

AMENDED IN ASSEMBLY MAY 25, 2012

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 *retail* 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 5%.~~

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.

1 (4) Greater certainty and uniformity are urgently needed
2 regarding the rights and obligations of medical marijuana facilities,
3 and for the imposition and enforcement of regulations to prevent
4 unlawful cultivation and the diversion of marijuana to nonmedical
5 use.

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

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

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

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

32 (9) The provisions of this act are enacted pursuant to the powers
33 reserved to the State of California and its people under the Tenth
34 Amendment to the United States Constitution.

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

37 (1) To establish a statewide system for regulating and controlling
38 medical marijuana activities by creating a state board to enact and
39 enforce regulations governing the cultivation, processing,

1 manufacturing, testing, transportation, distribution, and sale of
2 medical marijuana.

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

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

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

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

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

19 (7) To establish a statewide registration process to identify for
20 law enforcement which individuals and entities are exempt from
21 state law criminal penalties.

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

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

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

1 activities of the entity. This section applies regardless of whether
2 the registration procedure described in Section 11362.91 is being
3 implemented.

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

6 11362.81. (a) A person specified in subdivision (b) shall be
7 subject to the following penalties:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16
17 Article 2.8. Medical Marijuana Regulation and Control
18

19 11362.84. For purposes of this article, the following definitions
20 apply:

21 (a) “Act” means the Medical Marijuana Regulation and Control
22 Act.

23 (b) “Board” means the Board of Medical Marijuana
24 Enforcement.

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

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

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

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

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

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

39 (i) “Medical marijuana facility” means any facility, building,
40 structure, or location where medical marijuana is grown, processed,

1 stored, manufactured, tested, or sold, other than a location or
2 building in which a patient or a patient’s primary caregiver is
3 growing medical marijuana for the patient’s own medical use and
4 not for sale.

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

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 for the patient’s
19 use who do not sell or charge for the cultivation of marijuana are
20 not considered medical marijuana facilities, and are exempt from
21 mandatory registration.

22 11362.87. (a) It is the intent of the Legislature that each city,
23 county, and city and county permit the development of sufficient
24 numbers and types of medical marijuana facilities as are
25 commensurate with local needs, consistent with the provisions of
26 this article.

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

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

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

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

1 administered by a governing body as prescribed by Section
2 11362.881 and a civil executive officer, who shall be appointed
3 by, and serve at the pleasure of, the Director of Consumer Affairs,
4 and who shall be known as the Executive Director of the Board
5 of Medical Marijuana Enforcement. Funds for the establishment
6 and support of the board shall be advanced as a loan by the
7 Department of Consumer Affairs and shall be repaid by the initial
8 proceeds from fees collected pursuant to paragraph (7) of
9 subdivision (a) of Section 11362.882.

10 11362.881. (a) The governing body of the board shall consist
11 of nine members appointed as follows:

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

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

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

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

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

25 (6) One member, who is a representative from a medical
26 marijuana industry union, as defined in subdivision (j) of Section
27 11362.84, shall be appointed by the Speaker of the Assembly.

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

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

36 (d) A majority of the total appointed membership of the
37 governing body of the board shall constitute a quorum. Any action
38 taken by the governing body of the board under this article requires
39 a majority vote of the members present at the meeting of the

1 governing body of the board, with a quorum being present, unless
2 otherwise specifically provided for in this article.

3 (e) The governing body of the board shall elect a chairperson
4 and vice chairperson from among its members and shall meet at
5 least quarterly on call of the executive director, the chairperson,
6 or three members of the governing body of the board.

7 (f) The terms of office of the members of the governing body
8 of the board shall be as follows:

9 (1) Except as provided in paragraph (2), the terms of the
10 members of the governing body of the board shall be three calendar
11 years, commencing January 1 of the year of appointment. No
12 member shall serve more than two consecutive full terms; provided,
13 however, that a term or part of a term served pursuant to
14 subparagraph (A) or (B) of paragraph (2) shall not be included in
15 this limitation.

16 (2) The terms of the members of the governing body of the
17 board shall be staggered as follows:

18 (A) The first members appointed on or after January 1 of the
19 year following the effective date of this article pursuant to
20 paragraph (1) of subdivision (a) shall serve from the date of
21 appointment to the end of that calendar year, plus one additional
22 year.

23 (B) The first members appointed on or after January 1 of the
24 year following the effective date of this article pursuant to
25 paragraphs (2) and (3) of subdivision (a) shall serve from the date
26 of appointment to the end of that calendar year, plus two additional
27 years.

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

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

37 (g) Each member of the governing body of the board shall be
38 paid one hundred dollars (\$100) per day plus travel expenses,
39 including expenses for lodging and meals, which are incurred in
40 the attendance at board meetings or in conducting the business of

1 the board. All per diem and expense claims are subject to approval
2 by the executive director.

