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AMENDED IN ASSEMBLY JUNE 2, 2016

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 and repeal Part 13.5 (commencing with Section 31001) of Division 2 of the Revenue and Taxation Code, relating to medical cannabis, making an appropriation 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~~. *plants, and medical cannabis product*. 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, among other things, 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 Regional Marijuana Enforcement Officers. ~~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. This bill would repeal all of its provisions as of January 1, 2025.

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

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) "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~~ *both* of the following:
 - 20 (1) The sale of untaxed medical cannabis flowers, ~~medical~~
21 ~~cannabis leaves, and~~ immature medical cannabis ~~plants~~ *plants,*
22 *and medical cannabis product* in this state.
 - 23 (2) The use or consumption of untaxed medical cannabis
24 flowers, ~~medical cannabis leaves, and~~ immature medical cannabis
25 ~~plants~~ *plants, and medical cannabis product* 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)~~

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

18 ~~(j)~~

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

22 ~~(k)~~

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

28 ~~(l)~~

29 (k) “Sale” means the transfer of title or possession for
30 consideration in any manner or by any means whatever.

31 ~~(m)~~

32 (l) “Use” includes the exercise of any right or power over
33 medical cannabis flowers, ~~medical cannabis leaves, and~~ immature
34 medical cannabis plants, *and medical cannabis product* except
35 that it does not include the sale of medical cannabis flowers,
36 ~~medical cannabis leaves, and~~ immature medical cannabis ~~plants~~
37 *plants, and medical cannabis product* in the regular course of
38 business. “Use” includes a withdrawal of medical cannabis ~~flowers,~~
39 ~~medical cannabis leaves, and~~ *flowers and* immature medical

1 cannabis plants from inventory and use in the manufacture of a
2 medical cannabis product.

3
4 CHAPTER 2. IMPOSITION OF TAX
5

6 31005. (a) On and after the operative date set forth in Section
7 31030, for the privilege of distributing medical cannabis flowers,
8 ~~medical cannabis leaves, and~~ immature medical cannabis plants,
9 *and medical cannabis product* every distributor shall pay a tax
10 upon any distribution of medical cannabis flowers, ~~medical~~
11 ~~cannabis leaves, and~~ immature medical cannabis ~~plants~~ *plants,*
12 *and medical cannabis product* at the following rates:

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

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

17 (1) ____ dollars (\$____) *per ounce of medical cannabis flowers*
18 *cultivated by a licensee with a Type 1, Type 1A, or Type 1B*
19 *classification as described in Section 19300.7 of the Business and*
20 *Professions Code.*

21 (2) *Nine dollars and twenty-five cents (\$9.25) per ounce of*
22 *medical cannabis flowers cultivated by a licensee with a Type 2,*
23 *Type 2A, or Type 2B classification as described in Section 19300.7*
24 *of the Business and Professions Code.*

25 (3) ____ dollars (\$____) *per ounce of medical cannabis flowers*
26 *cultivated by a licensee with a Type 3, Type 3A, or Type 3B*
27 *classification as described in Section 19300.7 of the Business and*
28 *Professions Code.*

29 ~~(3)~~
30 (4) One dollar and twenty-five cents (\$1.25) per immature
31 medical cannabis plant.

32 (5) *At the rate equivalent to the combined rate of taxes on the*
33 *privilege of selling tangible personal property at retail in this state*
34 *that are imposed by the Sales and Use Tax Law (Part 1*
35 *commencing with Section 6001) and the California Constitution,*
36 *upon the wholesale cost of any medical cannabis product*
37 *manufactured by a licensee with a Type 6 or Type 7 classification*
38 *as described in Section 19300.7 of the Business and Professions*
39 *Code.*

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

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

6 31005.3. The board may prescribe by regulation a method and
7 manner for payment of the tax imposed by this part that utilizes
8 tax stamps or state-issued product bags that indicate that all
9 required tax has been paid on the distribution of the medical
10 cannabis flowers, ~~medical cannabis leaves, and~~ immature medical
11 cannabis ~~plants~~ *plants, and medical cannabis product* to which
12 the tax stamp is affixed or in which the medical cannabis flowers,
13 ~~medical cannabis leaves, and~~ immature medical cannabis ~~plants~~
14 *plants, and medical cannabis product* are packaged.

15 31006. The Legislative Analyst’s Office shall regularly review
16 the tax levels established under this part, at a minimum of every
17 other year, beginning in 2020, and make recommendations to the
18 Legislature, as appropriate, regarding adjustments that would
19 further the goal of addressing public safety and the environmental
20 impacts caused by the proliferation of cannabis cultivation.

