices.

5 (4) Best practices guiding advertisements promoting the
6 purchase of medical marijuana.

7 (5) Security requirements for premises subject to mandatory
8 registration pursuant to this article, including lighting, physical
9 security, alarm, and reporting requirements for changes, alterations,
10 or modifications to the premises.

11 (6) Regulations for the storage and transportation of medical
12 marijuana.

13 (7) Requirements for waste disposal and recycling.

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

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

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

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

22 (12) *Establishment of a committee to advise the Legislature on*
23 *the rescheduling of marijuana under federal law and under*
24 *Chapter 2 (commencing with Section 11053).*

25 ~~(12)~~

26 (13) Any other regulation in furtherance of this article.

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

29 11362.89. (a) All moneys collected pursuant to this article
30 shall be deposited in the Medical Marijuana Fund, which is hereby
31 created in the State Treasury.

32 (b) There is hereby established the Medical Marijuana
33 Enforcement Penalty Account within the fund, to receive the
34 penalty amounts collected pursuant to subdivision (g) of Section
35 11362.91 and any other penalty amounts levied pursuant to this
36 article. Moneys in the account shall be available, upon
37 appropriation by the Legislature, for purposes of this article.

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

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

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

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

11362.902. The executive director may bring an action to enjoin a violation or a threatened violation of any provision of this article *with the vote of a majority of the members of the governing body of the board*. The action may be brought in the county in which the violation occurred or is threatened to occur. Any proceeding brought pursuant to this section shall conform to the requirements of Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure.

11362.91. (a) Except as otherwise provided in this article, a medical marijuana facility shall not operate until it has filed a mandatory registration application with the board and the board has approved the mandatory registration application pursuant to this article. For the purpose of regulating the cultivation, processing, manufacturing, testing, transportation, distribution, and sale of medical marijuana, the board, in its reasonable discretion, may establish various classes or types of registrations for specific medical marijuana-related activities, subject to the provisions and restrictions provided by this article. A mandatory registration application or renewal shall be approved unless the board determines that any of the following are true:

(1) An applicant, or the medical marijuana facility location for which the applicant is applying for mandatory registration, fails

1 to meet the requirements of this article or any regulation
2 promulgated pursuant to this article.

3 (2) An applicant, *or any of its officers or directors*, is under 21
4 years of age.

5 (3) An applicant ~~has failed to provide information reasonably~~
6 ~~necessary for completion of registration~~ or has knowingly answered
7 a question or request for information falsely on the application
8 form.

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

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

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

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

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

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

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

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

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

28 (h) *If, at any time after July 1, 2013, the board has not formed,*
29 *is not accepting applications for mandatory registration, or is not*
30 *granting mandatory registrations in response to valid applications,*
31 *then a medical marijuana facility or medical marijuana dispensary*
32 *that is operating in compliance with applicable city or county*
33 *ordinances may continue to operate without a mandatory*
34 *registration.*

35 11362.92. (a) A person whose mandatory registration
36 application has been approved by the board, *and its agents, officers,*
37 *directors, and employees acting on its behalf,* shall not be subject
38 to arrest, prosecution, or other criminal, civil, or administrative
39 sanctions under state or local law for actions approved by the board
40 in accordance with its registration application, including, as

1 applicable, the cultivation, processing, manufacturing, testing,
2 transportation, distribution, sale, or possession, of medical
3 marijuana.

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

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

13 11362.93. A financial institution ~~may provide lending~~ *shall*
14 *not be penalized in any manner under state law for either of the*
15 *following:*

16 (a) *Providing lending* services to persons whose mandatory
17 registration application has been approved by the board pursuant
18 to this article ~~and may secure or securing~~ any such loans to those
19 persons with assets of those persons. ~~Any financial institution~~
20 ~~owning~~

21 (b) *Owning* or possessing medical marijuana or warehouse
22 receipts as security for an obligation or as a result of enforcement
23 of a security interest ~~may~~, after permission has been given by the
24 board, ~~sell or selling~~ the medical marijuana or warehouse receipts
25 to a registrant authorized to sell for resale that medical marijuana
26 or those warehouse receipts.

