

AMENDED IN ASSEMBLY MAY 3, 2016

AMENDED IN ASSEMBLY APRIL 26, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2243

Introduced by Assembly Member Wood
(Coauthor: Senator Runner)

February 18, 2016

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

LEGISLATIVE COUNSEL'S DIGEST

AB 2243, as amended, Wood. Medical cannabis: taxation: cannabis production and environment mitigation.

The Medical Marijuana Regulation and Safety Act, administered by the director of the Bureau of Medical Marijuana Regulation, provides for the licensure of persons engaged in specified activities relating to medical cannabis, including cultivation and distribution.

The Fee Collection Procedures Law, the violation of which is a crime, provides procedures for the collection of certain fees and surcharges.

This bill would impose a tax in specified amounts ~~on~~ *upon* the distribution ~~in this state by a licensed cultivator, as defined,~~ of medical cannabis flowers, medical cannabis leaves, and immature medical cannabis 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 State Board of Equalization.~~ *plants*. The bill would require the State Board of Equalization to administer and collect the tax pursuant to the procedures set forth in the Fee Collection Procedures Law. *The*

bill would require a distributor to register for a permit with the board and would allow the board to suspend or revoke a permit. The bill would authorize the board to prescribe by regulation a method and manner for payment of the tax that utilizes tax stamps or state-issued product bags. The bill would require all moneys, less refunds and costs of administration, to be deposited into the Cannabis Production and Environment Mitigation Fund, which this bill would establish in the State Treasury.

This bill would continuously appropriate the moneys in that fund in specified percentages to fund competitive grants for local law enforcement-related activities pertaining to illegal cannabis cultivation; to fund a competitive grant program for environmental cleanup restoration and protection of public and private lands that have been damaged by illegal cannabis cultivation; to address the environmental impacts of cannabis cultivation on public and private lands in California and fund other state enforcement-related activities pertaining to illegal cannabis cultivation; and to fund ongoing studies and reports of areas that may create challenges to compliance of the Medical Marijuana Regulation *and* Safety Act. This bill would require the bureau or other state agencies and departments to submit reports to the Legislature on the results of those studies funded by this tax by January 1, 2020, and every 2 years thereafter.

This bill, except as provided, would become inoperative on January 1, 2018, if the Secretary of State Initiative Number 1762, also known as the Control, Regulate and Tax Adult Use of Marijuana Act, is approved by the voters at the November 8, 2016, statewide general election and takes effect.

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: 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:

3

4 PART 13.5. MEDICAL CANNABIS TAX LAW

5

6 CHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS

7

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

10 31002. As used in this part, the following terms have the
11 following definitions:

12 (a) "Board" means the State Board of Equalization.

13 (b) "Cannabis" has the same meaning as that term is defined in
14 Section 19300.5 of the Business and Professions Code.

15 ~~(c) "Distribution" has the same meaning as that term is defined~~
16 ~~in Section 19300.5 of the Business and Professions Code.~~

17 (c) "Cultivator" means a person subject to licensing as a
18 cultivator for purposes of the Medical Marijuana Regulation and
19 Safety Act (Chapter 3.5 (commencing with Section 19300) of
20 Division 8 of the Business and Professions Code).

21 (d) "Distribution" means all of the following:

22 (1) The sale of untaxed medical cannabis flowers, medical
23 cannabis leaves, and immature medical cannabis plants in this
24 state.

25 (2) The use or consumption of untaxed medical cannabis flowers,
26 medical cannabis leaves, and immature medical cannabis plants
27 in this state.

28 (3) The placing in this state of untaxed medical cannabis
29 flowers, medical cannabis leaves, or immature medical cannabis
30 plants in retail stock for the purpose of selling the medical cannabis
31 flowers, medical cannabis leaves, or immature medical cannabis
32 plants.

33 (e) "Distributor" has the same meaning as that term is defined
34 in Section 19300.5 of the Business and Professions Code.

35 (f)

1 (f) “Immature medical cannabis plant” means a plant described
2 in subdivision (b) with no observable flowers or buds, that is
3 intended to be sold for use by medical cannabis patients in
4 California pursuant to the Compassionate Use Act of 1996
5 (Proposition 215), found in Section 11362.5 of the Health and
6 Safety Code.

