

Assembly Bill No. 567

Passed the Assembly August 30, 2016

Chief Clerk of the Assembly

Passed the Senate August 23, 2016

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2016, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 19323 of the Business and Professions Code, to amend and renumber Sections 7076, 7076.1, 7076.2, 7076.3, 7076.4, 7077, and 7078 of, and to add Article 2.1 (commencing with Section 7077) to Chapter 8 of Part 1 of Division 2 of, the Revenue and Taxation Code, relating to medical cannabis.

LEGISLATIVE COUNSEL'S DIGEST

AB 567, Gipson. Medical cannabis: regulation and taxation amnesty.

(1) 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, exempts from specified criminal penalties the possession or cultivation of medical marijuana by patients and primary caregivers. Existing law, the Medical Marijuana Program, requires the State Department of Public Health to establish a voluntary program for the issuance of identification cards to qualified patients and primary caregivers under the Compassionate Use Act, and grants immunity from arrest for violation of specified provisions relating to the cultivation, possession, transportation, and sale of marijuana, if conditions of the act are met.

Existing law imposes sales and use taxes collected and administered by the State Board of Equalization. Existing law sets forth various penalties, including penalties for the nonpayment or late payment of those taxes, and the failure to file or intentional filing of incorrect returns. Existing law established a tax amnesty program, conducted in 2005, with respect to sales and use tax penalties.

This bill would require the State Board of Equalization to administer a tax penalty amnesty program during the period beginning on July 1, 2017, through December 31, 2017, inclusive, for medical cannabis-related businesses, as provided. The bill would define a medical cannabis-related business for these purposes as a person that engages in the sale of cannabis for medical purposes to qualified patients or the primary caregivers of qualified patients pursuant to the Compassionate Use Act or the

Medical Marijuana Program. The bill would require the Department of Consumer Affairs to suspend or refuse to issue a state license to a medical cannabis-related business that is eligible to, but does not participate in, the program and meets other specified conditions.

(2) This bill would make related findings and declarations. The bill would also make technical and conforming changes.

(3) Existing state constitutional law prohibits the Legislature from making any gift, or authorizing the making of any gift, of any public money or thing of value to any individual, municipal, or other corporation.

This bill would make certain legislative findings and declarations that a tax penalty amnesty program to incentivize a specific type of business to become current with its tax obligations serves a general public purpose and therefore is not a gift of public funds.

(4) This bill would incorporate additional changes to Section 19323 of the Business and Professions Code proposed by AB 26 that would become operative if this bill and AB 26 are enacted and this bill is enacted last.

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

SECTION 1. The Legislature finds and declares all of the following:

(a) The voters of the State of California enacted the Compassionate Use Act of 1996, which became effective on November 6, 1996, as Section 11362.5 of the Health and Safety Code. The act exempts patients and their designated primary caregivers who possess and cultivate cannabis for personal medical use upon recommendation or approval of a physician from specified criminal laws.

(b) In 2004, the Legislature and Governor refined the Compassionate Use Act through SB 420, which added Sections 11362.7 to 11362.83, inclusive, to the Health and Safety Code, allows the formation of medical cultivation collectives or cooperatives, and provides for a voluntary state identification card system for medical cannabis patients. SB 420 also limits the amount of medical cannabis cardholders are allowed to possess and cultivate.

(c) However, the sale of any cannabis still remains illegal under federal law. At the federal level, marijuana remains classified as

a Schedule I substance under the Controlled Substances Act. Schedule I substances are defined as drugs with no currently accepted medical use and a high potential for abuse.

(d) In August 2013, the United States Department of Justice issued the “Cole Memo” to federal prosecutors, which established priorities for federal prosecution of cannabis-related activities under the Controlled Substances Act. The memo indicated that states with a strong regulatory framework for legalized recreational or medical cannabis that supports those priorities would make federal involvement in local jurisdictions less likely.

(e) In February 2014, the United States Department of the Treasury’s Financial Crimes Enforcement Network (FinCEN) issued guidance to financial institutions setting forth FinCEN’s Bank Secrecy Act expectations for financial institutions choosing to work with cannabis-related businesses.

(f) A federal spending bill passed in late 2014 prohibits the use of United States Department of Justice funds to prevent states, including California, that authorize the use, distribution, possession, or cultivation of cannabis for medical use from implementing laws related to these activities. Various other federal legislative proposals to loosen federal restrictions on the cultivation, possession, and sale of cannabis in states where it is legal are also pending.

