

AMENDED IN SENATE JANUARY 15, 2016

AMENDED IN SENATE JANUARY 4, 2016

AMENDED IN ASSEMBLY MAY 5, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 21

**Introduced by Assembly Members *Wood, Bonta, Cooley,*
Jones-Sawyer, ~~Lackey,~~ and ~~Wood and Lackey~~
(Principal coauthor: Senator McGuire)**

December 1, 2014

An act to amend Section 11362.777 of the Health and Safety Code, relating to medical marijuana, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 21, as amended, ~~Bonta~~ *Wood*. Medical marijuana: cultivation licenses.

Existing law, the Compassionate Use Act of 1996, an initiative measure enacted by the approval of Proposition 215 at the November 5, 1996, statewide general election, authorizes the use of marijuana for medical purposes. Existing law, enacted by the Legislature, provides for the licensing and regulation by both state and local entities of medical marijuana and its cultivation. Existing law provides that if a city, county, or city and county does not have land use regulations or ordinances regulating or prohibiting the cultivation of marijuana, commencing March 1, 2016, the Department of Food and Agriculture is the sole licensing authority for medical marijuana cultivation applicants in that city, county, or city and county.

This bill would delete the provision that grants the department the sole licensing authority under those circumstances.

Existing law exempts certain persons cultivating medical marijuana from the requirement to obtain both a state license from the Department of Food and Agriculture and a license, permit, or other entitlement allowing cultivation from the city, county, or city and county in which the cultivation will occur. Existing law authorizes a city, county, or city and county to regulate or ban the cultivation, storage, manufacture, transport, provision, or other activity by a person otherwise exempt from state regulation, or to enforce that regulation or ban.

This bill would delete the authorization of a city, county, or city and county to regulate or ban the cultivation, storage, manufacture, transport, provision, or other activity by a person otherwise exempt from state regulation under the program, or to enforce that regulation or ban.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: no.
 State-mandated local program: no.

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

- 1 SECTION 1. Section 11362.777 of the Health and Safety Code
- 2 is amended to read:
- 3 11362.777. (a) The Department of Food and Agriculture shall
- 4 establish a Medical Cannabis Cultivation Program to be
- 5 administered by the secretary and, except as specified in
- 6 subdivision (c), shall administer this section as it pertains to the
- 7 cultivation of medical marijuana. For purposes of this section and
- 8 Chapter 3.5 (commencing with Section 19300) of Division 8 of
- 9 the Business and Professions Code, medical cannabis is an
- 10 agricultural product.
- 11 (b) (1) A person or entity shall not cultivate medical marijuana
- 12 without first obtaining both of the following:
- 13 (A) A license, permit, or other entitlement, specifically
- 14 permitting cultivation pursuant to these provisions, from the city,
- 15 county, or city and county in which the cultivation will occur.
- 16 (B) A state license issued by the department pursuant to this
- 17 section.

1 (2) A person or entity shall not submit an application for a state
2 license issued by the department pursuant to this section unless
3 that person or entity has received a license, permit, or other
4 entitlement, specifically permitting cultivation pursuant to these
5 provisions, from the city, county, or city and county in which the
6 cultivation will occur.

7 (3) A person or entity shall not submit an application for a state
8 license issued by the department pursuant to this section if the
9 proposed cultivation of marijuana will violate the provisions of
10 any local ordinance or regulation, or if medical marijuana is
11 prohibited by the city, county, or city and county in which the
12 cultivation is proposed to occur, either expressly or otherwise
13 under principles of permissive zoning.

14 (c) (1) Except as otherwise specified in this subdivision, and
15 without limiting any other local regulation, a city, county, or city
16 and county, through its current or future land use regulations or
17 ordinance, may issue or deny a permit to cultivate medical
18 marijuana pursuant to this section. A city, county, or city and
19 county may inspect the intended cultivation site for suitability ~~prior~~
20 ~~to~~ *before* issuing a permit. After the city, county, or city and county
21 has approved a permit, the applicant shall apply for a state medical
22 marijuana cultivation license from the department. A locally issued
23 cultivation permit shall only become active upon licensing by the
24 department and receiving final local approval. A person shall not
25 cultivate medical marijuana ~~prior to~~ *before* obtaining both a permit
26 from the city, county, or city and county and a state medical
27 marijuana cultivation license from the department.

28 (2) A city, county, or city and county that issues or denies
29 conditional licenses to cultivate medical marijuana pursuant to this
30 section shall notify the department in a manner prescribed by the
31 secretary.

32 (3) A city, county, or city and county's locally issued conditional
33 permit requirements must be at least as stringent as the
34 department's state licensing requirements.

35 (d) (1) The secretary may prescribe, adopt, and enforce
36 regulations relating to the implementation, administration, and
37 enforcement of this part, including, but not limited to, applicant
38 requirements, collections, reporting, refunds, and appeals.