3 11362.882. (a) The board shall do all of the following:

4 (1) (A) Commencing September 1, 2013, approve or deny
5 mandatory registration applications for the cultivation, processing,
6 manufacturing, testing, transportation, distribution, and sale of
7 medical marijuana as provided by state law.

8 (B) Suspend, fine, restrict, or revoke registration upon a violation
9 of this article or a rule or regulation promulgated pursuant to this
10 article.

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

13 (D) Take any reasonable action with respect to a mandatory
14 registration application in accordance with procedures established
15 pursuant to this article.

16 (2) Commencing July 1, 2013, adopt, amend, and rescind
17 reasonable regulations, special rulings, and findings as necessary
18 for the regulation and control of the cultivation, processing,
19 manufacturing, testing, transportation, distribution, and sale of
20 medical marijuana, and to govern the procedures of the board to
21 exercise the powers and perform the duties conferred upon it by
22 this article, in accordance with the provisions of Chapter 3.5
23 (commencing with Section 11340) of Part 1 of Division 3 of Title
24 2 of the Government Code.

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

28 (B) Administer oaths and issue subpoenas to require the presence
29 of individuals and the production of papers, books, and records
30 necessary to the determination of any hearing. Any hearing under
31 this section shall be conducted in accordance with Chapter 5
32 (commencing with Section 11500) of Part 1 of Division 3 of Title
33 2 of the Government Code.

34 (4) Maintain the confidentiality of any information obtained
35 from a registered person related to medical marijuana patients or
36 caregivers in strict compliance with the federal Health Insurance
37 Portability and Accountability Act (42 U.S.C. Sec. 1320d et seq.),
38 the Confidentiality of Medical Information Act (Part 2.6
39 (commencing with Section 56) of Division 1 of the Civil Code),
40 and the Insurance Information and Privacy Protection Act (Article

1 6.6 (commencing with Section 791) of Chapter 1 of Part 2 of
2 Division 1 of the Insurance Code).

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

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

9 (7) Establish reasonable fees for processing all applications,
10 registrations, notices, or reports required to be submitted to the
11 board. The amount of fees shall reflect the direct and indirect costs
12 of the board in the administration and enforcement of this article
13 and shall be assessed on a sliding fee scale to reflect the projected
14 revenue of the particular registrant. Fees assessed pursuant to this
15 paragraph shall be deposited into the Medical Marijuana Fund.

16 (8) Commencing July 1, 2013, develop zoning standards for
17 purposes of implementing subdivision (g) of Section 11362.87.

18 (b) Regulations promulgated pursuant to paragraph (2) of
19 subdivision (a) shall be reasonable and shall include, but are not
20 necessarily limited to, the following:

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

24 (2) Civil penalties for violation of the provisions of this article,
25 including fines imposed pursuant to subdivision (g) of Section
26 11362.91.

27 (3) Prohibition of misrepresentation and unfair practices.

28 (4) Best practices guiding advertisements promoting the
29 purchase of medical marijuana.

30 (5) Security requirements for premises subject to mandatory
31 registration pursuant to this article, including lighting, physical
32 security, alarm, and reporting requirements for changes, alterations,
33 or modifications to the premises.

34 (6) Regulations for the storage and transportation of medical
35 marijuana.

36 (7) Requirements for waste disposal and recycling.

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

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

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

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

5 (12) Establishment of a committee to advise the Legislature on
6 the rescheduling of marijuana under federal law and under Chapter
7 2 (commencing with Section 11053).

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

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

11 11362.89. (a) All moneys collected pursuant to this article
12 shall be deposited in the Medical Marijuana Fund, which is hereby
13 created in the State Treasury.

14 (b) There is hereby established the Medical Marijuana
15 Enforcement Penalty Account within the fund, to receive the
16 penalty amounts collected pursuant to subdivision (g) of Section
17 11362.91 and any other penalty amounts levied pursuant to this
18 article. Moneys in the account shall be available, upon
19 appropriation by the Legislature, for purposes of this article.

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

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

32 11362.90. All applicable provisions of Division 1 (commencing
33 with Section 100) of the Business and Professions Code shall
34 govern and apply to the conduct of the board.

35 11362.901. Except as specified in Section 11362.881, the
36 executive director shall be the appointing authority of all employees
37 within the board. All heads of divisions and committees and other
38 employees within the board shall be responsible to the executive
39 director for the proper carrying out of the duties and responsibilities
40 of their respective positions.

1 11362.902. The executive director may bring an action to enjoin
2 a violation or a threatened violation of any provision of this article
3 with the vote of a majority of the members of the governing body
4 of the board. The action may be brought in the county in which
5 the violation occurred or is threatened to occur. Any proceeding
6 brought pursuant to this section shall conform to the requirements
7 of Chapter 3 (commencing with Section 525) of Title 7 of Part 2
8 of the Code of Civil Procedure.