7 ~~(e) “Licensed cultivator” means a person that is licensed as a
8 cultivator under the Medical Marijuana Regulation and Safety Act
9 (Chapter 3.5 (commencing with Section 19300) of Division 8 of
10 the Business and Professions Code).~~

11 ~~(f) “Licensed distributor” means “distributor” as defined in
12 Section 19300.5 of the Business and Professions Code.~~

13 (g) “Medical cannabis flowers” means the flowers of a plant
14 described in subdivision (b), which excludes the leaves and stems,
15 that are intended to be sold for use by medical cannabis patients
16 in California pursuant to the Compassionate Use Act of 1996
17 (Proposition 215), found in Section 11362.5 of the Health and
18 Safety Code.

19 (h) “Medical cannabis leaves” means all parts of a plant
20 described in subdivision (b), other than cannabis flowers, that are
21 intended to be sold for use by medical cannabis patients in
22 California pursuant to the Compassionate Use Act of 1996
23 (Proposition 215), found in Section 11362.5 of the Health and
24 Safety Code.

25 ~~(i) “Sale” means the transfer of title or possession for
26 consideration in any manner or by any means whatever.~~

27 ~~(i) “Medical cannabis product” means “medical cannabis” as
28 defined in Section 19300.5 of the Business and Professions Code.~~

29 (j) “Qualified nonprofit organization” means an organization
30 exempt from tax as an organization described in Section 501(c)(3)
31 of the Internal Revenue Code. Code.

32 (k) “Person” includes any individual, firm, partnership, joint
33 venture, limited liability company, association, social club,
34 fraternal organization, corporation, estate, trust, business trust,
35 receiver, assignee for the benefit of creditors, trustee, trustee in
36 bankruptcy, syndicate, or any other group or combination acting
37 as a unit.

38 ~~(l) “Sale” means the transfer of title or possession for
39 consideration in any manner or by any means whatever.~~

1 (m) “Use” includes the exercise of any right or power over
2 medical cannabis flowers, medical cannabis leaves, and immature
3 medical cannabis plants, except that it does not include the sale
4 of medical cannabis flowers, medical cannabis leaves, and
5 immature medical cannabis plants in the regular course of
6 business. “Use” includes a withdrawal of medical cannabis
7 flowers, medical cannabis leaves, and immature medical cannabis
8 plants from inventory and use in the manufacture of a medical
9 cannabis product.

10
11 CHAPTER 2. IMPOSITION OF TAX
12

13 31005. (a) On and after the operative date set forth in Section
14 31030, for the privilege of distributing medical cannabis flowers,
15 medical cannabis leaves, and immature medical cannabis plants,
16 a tax is hereby imposed upon all licensed cultivators at a rate of
17 nine dollars and twenty-five cents (\$9.25) per ounce of medical
18 cannabis flowers, two dollars and seventy-five cents (\$2.75) per
19 ounce of medical cannabis leaves, and one dollar and twenty-five
20 cents (\$1.25) per immature medical cannabis plant from the sale
21 of all medical cannabis flowers, medical cannabis leaves, and
22 immature medical cannabis plants distributed to a licensed
23 distributor in this state: every distributor shall pay a tax upon any
24 distribution of medical cannabis flowers, medical cannabis leaves,
25 and immature medical cannabis plants at the following rates:

26 (1) Nine dollars and twenty-five cents (\$9.25) per ounce of
27 medical cannabis flowers.

28 (2) Two dollars and seventy-five cents (\$2.75) per ounce of
29 medical cannabis leaves.

30 (3) One dollar and twenty-five cents (\$1.25) per immature
31 medical cannabis plant.