(g) Despite this identified federal guidance, the uncertainty created by state and federal differences has left medical cannabis-related businesses with the fear that compliance with state tax laws could lead to federal prosecution. Thus, many of these businesses have been noncompliant since their inception, and would owe massive penalties and interest if they were to come into compliance.

(h) It is the intent of the Legislature to further the public purposes of preventing undue hardship on medical cannabis-related businesses and providing a strong incentive, the relief of penalties, for those businesses to come forward and pay the taxes and interest that they owe. In furtherance of this intent, the Legislature hereby enacts the Medical Cannabis Tax Amnesty Act as set forth in Section 10 of this act.

SEC. 2. Section 19323 of the Business and Professions Code, as amended by Chapter 32 of the Statutes of 2016, is amended to read:

19323. (a) A licensing authority shall deny an application if the applicant or the premises for which a state license is applied does not qualify for licensure under this chapter or the rules and regulations for the state license.

(b) A licensing authority may deny an application for licensure or renewal of a state license, or issue a conditional license, if any of the following conditions apply:

(1) Failure to comply with the provisions of this chapter or any rule or regulation adopted pursuant to this chapter, including, but not limited to, any requirement imposed to protect natural resources, instream flow, and water quality pursuant to subdivision (a) of Section 19332.

(2) Conduct that constitutes grounds for denial of licensure pursuant to Chapter 2 (commencing with Section 480) of Division 1.5.

(3) The applicant has failed to provide information required by the licensing authority.

(4) The applicant or licensee has been convicted of an offense that is substantially related to the qualifications, functions, or duties of the business or profession for which the application is made, except that if the licensing authority determines that the applicant or licensee is otherwise suitable to be issued a license and granting the license would not compromise public safety, the licensing authority shall conduct a thorough review of the nature of the crime, conviction, circumstances, and evidence of rehabilitation of the applicant, and shall evaluate the suitability of the applicant or licensee to be issued a license based on the evidence found through the review. In determining which offenses are substantially related to the qualifications, functions, or duties of the business or profession for which the application is made, the licensing authority shall include, but not be limited to, the following:

(A) A felony conviction for the illegal possession for sale, sale, manufacture, transportation, or cultivation of a controlled substance.

(B) A violent felony conviction, as specified in subdivision (c) of Section 667.5 of the Penal Code.

(C) A serious felony conviction, as specified in subdivision (c) of Section 1192.7 of the Penal Code.

(D) A felony conviction involving fraud, deceit, or embezzlement.

(5) The applicant, or any of its officers, directors, or owners, is a licensed physician making patient recommendations for medical cannabis pursuant to Section 11362.7 of the Health and Safety Code.

(6) The applicant or any of its officers, directors, or owners has been subject to fines or penalties for cultivation or production of a controlled substance on public or private lands pursuant to Section 12025 or 12025.1 of the Fish and Game Code.

(7) The applicant, or any of its officers, directors, or owners, has been sanctioned by a licensing authority or a city, county, or city and county for unlicensed commercial cannabis activities or has had a license revoked under this chapter in the three years immediately preceding the date the application is filed with the licensing authority.

(8) Failure to obtain and maintain a valid seller's permit required pursuant to Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code.

(9) The applicant or any of its officers, directors, owners, employees, or authorized agents have failed to comply with any operating procedure required pursuant to subdivision (b) of Section 19322.

(10) Conduct that constitutes grounds for disciplinary action pursuant to this chapter.

(c) The licensing authority shall suspend or refuse to issue, reinstate, or renew a state license pursuant to Section 7077.4 of the Revenue and Taxation Code.

SEC. 2.5. Section 19323 of the Business and Professions Code, as amended by Chapter 32 of the Statutes of 2016, is amended to read:

19323. (a) A licensing authority shall deny an application if the applicant or the premises for which a state license is applied does not qualify for licensure under this chapter or the rules and regulations for the state license.

(b) A licensing authority may deny an application for licensure or renewal of a state license, or issue a conditional license, if any of the following conditions apply:

(1) Failure to comply with the provisions of this chapter or any rule or regulation adopted pursuant to this chapter, including, but not limited to, any requirement imposed to protect natural

resources, instream flow, and water quality pursuant to subdivision (a) of Section 19332.

