

ASSEMBLY BILL

No. 1548

Introduced by Assembly Member Wood
(Coauthor: Senator Runner)

September 11, 2015

An act to add Part 13.5 (commencing with Section 31001) to Division 2 of the Revenue and Taxation Code, relating to medical marijuana, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 1548, as introduced, Wood. Medical marijuana: taxation: marijuana production and environment mitigation.

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 and cultivation of marijuana for medical purposes. Existing law makes it a crime to plant, cultivate, harvest, dry, or process marijuana, except as otherwise authorized by law. Under existing law, qualified patients, persons with valid identification cards, and the designated primary caregivers of qualified patients and persons with identification cards, who associate in order collectively and cooperatively to cultivate marijuana for medical purposes, are not subject to criminal sanctions solely on the basis of that fact.

The Fee Collection Procedures Law, among other things, provides for the administration of fee programs by the State Board of Equalization, establishes procedures for collection, reporting, return, refund, and appeals, and authorizes the board to adopt regulations relating to administration and enforcement of the law. The Fee Collection Procedures Law establishes criminal penalties for specified

acts, including making it a misdemeanor to knowingly or willfully file a false return and making it a felony to willfully evade or attempt to evade or defeat the payment of a fee.

This bill would impose a tax in specified amounts on the distribution in this state by a cultivator, as defined, of marijuana flowers, marijuana leaves, and immature marijuana plants to a licensed distributor, as specified, and would require the licensed distributor to collect the tax from the cultivator and remit it to the board. The bill would require the board to collect the tax pursuant to the procedures set forth in the Fee Collection Procedures Law. The bill would require all moneys, less refunds and costs of administration, to be deposited into the Marijuana Production and Environment Mitigation Fund, which this bill would establish in the State Treasury, and would continuously appropriate the moneys in that fund to the board for allocation, as specified.

By expanding the application of the Fee Collection Procedures Law, which imposes criminal penalties for various acts, this bill would impose a state-mandated local program.

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.

This bill would include a change in state statute that would result in a taxpayer paying a higher tax within the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require for passage the approval of $\frac{2}{3}$ of the membership of each house of the Legislature.

Vote: $\frac{2}{3}$. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: yes.

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

1 SECTION 1. Part 13.5 (commencing with Section 31001) is
2 added to Division 2 of the Revenue and Taxation Code, to read:

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4 PART 13.5. MEDICAL MARIJUANA TAX LAW

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6 CHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS

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8 31001. This part shall be known and may be cited as the
9 Medical Marijuana Tax Law.

1 31002. As used in this part, the following terms have the
2 following definitions:

3 (a) “Cultivator” means a person that is licensed as a cultivator
4 for purposes of medical marijuana regulation under the Business
5 and Professions Code.

6 (b) “Distribution” has the same meaning as that term is defined
7 for purposes of medical marijuana regulation in the Business and
8 Professions Code.

9 (c) “Licensed distributor” means a person that is licensed as a
10 distributor for purposes of medical marijuana regulation under the
11 Business and Professions Code.

12 (d) “Sale” means the transfer of title or possession for
13 consideration in any manner or by any means whatever.

14 (e) “Qualified nonprofit organization” means an organization
15 exempt from tax as an organization described in Section 501(c)(3)
16 of the Internal Revenue Code .

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18 CHAPTER 2. IMPOSITION OF TAX
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20 31005. (a) On and after the operative date set forth in Section
21 31030, for the privilege of distributing marijuana flowers,
22 marijuana leaves, and immature marijuana plants, a tax is hereby
23 imposed upon all cultivators at a rate of \$9.25 per ounce of
24 marijuana flowers, \$2.75 per ounce of marijuana leaves, and \$1.25
25 per immature marijuana plant from the sale of all marijuana
26 flowers, marijuana leaves, and immature marijuana plants
27 distributed to a licensed distributor in this state.

28 (b) The licensed distributor shall collect the tax from the
29 cultivator and shall separately state the amount of the tax imposed
30 under this part on the purchase order, which shall be given by the
31 licensed distributor to the cultivator at the time of sale.

32 (c) There are exempted from the taxes imposed by this part,
33 sales by a cultivator that the state is prohibited from taxing under
34 the Constitution or laws of the United States or the Constitution
35 of this state. Any claim for exemption from the tax imposed by
36 this part shall be made to the board in the manner prescribed by
37 the board.

38 31006. The Legislative Analyst’s Office shall regularly review
39 the tax levels established under this part, at a minimum of every
40 other year, beginning in 2018, and make recommendations to the

1 Legislature, as appropriate, regarding adjustments that would
2 further the goal of addressing public safety and the environmental
3 impacts caused by the proliferation of marijuana cultivation.

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CHAPTER 3. ADMINISTRATION

7 31010. (a) The board shall administer and collect the tax
8 imposed by this part pursuant to the Fee Collection Procedures
9 Law (Part 30 (commencing with Section 55001) of Division 2 of
10 the Revenue and Taxation Code) with those changes as may be
11 necessary to conform to this section. For purposes of this part, the
12 references in the Fee Collection Procedures Law to “fee” shall
13 include the tax imposed by this part, and references to “feepayer”
14 shall include a person required to pay the tax imposed by this part.

15 (b) The tax that is required to be collected by the licensed
16 distributor, and any amount unreturned to the medical marijuana
17 cultivator that is not owed as part of the tax, but was collected
18 from the cultivator under the representation by the licensed
19 distributor that it was owed as a tax, constitutes debts owed by the
20 licensed distributor to the state.