32 (b) ~~The licensed distributor shall collect the tax from the licensed~~
33 ~~cultivator and shall separately state the amount of the tax imposed~~
34 ~~under this part on the purchase order, which shall be given by the~~
35 ~~licensed distributor to the licensed cultivator at the time of sale.~~

36 (c) ~~There are exempted from the taxes imposed by this part,~~
37 ~~sales by a licensed cultivator that the state is prohibited from taxing~~
38 ~~under the Constitution or laws of the United States or the~~
39 ~~Constitution of this state. Any claim for exemption from the tax~~

1 ~~imposed by this part shall be made to the board in the manner~~
 2 ~~prescribed by the board.~~

3 *(b) The rates of tax imposed by this section shall apply*
 4 *proportionately to quantities of less than one ounce.*

5 *(c) The tax imposed by this part shall not apply to the sale of*
 6 *medical cannabis flowers, medical cannabis leaves, and immature*
 7 *medical cannabis plants by a cultivator to the distributor.*

8 *31005.3. The board may prescribe by regulation a method and*
 9 *manner for payment of the tax imposed by this part that utilizes*
 10 *tax stamps or state-issued product bags that indicate that all*
 11 *required tax has been paid on the distribution of the medical*
 12 *cannabis flowers, medical cannabis leaves, and immature medical*
 13 *cannabis plants to which the tax stamp is affixed or in which the*
 14 *medical cannabis flowers, medical cannabis leaves, and immature*
 15 *medical cannabis plants are packaged.*

16 31006. The Legislative Analyst’s Office shall regularly review
 17 the tax levels established under this part, at a minimum of every
 18 other year, beginning in ~~2018~~, 2020, and make recommendations
 19 to the Legislature, as appropriate, regarding adjustments that would
 20 further the goal of addressing public safety and the environmental
 21 impacts caused by the proliferation of cannabis cultivation.

22
 23 CHAPTER 3. ADMINISTRATION
 24

25 31010. ~~(a) The board shall administer and collect the tax~~
 26 ~~imposed by this part pursuant to the Fee Collection Procedures~~
 27 ~~Law (Part 30 (commencing with Section 55001) of Division 2 of~~
 28 ~~the Revenue and Taxation Code) with those changes as may be~~
 29 ~~necessary to conform to this section: 55001)), except that Article~~
 30 ~~1.1 (commencing with Section 55050) of Chapter 3 of Part 30 shall~~
 31 ~~not apply.~~ For purposes of this part, the references in the Fee
 32 Collection Procedures Law to “fee” shall include the tax imposed
 33 by this part, and references to “feepayer” shall include a person
 34 required to pay the tax imposed by this part.

35 ~~(b) The tax that is required to be collected by the licensed~~
 36 ~~distributor and any amount unreturned to the licensed cultivator~~
 37 ~~that is not owed as part of the tax, but was collected from the~~
 38 ~~licensed cultivator under the representation by the licensed~~
 39 ~~distributor that it was owed as a tax, constitutes debts owed by the~~
 40 ~~licensed distributor to the state.~~

1 ~~(e) A licensed cultivator is liable for the tax until it has been~~
2 ~~paid to the state, except that payment to the licensed distributor~~
3 ~~relieves the licensed cultivator from further liability for the tax.~~
4 ~~Any tax collected from a licensed cultivator that has not been~~
5 ~~remitted to the board shall be a debt owed to the state by the~~
6 ~~licensed distributor required to collect and remit the tax. This part~~
7 ~~does not impose any obligation upon the licensed distributor to~~
8 ~~take any legal action to enforce the collection of the tax imposed~~
9 ~~by this part.~~

10 31011. (a) The board may prescribe, adopt, and enforce
11 regulations relating to the implementation, administration, and
12 enforcement of this part, including, but not limited to, applicant
13 requirements, collections, reporting, refunds, and appeals.

14 (b) The board may prescribe, adopt, and enforce any emergency
15 regulations as necessary to implement this part. Any emergency
16 regulation prescribed, adopted, or enforced pursuant to this section
17 shall be adopted in accordance with Chapter 3.5 (commencing
18 with Section 11340) of Part 1 of Division 3 of Title 2 of the
19 Government Code, and, for purposes of that chapter, including
20 Section 11349.6 of the Government Code, the adoption of the
21 regulation is an emergency and shall be considered by the Office
22 of Administrative Law as necessary for the immediate preservation
23 of the public peace, health and safety, and general welfare.