(2) Conduct that constitutes grounds for denial of licensure pursuant to Chapter 2 (commencing with Section 480) of Division 1.5.

(3) The applicant has failed to provide information required by the licensing authority.

(4) The applicant or licensee has been convicted of an offense that is substantially related to the qualifications, functions, or duties of the business or profession for which the application is made, except that if the licensing authority determines that the applicant or licensee is otherwise suitable to be issued a license and granting the license would not compromise public safety, the licensing authority shall conduct a thorough review of the nature of the crime, conviction, circumstances, and evidence of rehabilitation of the applicant, and shall evaluate the suitability of the applicant or licensee to be issued a license based on the evidence found through the review. In determining which offenses are substantially related to the qualifications, functions, or duties of the business or profession for which the application is made, the licensing authority shall include, but not be limited to, the following:

(A) A felony conviction for the illegal possession for sale, sale, manufacture, transportation, or cultivation of a controlled substance.

(B) A violent felony conviction, as specified in subdivision (c) of Section 667.5 of the Penal Code.

(C) A serious felony conviction, as specified in subdivision (c) of Section 1192.7 of the Penal Code.

(D) A felony conviction involving fraud, deceit, or embezzlement.

(5) The applicant, or any of its officers, directors, or owners, is a licensed physician making patient recommendations for medical cannabis pursuant to Section 11362.7 of the Health and Safety Code.

(6) The applicant or any of its officers, directors, or owners has been subject to fines or penalties for cultivation or production of a controlled substance on public or private lands pursuant to Section 12025 or 12025.1 of the Fish and Game Code.

(7) The applicant, or any of its officers, directors, or owners, has been sanctioned by a licensing authority or a city, county, or

city and county for unlicensed commercial cannabis activities or has had a license revoked under this chapter in the three years immediately preceding the date the application is filed with the licensing authority.

(8) Failure to obtain and maintain a valid seller's permit required pursuant to Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code.

(9) The applicant or any of its officers, directors, owners, employees, or authorized agents have failed to comply with any operating procedure required pursuant to subdivision (b) of Section 19322.

(10) Conduct that constitutes grounds for disciplinary action pursuant to this chapter.

(c) The licensing authority shall suspend or refuse to issue, reinstate, or renew a state license pursuant to Section 7077.4 of the Revenue and Taxation Code.

(d) On and after July 1, 2018, the licensing authority shall deny an application of an applicant with 20 or more employees unless the applicant attests on the application that the applicant will implement an employee training program approved by the licensing authority within one year of licensure, pursuant to Section 19326.5.

SEC. 3. Section 7076 of the Revenue and Taxation Code, as added by Section 1 of Chapter 87 of the Statutes of 2003, is amended and renumbered to read:

7079. (a) The State Board of Equalization shall determine which taxpayer's accounts are eligible for the managed audit program in a manner that is consistent with the efficient use of its auditing resources and the maximum effectiveness of the program.

(b) A taxpayer is not required to participate in the managed audit program.

SEC. 4. Section 7076.1 of the Revenue and Taxation Code is amended and renumbered to read:

7079.1. A taxpayer's account is eligible for the managed audit program only if the taxpayer meets all of the following criteria:

(a) The taxpayer's business involves few or no statutory exemptions.

(b) The taxpayer's business involves a single or small number of clearly defined taxability issues.

(c) The taxpayer is taxed pursuant to this part and agrees to participate in the managed audit program.

(d) The taxpayer has the resources to comply with the managed audit instructions provided by the board.

SEC. 5. Section 7076.2 of the Revenue and Taxation Code is amended and renumbered to read:

7079.2. (a) If the board selects a taxpayer's account for a managed audit, all of the following apply:

(1) The board shall identify all of the following:

(A) The audit period covered by the managed audit.

(B) The types of transactions covered by the managed audit.

(C) The specific procedures that the taxpayer is to follow in determining any liability.

(D) The records to be reviewed by the taxpayer.

(E) The manner in which the types of transactions are to be scheduled for review.

(F) The time period for completion of the managed audit.

(G) The time period for the payment of the liability and interest.

(H) Any other criteria that the board may require for completion of the managed audit.

(2) The taxpayer shall:

(A) Examine its books, records, and equipment to determine if it has any unreported tax liability for the audit period.

(B) Make available to the board for verification all computations, books, records, and equipment examined pursuant to subparagraph (A).