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

30
31 CHAPTER 4. LOCAL MEDICAL MARIJUANA TAXES

32
33 Article 1. Counties Medical Marijuana Tax

34
35 7294. Notwithstanding any other law, the board of supervisors
36 of any county may levy, increase, or extend a transactions and use
37 tax on the sale of medical marijuana or medical marijuana-infused
38 products for general purposes at a rate of ____ percent, or a
39 multiple thereof, if the ordinance proposing that tax is approved
40 by a two-thirds vote of all members of the board of supervisors

1 and the tax is approved by a majority vote of the qualified voters
2 of the county voting in an election on the issue. The board of
3 supervisors may levy, increase, or extend more than one
4 transactions and use tax under this section, if the adoption of each
5 tax is in the manner prescribed in this section. The transactions
6 and use tax shall conform to Part 1.6 (commencing with Section
7 7251).

8 7294.5. (a) Notwithstanding any other law, the board of
9 supervisors of any county may levy, increase, or extend a
10 transactions and use tax on medical marijuana or medical
11 marijuana-infused products for specific purposes. The tax may be
12 levied, increased, or extended at a rate of ____ percent, or a
13 multiple thereof, for the purpose for which it is established, if all
14 of the following requirements are met:

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

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

21 (3) The ordinance includes an expenditure plan describing the
22 specific projects for which the revenues from the tax may be
23 expended.

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

27 7294.6. Notwithstanding any other law, the combined rate of
28 all taxes imposed in any county pursuant to this article and pursuant
29 to Article 2 (commencing with Section 7295) shall not exceed the
30 rate of 2.5 percent.

31 Article 2. Cities Medical Marijuana Tax

32
33
34 7295. Notwithstanding any other law, the governing body of
35 any city may levy, increase, or extend a transactions and use tax
36 on the sale of medical marijuana or medical marijuana-infused
37 products for general purposes at a rate of ____ percent, or a
38 multiple thereof, if the ordinance proposing that tax is approved
39 by a two-thirds vote of all members of that governing body and
40 the tax is approved by a majority vote of the qualified voters of

1 the city voting in an election on the issue. The governing body
2 may levy, increase, or extend more than one transactions and use
3 tax under this section, if the adoption of each tax is in the manner
4 prescribed in this section. The transactions and use tax shall
5 conform to Part 1.6 (commencing with Section 7251).

6 7295.5. Notwithstanding any other law, the governing body
7 of any city may levy, increase, or extend a transactions and use
8 tax on the sale of medical marijuana or medical marijuana-infused
9 products for specific purposes. The tax may be levied, increased,
10 or extended at a rate of ____ percent, or a multiple thereof, for the
11 purpose for which it is established, if all of the following
12 requirements are met:

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

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

19 (c) The ordinance includes an expenditure plan describing the
20 specific projects for which the revenues from the tax may be
21 expended.

22 7295.6. (a) The authority of a city to impose transactions and
23 use taxes under Sections 7295 and 7295.5 shall not exceed the rate
24 of 1 percent.

25 (b) An ordinance proposing a tax shall contain a provision that
26 any person subject to a transactions and use tax under a county
27 ordinance shall be entitled to credit against the payment of taxes
28 due under that ordinance in the amount of transactions and use tax
29 due to any city in the county.

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

34 SEC. 9. No reimbursement is required by this act pursuant to
35 Section 6 of Article XIII B of the California Constitution because
36 the only costs that may be incurred by a local agency or school
37 district will be incurred because this act creates a new crime or
38 infraction, eliminates a crime or infraction, or changes the penalty
39 for a crime or infraction, within the meaning of Section 17556 of
40 the Government Code, or changes the definition of a crime within

- 1 the meaning of Section 6 of Article XIII B of the California
- 2 Constitution.

O