

AMENDED IN ASSEMBLY MAY 31, 2016

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.~~ *therefor, and declaring the urgency thereof, to take effect immediately.*

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 upon the distribution of medical cannabis flowers, medical cannabis leaves, and immature medical cannabis 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.~~

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

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:

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

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

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

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

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

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

32 (f) "Immature medical cannabis plant" means a plant described
33 in subdivision (b) with no observable flowers or buds, that is
34 intended to be sold for use by medical cannabis patients in
35 California pursuant to the Compassionate Use Act of 1996

1 (Proposition 215), found in Section 11362.5 of the Health and
2 Safety Code.

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

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

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

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

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

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

27 (m) “Use” includes the exercise of any right or power over
28 medical cannabis flowers, medical cannabis leaves, and immature
29 medical cannabis plants, except that it does not include the sale of
30 medical cannabis flowers, medical cannabis leaves, and immature
31 medical cannabis plants in the regular course of business. “Use”
32 includes a withdrawal of medical cannabis flowers, medical
33 cannabis leaves, and immature medical cannabis plants from
34 inventory and use in the manufacture of a medical cannabis
35 product.

36

37 CHAPTER 2. IMPOSITION OF TAX

38

39 31005. (a) On and after the operative date set forth in Section
40 31030, for the privilege of distributing medical cannabis flowers,

1 medical cannabis leaves, and immature medical cannabis plants,
2 every distributor shall pay a tax upon any distribution of medical
3 cannabis flowers, medical cannabis leaves, and immature medical
4 cannabis plants at the following rates:

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

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

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

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

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

16 31005.3. The board may prescribe by regulation a method and
17 manner for payment of the tax imposed by this part that utilizes
18 tax stamps or state-issued product bags that indicate that all
19 required tax has been paid on the distribution of the medical
20 cannabis flowers, medical cannabis leaves, and immature medical
21 cannabis plants to which the tax stamp is affixed or in which the
22 medical cannabis flowers, medical cannabis leaves, and immature
23 medical cannabis plants are packaged.

24 31006. The Legislative Analyst's Office shall regularly review
25 the tax levels established under this part, at a minimum of every
26 other year, beginning in 2020, and make recommendations to the
27 Legislature, as appropriate, regarding adjustments that would
28 further the goal of addressing public safety and the environmental
29 impacts caused by the proliferation of cannabis cultivation.

30

31

CHAPTER 3. ADMINISTRATION

32

33 31010. The board shall administer and collect the tax imposed
34 by this part pursuant to the Fee Collection Procedures Law (Part
35 30 (commencing with Section 55001)), except that Article 1.1
36 (commencing with Section 55050) of Chapter 3 of Part 30 shall
37 not apply. For purposes of this part, the references in the Fee
38 Collection Procedures Law to "fee" shall include the tax imposed
39 by this part, and references to "feepayer" shall include a person
40 required to pay the tax imposed by this part.

1 31011. (a) The board may prescribe, adopt, and enforce
2 regulations relating to the implementation, administration, and
3 enforcement of this part, including, but not limited to, applicant
4 requirements, collections, reporting, refunds, and appeals.

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

15 31012. (a) The tax is due and payable to the board quarterly
16 on or before the last day of the month following each calendar
17 quarter.

18 (b) On or before the last day of the month following each
19 calendar quarter, a return for the preceding calendar quarter shall
20 be filed with the board using electronic media.

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

23 31012.1. (a) A distributor required to pay the tax imposed
24 under this part shall register for a permit with the board. Every
25 application for registration shall be made in a form prescribed by
26 the board and shall set forth the name under which the applicant
27 transacts or intends to transact business, the location of the
28 distributor's place or places of business, and any other information
29 that the board may require. An application for registration shall
30 be authenticated in a form or pursuant to methods as may be
31 prescribed by the board.

32 (b) The board shall grant and issue to each applicant that
33 complies with subdivision (a) a separate permit for each place of
34 business within the state.

35 (c) A permit issued pursuant to this section is not assignable
36 and is valid only for the person in whose name it is issued and for
37 the transaction of business at the place designated therein. It shall
38 at all times be conspicuously displayed at the place for which it is
39 issued.