(b) The information provided by the taxpayer pursuant to paragraph (2) of subdivision (a) is the same information that is required for the completion of any other audit that the board may conduct.

SEC. 6. Section 7076.3 of the Revenue and Taxation Code is amended and renumbered to read:

7079.3. Nothing in this article limits the board's authority to examine the books, papers, records, and equipment of a taxpayer under Section 7054.

SEC. 7. Section 7076.4 of the Revenue and Taxation Code is amended and renumbered to read:

7079.4. Upon completion of the managed audit and verification by the board, interest on any unpaid liability shall be computed at one-half the rate that would otherwise be imposed for liabilities covered by the audit period. Payment of the liabilities and interest shall be made within the time period specified by the board. If the

requirements for the managed audit are not satisfied, the board may proceed to examine the records of the taxpayer in a manner to be determined by the board under law.

SEC. 8. Section 7077 of the Revenue and Taxation Code is amended and renumbered to read:

7076.3. The board shall adequately publicize the tax penalty amnesty program so as to maximize public awareness of the participation in the program. The board shall coordinate to the highest degree possible its publicity efforts and other actions taken in implementing this article with similar programs administered by the Franchise Tax Board.

SEC. 9. Section 7078 of the Revenue and Taxation Code is amended and renumbered to read:

7076.5. Subdivision (b) of Section 19736, to the extent feasible and practical, shall also apply to the board.

SEC. 10. Article 2.1 (commencing with Section 7077) is added to Chapter 8 of Part 1 of Division 2 of the Revenue and Taxation Code, to read:

Article 2.1. Medical Cannabis Tax Amnesty

7077. The board shall develop and administer a tax penalty amnesty program for qualified taxpayers.

7077.05. For the purposes of this article, the following terms have the following meanings:

(a) “Amnesty period” means the period during which the tax penalty amnesty program is conducted, as described in Section 7077.1.

(b) “Medical cannabis-related business” means a person that engages in the sale of cannabis for medical purposes to qualified patients or the primary caregivers of qualified patients pursuant to the Compassionate Use Act of 1996 (Section 11362.5 of the Health and Safety Code) or Article 2.5 (commencing with Section 11362.7) of Chapter 6 of Division 10 of the Health and Safety Code, commonly referred to as the Medical Marijuana Program.

(c) “Qualified taxpayer” means a seller that is a medical cannabis-related business.

7077.1. The tax penalty amnesty program shall be conducted for a six-month period beginning July 1, 2017, through December 31, 2017, inclusive. The program shall apply to tax liabilities due

and payable for tax reporting periods beginning before January 1, 2015.

7077.2. (a) For any qualified taxpayer that meets the requirements of Section 7077.3, all of the following shall apply:

(1) The board shall waive all penalties imposed by this part, for the tax reporting periods for which tax penalty amnesty is requested, that are owed as a result of the nonreporting or underreporting of tax liabilities.

(2) No criminal action shall be brought against the qualified taxpayer, for the tax reporting periods for which tax penalty amnesty is requested, based on the nonreporting or underreporting of tax liabilities.

(3) Paragraphs (1) and (2) do not apply to the nonpayment of any taxes for which a notice of determination has previously been issued.

(b) This section does not apply to violations of this part for which, as of the first day of the amnesty period, either of the following applies:

(1) The qualified taxpayer is on notice of a criminal investigation by a complaint having been filed against the qualified taxpayer or by written notice having been mailed to the qualified taxpayer that the qualified taxpayer is under criminal investigation.

(2) A court proceeding has already been initiated.

(c) No refund or credit shall be granted of any penalty paid prior to the time the qualified taxpayer makes a request for tax penalty amnesty pursuant to Section 7077.3.

7077.3. (a) This article applies to any qualified taxpayer that during the amnesty period files an application for tax penalty amnesty and, within 60 days after the conclusion of the amnesty period, does all of the following:

(1) Files completed tax returns reporting the nonreported or underreported tax liabilities for all tax reporting periods for which amnesty is being applied.

(2) Pays in full the taxes and interest due for each period for which amnesty is requested, or applies for an installment agreement under subdivision (b).