9 11362.91. (a) Except as otherwise provided in this article, a
10 medical marijuana facility shall not operate until it has filed a
11 mandatory registration application with the board and the board
12 has approved the mandatory registration application pursuant to
13 this article. For the purpose of regulating the cultivation,
14 processing, manufacturing, testing, transportation, distribution,
15 and sale of medical marijuana, the board, in its reasonable
16 discretion, may establish various classes or types of registrations
17 for specific medical marijuana-related activities, subject to the
18 provisions and restrictions provided by this article. A mandatory
19 registration application or renewal shall be approved unless the
20 board determines that any of the following are true:

21 (1) An applicant, or the medical marijuana facility location for
22 which the applicant is applying for mandatory registration, fails
23 to meet the requirements of this article or any regulation
24 promulgated pursuant to this article.

25 (2) An applicant, or any of its officers or directors, is under 21
26 years of age.

27 (3) An applicant has knowingly answered a question or request
28 for information falsely on the application form.

29 (4) An applicant, or any of its officers or directors, has been
30 convicted in the previous five years of a violent felony, as specified
31 in subdivision (c) of Section 667.5 of the Penal Code, a serious
32 felony, as specified in subdivision (c) of Section 1192.7 of the
33 Penal Code, a felony offense involving fraud or deceit, or any other
34 felony that, in the board's estimation, would impair the applicant's
35 ability to appropriately operate a medical marijuana facility.

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

38 (6) An applicant, or any of its officers or directors, has been
39 sanctioned by the board for operating an unregistered medical

1 marijuana facility or has had a mandatory registration revoked in
2 the previous three years.

3 (b) No later than July 1, 2013, the board shall make available
4 mandatory registration application forms for all persons subject
5 to mandatory registration. Upon receipt of an application for
6 mandatory registration and the applicable fee, the board shall make
7 a thorough investigation to determine whether the applicant and
8 the premises for which a mandatory registration is applied qualify
9 for registration, and comply with local ordinances and zoning, and
10 whether the provisions of this article have been complied with.
11 The board shall deny an application for mandatory registration if
12 either the applicant or the premises for which a registration is
13 applied do not qualify for registration under this article. A
14 mandatory registration application shall be approved or denied no
15 later than 180 days after a mandatory registration application is
16 filed with the board. If the board fails to act on an application
17 within 180 days, it shall be deemed approved.

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

22 (d) All mandatory registration applications that are approved
23 by the board pursuant to this article shall be valid for a period not
24 to exceed two years from the date of approval unless revoked or
25 suspended pursuant to this article or the rules or regulations
26 promulgated pursuant to this article.

27 (e) Ninety days prior to the expiration date of an existing
28 mandatory registration, the board shall notify the person of the
29 expiration date by first-class mail at the person's address of record
30 with the board. A person shall apply for the renewal of an existing
31 mandatory registration to the board not less than 60 days prior to
32 the expiration. The board, in its discretion and based upon
33 reasonable grounds, may waive the 60-day time requirement set
34 forth in this subdivision. The board shall act upon a timely filed
35 registration renewal application no later than 10 days prior to the
36 expiration of the registration.

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

1 (g) Operating a medical marijuana facility without an approved
2 mandatory registration may result in fines of up to twenty-five
3 thousand dollars (\$25,000), and the board may order the destruction
4 of any marijuana being cultivated or possessed in violation of this
5 article. Any fines collected pursuant to this subdivision shall be
6 deposited into the Medical Marijuana Enforcement Penalty
7 Account established pursuant to subdivision (b) of Section
8 11362.89.

9 (h) If, at any time after July 1, 2013, the board has not formed,
10 is not accepting applications for mandatory registration, or is not
11 granting mandatory registrations in response to valid applications,
12 then a medical marijuana facility or medical marijuana dispensary
13 that is operating in compliance with applicable city or county
14 ordinances may continue to operate without a mandatory
15 registration.

16 11362.92. (a) A person whose mandatory registration
17 application has been approved by the board, and its agents, officers,
18 directors, and employees acting on its behalf, shall not be subject
19 to arrest, prosecution, or other criminal, civil, or administrative
20 sanctions under state or local law for actions approved by the board
21 in accordance with its registration application, including, as
22 applicable, the cultivation, processing, manufacturing, testing,
23 transportation, distribution, sale, or possession, of medical
24 marijuana.

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

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

34 11362.93. A financial institution shall not be penalized in any
35 manner under state law for either of the following:

36 (a) Providing lending services to persons whose mandatory
37 registration application has been approved by the board pursuant
38 to this article or securing any such loans to those persons with
39 assets of those persons.