24 31012. (a) The tax is due and payable to the board quarterly
25 on or before the last day of the month following each calendar
26 quarter.

27 (b) On or before the last day of the month following each
28 calendar quarter, a return for the preceding calendar quarter shall
29 be filed with the ~~board.~~ *board using electronic media.*

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

32 *31012.1. (a) A distributor required to pay the tax imposed*
33 *under this part shall register for a permit with the board. Every*
34 *application for registration shall be made in a form prescribed by*
35 *the board and shall set forth the name under which the applicant*
36 *transacts or intends to transact business, the location of the*
37 *distributor's place or places of business, and any other information*
38 *that the board may require. An application for registration shall*
39 *be authenticated in a form or pursuant to methods as may be*
40 *prescribed by the board.*

1 (b) *The board shall grant and issue to each applicant that*
2 *complies with subdivision (a) a separate permit for each place of*
3 *business within the state.*

4 (c) *A permit issued pursuant to this section is not assignable*
5 *and is valid only for the person in whose name it is issued and for*
6 *the transaction of business at the place designated therein. It shall*
7 *at all times be conspicuously displayed at the place for which it is*
8 *issued.*

9 31012.3. *Whenever any distributor fails to comply with any*
10 *provision of this part or any rule or regulation of the board*
11 *prescribed and adopted under this part, the board upon hearing,*
12 *after giving the distributor at least 10 days' notice in writing*
13 *specifying the time and place of the hearing and requiring the*
14 *distributor to show cause why the permit should not be suspended*
15 *or revoked, may suspend or revoke the permit held by the*
16 *distributor. The board shall give to the distributor written notice*
17 *of the suspension or revocation of any of the distributor's permits.*
18 *The notices herein required may be served personally or by mail*
19 *in the manner prescribed for service of notice of a deficiency*
20 *determination. The board shall not issue a new permit after the*
21 *revocation of a permit unless it is satisfied that the former holder*
22 *of the permit will comply with the provisions of this part and the*
23 *regulations of the board prescribed and adopted under this part.*

24 31013. (a) *The Cannabis Production and Environment*
25 *Mitigation Fund is hereby created in the State Treasury. All taxes,*
26 *interest, penalties, and other amounts collected and paid to the*
27 *board pursuant to this part, less payments of refunds and costs of*
28 *administration, shall be deposited in the fund.*

29 (b) *Notwithstanding Section 13340 of the Government Code,*
30 *all moneys deposited in the Cannabis Production and Environment*
31 *Mitigation Fund are hereby continuously appropriated, without*
32 *regard to fiscal years, in the following manner:*

33 (1) *Thirty percent to the Board of State and Community*
34 *Corrections for disbursement for local law enforcement-related*
35 *activities pertaining to illegal cannabis cultivation. Funds allocated*
36 *pursuant to this paragraph shall be allocated on a competitive grant*
37 *application process administered by the Board of State and*
38 *Community Corrections. Applicants may include local entities*
39 *that support enforcement activities related to unpermitted activity.*
40 *The Board of State and Community Corrections shall promulgate*

1 guidelines for the grant process as soon as administratively
2 possible.

3 (2) Thirty percent to the Natural Resources Agency to fund a
4 competitive grant program for environmental cleanup restoration
5 and protection of public and private lands that have been damaged
6 by illegal cannabis cultivation. Where appropriate, the agency may
7 administer funds using programs established pursuant to Chapter
8 3.8 (commencing with Section 5750) of Division 5 of the Public
9 Resources Code and described in subdivision (a) and paragraph
10 (1) of subdivision (l) of Section 75050 of the Public Resources
11 Code. Funds allocated pursuant to this paragraph shall be
12 prioritized to restoration and cleanup projects, on public or private
13 lands, based on the level of damages that have occurred. Not less
14 than 35 percent of the funds shall be used for these purposes related
15 to public lands, including, but not limited to, parks managed by
16 the Department of Parks and Recreation, and not less than 20
17 percent of the funds shall be used for these purposes related to
18 private lands. The agency shall consult and partner with counties,
19 cities, or cities and counties and may partner with qualified
20 nonprofit organizations, other appropriate state agencies, and the
21 appropriate federal entities, including, but not limited to, the United
22 States Department of Agriculture and the United States Department
23 of the Interior, for the purposes of awarding grants to state or local
24 government entities and qualified nonprofit organizations that
25 engage in environmental cleanup and restoration. The agency shall
26 promulgate guidelines for the grant process as soon as
27 administratively possible.