39 (2) The secretary may prescribe, adopt, and enforce any
40 emergency regulations as necessary to implement this part. Any

1 emergency regulation prescribed, adopted, or enforced pursuant
2 to this section shall be adopted in accordance with Chapter 3.5
3 (commencing with Section 11340) of Part 1 of Division 3 of Title
4 2 of the Government Code, and, for purposes of that chapter,
5 including Section 11349.6 of the Government Code, the adoption
6 of the regulation is an emergency and shall be considered by the
7 Office of Administrative Law as necessary for the immediate
8 preservation of the public peace, health and safety, and general
9 welfare.

10 (3) The secretary may enter into a cooperative agreement with
11 a county agricultural commissioner to carry out the provisions of
12 this chapter, including, but not limited to, administration,
13 investigations, inspections, licensing and assistance pertaining to
14 the cultivation of medical marijuana. Compensation under the
15 cooperative agreement shall be paid from assessments and fees
16 collected and deposited pursuant to this chapter and shall provide
17 reimbursement to the county agricultural commissioner for
18 associated costs.

19 (e) (1) The department, in consultation with, but not limited
20 to, the Bureau of Medical Marijuana Regulation, the State Water
21 Resources Control Board, and the Department of Fish and Wildlife,
22 shall implement a unique identification program for medical
23 marijuana. In implementing the program, the department shall
24 consider issues, including, but not limited to, water use and
25 environmental impacts. In implementing the program, the
26 department shall ensure that:

27 (A) Individual and cumulative effects of water diversion and
28 discharge associated with cultivation do not affect the instream
29 flows needed for fish spawning, migration, and rearing, and the
30 flows needed to maintain natural flow variability.

31 (B) Cultivation will not negatively impact springs, riparian
32 wetlands, and aquatic habitats.

33 (2) The department shall establish a program for the
34 identification of permitted medical marijuana plants at a cultivation
35 site during the cultivation period. The unique identifier shall be
36 attached at the base of each plant. A unique identifier, such as, but
37 not limited to, a zip tie, shall be issued for each medical marijuana
38 plant.

39 (A) Unique identifiers will only be issued to those persons
40 appropriately licensed by this section.

1 (B) Information associated with the assigned unique identifier
2 and licensee shall be included in the trace and track program
3 specified in Section 19335 of the Business and Professions Code.

4 (C) The department may charge a fee to cover the reasonable
5 costs of issuing the unique identifier and monitoring, tracking, and
6 inspecting each medical marijuana plant.

7 (D) The department may promulgate regulations to implement
8 this section.

9 (3) The department shall take adequate steps to establish
10 protections against fraudulent unique identifiers and limit illegal
11 diversion of unique identifiers to unlicensed persons.

12 (f) (1) A city, county, or city and county that issues or denies
13 licenses to cultivate medical marijuana pursuant to this section
14 shall notify the department in a manner prescribed by the secretary.

15 (2) Unique identifiers and associated identifying information
16 administered by a city or county shall adhere to the requirements
17 set by the department and be the equivalent to those administered
18 by the department.

19 (g) This section does not apply to a qualified patient cultivating
20 marijuana pursuant to Section 11362.5 if the area he or she uses
21 to cultivate marijuana does not exceed 100 square feet and he or
22 she cultivates marijuana for his or her personal medical use and
23 does not sell, distribute, donate, or provide marijuana to any other
24 person or entity. This section does not apply to a primary caregiver
25 cultivating marijuana pursuant to Section 11362.5 if the area he
26 or she uses to cultivate marijuana does not exceed 500 square feet
27 and he or she cultivates marijuana exclusively for the personal
28 medical use of no more than five specified qualified patients for
29 whom he or she is the primary caregiver within the meaning of
30 Section 11362.7 and does not receive remuneration for these
31 activities, except for compensation provided in full compliance
32 with subdivision (c) of Section 11362.765. For purposes of this
33 section, the area used to cultivate marijuana shall be measured by
34 the aggregate area of vegetative growth of live marijuana plants
35 on the premises. ~~Exemption from the requirements of this section
36 does not limit or prevent a city, county, or city and county from
37 regulating or banning the cultivation, storage, manufacture,
38 transport, provision, or other activity by the exempt person, or
39 impair the enforcement of that regulation or ban.~~

1 SEC. 2. This act is an urgency statute necessary for the
2 immediate preservation of the public peace, health, or safety within
3 the meaning of Article IV of the Constitution and shall go into
4 immediate effect. The facts constituting the necessity are:
5 To allow local governments to protect the health of their citizens
6 by regulating marijuana at the earliest possible date, it is necessary
7 that this act take effect immediately.

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