1 (b) Owning or possessing medical marijuana or warehouse
 2 receipts as security for an obligation or as a result of enforcement
 3 of a security interest, after permission has been given by the board,
 4 or selling the medical marijuana or warehouse receipts to a
 5 registrant authorized to sell for resale that medical marijuana or
 6 those warehouse receipts.

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

10
 11 CHAPTER 4. LOCAL MEDICAL MARIJUANA TAXES

12
 13 Article 1. Counties Medical Marijuana Tax

14
 15 7294. (a) Notwithstanding any other law, the board of
 16 supervisors of any county may levy, increase, or extend a
 17 transactions and use tax ~~on the sale of~~ *for tangible personal*
 18 *property that is* medical marijuana or medical marijuana-infused
 19 products for general purposes ~~at a rate of _____ percent, or a~~
 20 ~~multiple thereof~~, if the ordinance proposing that tax is approved
 21 by a two-thirds vote of all members of the board of supervisors
 22 and the tax is approved by a majority vote of the qualified voters
 23 of the county voting in an election on the issue. The board of
 24 supervisors may levy, increase, or extend more than one
 25 transactions and use tax under this section, if the adoption of each
 26 tax is in the manner prescribed in this section. ~~The~~

27 (b) (1) *The* transactions and use tax shall conform to Part 1.6
 28 (commencing with Section 7251).

29 (2) *Notwithstanding Section 7251.1, the tax rate authorized by*
 30 *this section shall not be considered for purposes of the combined*
 31 *rate established by that section.*

32 7294.5. (a) Notwithstanding any other law, the board of
 33 supervisors of any county may levy, increase, or extend a
 34 transactions and use tax ~~on~~ *for tangible personal property that is*
 35 medical marijuana or medical marijuana-infused products for
 36 specific purposes. The tax may be levied, increased, or extended
 37 at a rate of _____ percent, ~~or a multiple thereof~~, for the purpose for
 38 which it is established, if all of the following requirements are met:

39 (1) The ordinance proposing that tax is approved by a two-thirds
 40 vote of all members of the board of supervisors and is subsequently

1 approved by a two-thirds vote of the qualified voters of the county
2 voting in an election on the issue.

3 (2) (A) The transactions and use tax conforms to the
4 Transactions and Use Tax Law Part 1.6 (commencing with Section
5 7251).

6 (B) *Notwithstanding Section 7251.1, the tax rate authorized by*
7 *this section shall not be considered for purposes of the combined*
8 *rate established by that section.*

9 (3) The ordinance includes an expenditure plan describing the
10 specific projects for which the revenues from the tax may be
11 expended.

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

15 7294.6. Notwithstanding any other law, the combined rate of
16 all taxes imposed in any county pursuant to this article and pursuant
17 to Article 2 (commencing with Section 7295) shall not exceed the
18 rate of ~~2.5~~ 5 percent.

19

20 Article 2. Cities Medical Marijuana Tax

21

22 7295. (a) Notwithstanding any other law, the governing body
23 of any city may levy, increase, or extend a transactions and use
24 tax ~~on the sale of~~ *for tangible personal property that is* medical
25 marijuana or medical marijuana-infused products for general
26 purposes ~~at a rate of _____ percent, or a multiple thereof,~~ if the
27 ordinance proposing that tax is approved by a two-thirds vote of
28 all members of that governing body and the tax is approved by a
29 majority vote of the qualified voters of the city voting in an election
30 on the issue. The governing body may levy, increase, or extend
31 more than one transactions and use tax under this section, if the
32 adoption of each tax is in the manner prescribed in this section.

33 The

34 (b) (1) *The transactions and use tax shall conform to Part 1.6*
35 *(commencing with Section 7251).*

36 (2) *Notwithstanding Section 7251.1, the tax rate authorized by*
37 *this section shall not be considered for purposes of the combined*
38 *rate established by that section.*

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~~ *for tangible personal property that is* medical
2 marijuana or medical marijuana-infused products for specific
3 purposes. The tax may be levied, increased, or extended ~~at a rate~~
4 ~~of _____ percent, or a multiple thereof,~~ for the purpose for which
5 it is established, if all of the following 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) (1) The transactions and use tax conforms to the
11 Transactions and Use Tax Law Part 1.6 (commencing with Section
12 7251).

13 (2) *Notwithstanding Section 7251.1, the tax rate authorized by*
14 *this section shall not be considered for purposes of the combined*
15 *rate established by that section.*

16 (c) The ordinance includes an expenditure plan describing the
17 specific projects for which the revenues from the tax may be
18 expended.

19 7295.6. (a) The authority of a city to impose transactions and
20 use taxes under Sections 7295 and 7295.5 shall not exceed the rate
21 of ~~+~~ 2 percent.

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

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

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