28 (3) Thirty percent to the multiagency task force, the Department
29 of Fish and Wildlife and *the* State Water Resources Control Board,
30 to address the environmental impacts of cannabis cultivation on
31 public and private lands in California and fund other state
32 enforcement-related activities pertaining to illegal cannabis
33 cultivation.

34 (4) Ten percent to the Bureau of Medical Marijuana ~~Regulations,~~
35 *Regulation*, and other state agencies or departments that the bureau
36 determines is appropriate, to conduct ongoing studies of areas that
37 may create challenges to compliance of the Medical Marijuana
38 Regulation Safety Act (Chapter 3.5 (commencing with Section
39 19300) of Division 8 of the Business and Professions Code),
40 including, but not limited to, financial transactions, allowable tax

1 deductions, and the public safety implications of a cash industry.
 2 The bureau or other state agencies or departments shall prepare
 3 reports on the results of those studies and submit those ~~report~~
 4 *reports* to the Legislature, in compliance with Section 9795 of the
 5 Government Code, on or before January 1, 2020, and on or before
 6 January ~~1~~, *1* every two years thereafter.

7
 8 CHAPTER 4. REPORT TO THE LEGISLATURE
 9

10 31020. (a) The board shall submit a report to the Legislature
 11 on the total amount of revenue that was collected for the two-year
 12 period commencing on the operative date of this part. The report
 13 is due to the Legislature on or before the last day of the month
 14 commencing 180 days after the two-year period commencing on
 15 the operative date of this part.

16 (b) The report required by this section shall be submitted in
 17 compliance with Section 9795 of the Government Code.
 18

19 CHAPTER 5. OPERATIVE DATE AND FUNDING
 20

21 31030. This part shall become operative on or after the first
 22 day of the first calendar quarter commencing more than 270 days
 23 after adequate funding has been received by the board to implement
 24 and administer this part. The board shall post a notice on its Internet
 25 Web site when this condition has been satisfied.

26 31031. Funds for the establishment and support of the activities
 27 required pursuant to this part shall be advanced as a General Fund
 28 or special fund loan, and shall be repaid by the board from the
 29 initial proceeds from taxes collected pursuant to this part, no later
 30 than six months after the operative date specified in Section 31030.

31 *31032. (a) Except as provided in subdivision (b), this part*
 32 *shall become inoperative on January 1, 2018, if the Secretary of*
 33 *State Initiative Number 1762, also known as the Control, Regulate*
 34 *and Tax Adult Use of Marijuana Act, is approved by the voters at*
 35 *the November 8, 2016, statewide general election and takes effect.*

36 *(b) The provisions of this part relating to the collection of the*
 37 *tax, refunds, allowance for credits, disposition of moneys deposited*
 38 *into the Cannabis Production and Environment Mitigation Fund,*
 39 *and the commencement of an action or proceeding shall remain*

1 *operative with respect to taxes for which the liability accrued*
2 *before January 1, 2018.*

3

4 *CHAPTER 6. NO PREEMPTION OF LOCAL TAXATION AUTHORITY*

5

6 *31035. The tax shall be in addition to, and shall not limit, any*
7 *taxes or fees imposed by a county or city and county.*

8 SEC. 2. No reimbursement is required by this act pursuant to

9 Section 6 of Article XIII B of the California Constitution because

10 the only costs that may be incurred by a local agency or school

11 district will be incurred because this act creates a new crime or

12 infraction, eliminates a crime or infraction, or changes the penalty

13 for a crime or infraction, within the meaning of Section 17556 of

14 the Government Code, or changes the definition of a crime within

15 the meaning of Section 6 of Article XIII B of the California

16 Constitution.