(b) The board may enter into an installment payment agreement pursuant to paragraph (2) of subdivision (a), which shall include interest on the outstanding amount due at the rate prescribed by law. Failure by the qualified taxpayer to fully comply with the

terms of the agreement renders the waiver of penalties null and void, unless the board determines that the failure was due to reasonable causes, and the total amount of tax, interest, and all penalties shall be immediately due and payable.

(c) If, subsequent to the amnesty period, the board issues a notice of determination upon a return filed pursuant to subdivision (a), or upon any other nonreporting or underreporting of tax liability by any person who could have otherwise been eligible for amnesty, the board may impose penalties at a rate that is double the rate of penalties described in law and criminal action may be brought under this part only with respect to the difference between the amount shown on that return and the correct amount of tax. This action shall not invalidate any waivers granted under Section 7077.2.

(d) The application required under subdivision (a) shall be in the form and manner specified by the board, but in no case shall a mere payment of any taxes and interest due, in whole or in part, for any period otherwise eligible for amnesty under this part, be deemed to constitute an acceptable amnesty application under this part. For purposes of the preceding sentence, the application of a refund from one period to offset a tax liability for another period otherwise eligible for amnesty shall not be allowed without the filing of an amnesty application under this part.

7077.4. (a) (1) Notwithstanding any other law, the Department of Consumer Affairs shall suspend or refuse to issue, reinstate, or renew a state license of a qualified taxpayer that is eligible to participate in the tax penalty amnesty program under this article but does not participate in the amnesty program, and that does any of the following:

(A) Fails to register with the board.

(B) Has a seller's permit revoked pursuant to Section 7077.6.

(C) Does both of the following:

(i) Reports a gross understatement of tax.

(ii) Fails to pay in full the taxes and interest due for each period for which amnesty is requested or fails to fully comply with the terms of an installment payment agreement entered into by the board pursuant to Section 7077.3.

(2) Notwithstanding any other law, the Department of Consumer Affairs shall suspend or refuse to issue, reinstate, or renew a state license of a qualified taxpayer if the board issues a deficiency

determination upon a return filed pursuant to subdivision (a) of Section 7077.3 and the qualified taxpayer does both of the following:

(A) Reports a gross understatement of tax.

(B) Fails to pay in full the taxes and interest due for each period for which amnesty is requested or fails to fully comply with the terms of an installment payment agreement entered into by the board pursuant to Section 7077.3.

(3) Suspension or refusal to issue, reinstate, or renew a state license pursuant to paragraph (1) shall not be effective unless the Department of Consumer Affairs, at least 60 days before the date of suspension or refusal, mails a notice to the qualified taxpayer that indicates that the license will be suspended or refused by that date.

(b) For purposes of this section, the following terms have the following meanings:

(1) “Gross understatement of tax” is a deficiency that is in excess of 25 percent of the amount of tax reported on a qualified taxpayer’s return filed pursuant to Article 1 (commencing with Section 6451) of Chapter 5.

(2) “State license” includes a license issued for any activity of a medical cannabis-related business.

7077.6. The board may refuse to issue a permit to any person, pursuant to the provisions applicable to the refusal to issue a permit as set forth in Section 6070.5, or may revoke a seller’s permit issued under this part for any person that is both of the following:

(a) Eligible to participate in the tax penalty amnesty program under this article but does not participate in the amnesty program.

(b) Engaged in retail sales of medical cannabis in this state that would have been eligible to participate in the tax penalty amnesty program as a medical cannabis-related business.

7077.7. The board shall issue forms and instructions and take other actions needed to implement this article.

7077.8. The board shall adequately publicize the tax penalty amnesty program for medical cannabis-related businesses so as to maximize public awareness of, and participation in, the program.

SEC. 11. The Legislature finds and declares that Section 10 of this act, establishing the medical cannabis tax penalty amnesty program by adding Article 2.1 (commencing with Section 7077) to Chapter 8 of Part 1 of Division 2 of the Revenue and Taxation

Code, serves a general public purpose by incentivizing a specific type of business to become current with its tax obligations and therefore does not constitute a gift of public funds within the meaning of Section 6 of Article XVI of the California Constitution.

SEC. 12. Section 2.5 of this bill incorporates amendments to Section 19323 of the Business and Professions Code proposed by both this bill and Assembly Bill 26. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2017, (2) each bill amends Section 19323 of the Business and Professions Code, and (3) this bill is enacted after Assembly Bill 26, in which case Section 2 of this bill shall not become operative.

Approved _____, 2016

Governor