21 (c) A cultivator is liable for the tax until it has been paid to the
22 state, except that payment to the licensed distributor relieves the
23 cultivator from further liability for the tax. Any tax collected from
24 a cultivator that has not been remitted to the board shall be a debt
25 owed to the state by the licensed distributor required to collect and
26 remit the tax. This part does not impose any obligation upon the
27 licensed distributor to take any legal action to enforce the collection
28 of the tax imposed by this part.

29 31011. (a) The board may prescribe, adopt, and enforce
30 regulations relating to the implementation, administration, and
31 enforcement of this part, including, but not limited to, applicant
32 requirements, collections, reporting, refunds, and appeals.

33 (b) The board may prescribe, adopt, and enforce any emergency
34 regulations as necessary to implement this part. Any emergency
35 regulation prescribed, adopted, or enforced pursuant to this section
36 shall be adopted in accordance with Chapter 3.5 (commencing
37 with Section 11340) of Part 1 of Division 3 of Title 2 of the
38 Government Code, and, for purposes of that chapter, including
39 Section 11349.6 of the Government Code, the adoption of the
40 regulation is an emergency and shall be considered by the Office

1 of Administrative Law as necessary for the immediate preservation
2 of the public peace, health and safety, and general welfare.

3 31012. (a) The tax is due and payable to the board quarterly
4 on or before the last day of the month following each calendar
5 quarter.

6 (b) On or before the last day of the month following each
7 calendar quarter, a return for the preceding calendar quarter shall
8 be filed with the board.

9 (c) Returns shall be authenticated in a form or pursuant to
10 methods as may be prescribed by the board.

11 31013. (a) The Marijuana Production and Environment
12 Mitigation Fund is hereby created in the State Treasury. All taxes,
13 interest, penalties, and other amounts collected and paid to the
14 board pursuant to this part, less payments of refunds and costs of
15 administration, shall be deposited in the fund.

16 (b) Notwithstanding Section 13340 of the Government Code,
17 all moneys deposited in the Marijuana Production and Environment
18 Mitigation Fund are hereby continuously appropriated, without
19 regard to fiscal years, in the following manner:

20 (1) Thirty-five percent to the Department of Food and
21 Agriculture for disbursement for local law enforcement-related
22 activities pertaining to illegal marijuana cultivation. Funds allocated
23 pursuant to this paragraph shall be allocated on a competitive grant
24 application process administered by the Department of Food and
25 Agriculture. The Department of Food and Agriculture shall
26 promulgate guidelines for the grant process as soon as
27 administratively possible, but no later than April 1, 2017.

28 (2) Thirty-five percent to the Natural Resources Agency to fund
29 a competitive grant program for environmental cleanup restoration,
30 and protection of public and private lands that have been damaged
31 by illegal marijuana cultivation. Where appropriate, the agency
32 may administer funds using programs established pursuant to
33 Section 5750 of the Public Resources Code, subdivision (a) and
34 paragraph (1) of subdivision (l) of Section 75050 of the Public
35 Resources Code. Funds allocated pursuant to this paragraph shall
36 be prioritized to restoration and cleanup projects, on public or
37 private lands, based on the level of damages that have occurred.
38 Not less than 35 percent of the funds shall be used for these
39 purposes related to public lands, and not less than 20 percent of
40 the funds shall be used for these purposes related to private lands.

1 The agency shall consult and partner with counties, cities, or cities
2 and counties, and may partner with qualified nonprofit
3 organizations, other appropriate state agencies, and the appropriate
4 federal entities, including, but not limited to, the United States
5 Department of Agriculture and the United States Department of
6 the Interior, for the purposes of awarding grants to state or local
7 government entities and qualified nonprofit organizations that
8 engage in environmental cleanup and restoration. The agency shall
9 promulgate guidelines for the grant process as soon as
10 administratively possible, but no later than April 1, 2017.

11 (3) Thirty percent to the multiagency task force, the Department
12 of Fish and Wildlife and State Water Resources Control Board
13 pilot project, to address the environmental impacts of marijuana
14 cultivation on public and private lands in California and other state
15 enforcement-related activities from illegal marijuana cultivation.

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17 CHAPTER 4. REPORT TO THE LEGISLATURE

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19 31020. (a) The board shall submit a report to the Legislature
20 on the total amount of revenue that was collected for the two-year
21 period commencing on the operative date of this part. The report
22 is due to the Legislature on or before the last day of the month
23 commencing 180 days after the two-year period commencing on
24 the operative date of this part.

25 (b) The report required by this section shall be submitted in
26 compliance with Section 9795 of the Government Code.

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28 CHAPTER 5. OPERATIVE DATE AND FUNDING

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30 31030. This part shall become operative on or after the first
31 day of the first calendar quarter commencing more than 270 days
32 after adequate funding has been received by the board to implement
33 and administer this part. The board shall post a notice on its Internet
34 Web site when this condition has been satisfied.

35 31031. Funds for the establishment and support of the activities
36 required pursuant to this part shall be advanced as a General Fund
37 or special fund loan, and shall be repaid by the board from the
38 initial proceeds from taxes collected pursuant to this part, no later
39 than six months after the operative date specified in Section 31030.

1 SEC. 2. No reimbursement is required by this act pursuant to
2 Section 6 of Article XIII B of the California Constitution because
3 the only costs that may be incurred by a local agency or school
4 district will be incurred because this act creates a new crime or
5 infraction, eliminates a crime or infraction, or changes the penalty
6 for a crime or infraction, within the meaning of Section 17556 of
7 the Government Code, or changes the definition of a crime within
8 the meaning of Section 6 of Article XIII B of the California
9 Constitution.

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