1 31012.3. Whenever any distributor fails to comply with any
2 provision of this part or any rule or regulation of the board
3 prescribed and adopted under this part, the board upon hearing,
4 after giving the distributor at least 10 days' notice in writing
5 specifying the time and place of the hearing and requiring the
6 distributor to show cause why the permit should not be suspended
7 or revoked, may suspend or revoke the permit held by the
8 distributor. The board shall give to the distributor written notice
9 of the suspension or revocation of any of the distributor's permits.
10 The notices herein required may be served personally or by mail
11 in the manner prescribed for service of notice of a deficiency
12 determination. The board shall not issue a new permit after the
13 revocation of a permit unless it is satisfied that the former holder
14 of the permit will comply with the provisions of this part and the
15 regulations of the board prescribed and adopted under this part.

16 31013. (a) The Cannabis Production and Environment
17 Mitigation Fund is hereby created in the State Treasury. All taxes,
18 interest, penalties, and other amounts collected and paid to the
19 board pursuant to this part, less payments of refunds and costs of
20 administration, shall be deposited in the fund.

21 (b) Notwithstanding Section 13340 of the Government Code,
22 all moneys deposited in the Cannabis Production and Environment
23 Mitigation Fund are hereby continuously appropriated, without
24 regard to fiscal years, in the following manner:

25 (1) Thirty percent to the Board of State and Community
26 Corrections for disbursement for local law enforcement-related
27 activities pertaining to illegal cannabis cultivation. Funds allocated
28 pursuant to this paragraph shall be allocated on a competitive grant
29 application process administered by the Board of State and
30 Community Corrections. Applicants may include local entities
31 that support enforcement activities related to unpermitted activity.
32 The Board of State and Community Corrections shall promulgate
33 guidelines for the grant process as soon as administratively
34 possible.

35 (2) Thirty percent to the Natural Resources Agency to fund a
36 competitive grant program for environmental cleanup restoration
37 and protection of public and private lands that have been damaged
38 by illegal cannabis cultivation. Where appropriate, the agency may
39 administer funds using programs established pursuant to Chapter
40 3.8 (commencing with Section 5750) of Division 5 of the Public

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

20 (3) Thirty percent to the multiagency task force, the Department
21 of Fish and Wildlife and the State Water Resources Control Board,
22 to address the environmental impacts of cannabis cultivation on
23 public and private lands in California and fund other state
24 enforcement-related activities pertaining to illegal cannabis
25 cultivation.

26 (4) Ten percent to the Bureau of Medical Marijuana Regulation,
27 and other state agencies or departments that the bureau determines
28 is appropriate, to conduct ongoing studies of areas that may create
29 challenges to compliance of the Medical Marijuana Regulation
30 Safety Act (Chapter 3.5 (commencing with Section 19300) of
31 Division 8 of the Business and Professions Code), including, but
32 not limited to, financial transactions, allowable tax deductions,
33 and the public safety implications of a cash industry. The bureau
34 or other state agencies or departments shall prepare reports on the
35 results of those studies and submit those reports to the Legislature,
36 in compliance with Section 9795 of the Government Code, on or
37 before January 1, 2020, and on or before January 1 every two years
38 thereafter.

CHAPTER 4. REPORT TO THE LEGISLATURE

~~31020.~~

31025. (a) The board shall submit a report to the Legislature on the total amount of revenue that was collected for the two-year period commencing on the operative date of this part. The report is due to the Legislature on or before the last day of the month commencing 180 days after the two-year period commencing on the operative date of this part.

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

CHAPTER 5. OPERATIVE DATE AND FUNDING

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

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

31032. (a) Except as provided in subdivision (b), this part shall 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.

(b) The provisions of this part relating to the collection of the tax, refunds, allowance for credits, disposition of moneys deposited into the Cannabis Production and Environment Mitigation Fund, and the commencement of an action or proceeding shall remain operative with respect to taxes for which the liability accrued before January 1, 2018.

CHAPTER 6. NO PREEMPTION OF LOCAL TAXATION AUTHORITY

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

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.

10 SEC. 3. *This act is an urgency statute necessary for the*
11 *immediate preservation of the public peace, health, or safety within*
12 *the meaning of Article IV of the Constitution and shall go into*
13 *immediate effect. The facts constituting the necessity are:*

14 *In order to address the damage done by illegal cannabis*
15 *cultivation at the earliest time possible, it is necessary that this*
16 *act take effect immediately.*