21
22 CHAPTER 3. ADMINISTRATION
23

24 31010. The board shall administer and collect the tax imposed
25 by this part pursuant to the Fee Collection Procedures Law (Part
26 30 (commencing with Section 55001)), except that Article 1.1
27 (commencing with Section 55050) of Chapter 3 of Part 30 shall
28 not apply. For purposes of this part, the references in the Fee
29 Collection Procedures Law to “fee” shall include the tax imposed
30 by this part, and references to “feepayer” shall include a person
31 required to pay the tax imposed by this part.

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

36 (b) The board may prescribe, adopt, and enforce any emergency
37 regulations as necessary to implement this part. Any emergency
38 regulation prescribed, adopted, or enforced pursuant to this section
39 shall be adopted in accordance with Chapter 3.5 (commencing
40 with Section 11340) of Part 1 of Division 3 of Title 2 of the

1 Government Code, and, for purposes of that chapter, including
2 Section 11349.6 of the Government Code, the adoption of the
3 regulation is an emergency and shall be considered by the Office
4 of Administrative Law as necessary for the immediate preservation
5 of the public peace, health and safety, and general welfare.

6 31012. (a) The tax is due and payable to the board quarterly
7 on or before the last day of the month following each calendar
8 quarter.

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

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

14 31012.1. (a) A distributor required to pay the tax imposed
15 under this part shall register for a permit with the board. Every
16 application for registration shall be made in a form prescribed by
17 the board and shall set forth the name under which the applicant
18 transacts or intends to transact business, the location of the
19 distributor's place or places of business, and any other information
20 that the board may require. An application for registration shall
21 be authenticated in a form or pursuant to methods as may be
22 prescribed by the board.

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

26 (c) A permit issued pursuant to this section is not assignable
27 and is valid only for the person in whose name it is issued and for
28 the transaction of business at the place designated therein. It shall
29 at all times be conspicuously displayed at the place for which it is
30 issued.

31 31012.3. Whenever any distributor fails to comply with any
32 provision of this part or any rule or regulation of the board
33 prescribed and adopted under this part, the board upon hearing,
34 after giving the distributor at least 10 days' notice in writing
35 specifying the time and place of the hearing and requiring the
36 distributor to show cause why the permit should not be suspended
37 or revoked, may suspend or revoke the permit held by the
38 distributor. The board shall give to the distributor written notice
39 of the suspension or revocation of any of the distributor's permits.
40 The notices herein required may be served personally or by mail

1 in the manner prescribed for service of notice of a deficiency
2 determination. The board shall not issue a new permit after the
3 revocation of a permit unless it is satisfied that the former holder
4 of the permit will comply with the provisions of this part and the
5 regulations of the board prescribed and adopted under this part.

6 31013. (a) The Cannabis Production and Environment
7 Mitigation Fund is hereby created in the State Treasury. All taxes,
8 interest, penalties, and other amounts collected and paid to the
9 board pursuant to this part, less payments of refunds and costs of
10 administration, shall be deposited in the fund.

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

15 (1) Thirty percent to the Board of State and Community
16 Corrections for disbursement for local law enforcement-related
17 activities pertaining to illegal cannabis cultivation. The Board of
18 State and Community Corrections shall give priority of funds to
19 applicants that demonstrate that the area within the applicant's
20 jurisdiction has a high rate of criminal activity from organized
21 crime as defined by Section 186.2 of the Penal Code related to
22 illegal cannabis cultivation. Funds allocated pursuant to this
23 paragraph shall be allocated on a competitive grant application
24 process administered by the Board of State and Community
25 Corrections. Applicants may include local entities that support
26 enforcement activities related to unpermitted activity. The Board
27 of State and Community Corrections shall promulgate guidelines
28 for the grant process as soon as administratively possible.

29 (2) Two percent to the Department of Justice to fund and create
30 Regional Marijuana Enforcement Officers who shall coordinate
31 enforcement efforts, related to illegal cannabis cultivation, between
32 the Department of Fish and Wildlife's Marijuana Enforcement
33 Team, the Department of Justice's Bureau of Narcotic
34 Enforcement, the United States Drug Enforcement Administration,
35 and local law enforcement. The Department of Justice shall
36 prioritize creation of Regional Marijuana Enforcement Officers
37 in counties that have demonstrated that the area within the county's
38 jurisdiction has a high rate of criminal activity from organized
39 crime, as defined by Section 186.2 of the Penal Code, related to
40 illegal cannabis cultivation.

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

30 (4) Eight percent to the Open Space Subvention Payment
31 Account of the California Land Conservation Act of 1965 (Chapter
32 7 (commencing with Section 51200) of Part 1 of Division 1 of
33 Title 5 of the Government Code). Administrative costs to the
34 Department of Conservation shall be no more than the reasonable
35 costs to administer the program and shall be no more than 0.5
36 percent of the 8 percent.

37 (5) Thirty percent to the multiagency task force, the Department
38 of Fish and Wildlife and the State Water Resources Control Board,
39 to address the environmental impacts of cannabis cultivation on
40 public and private lands in California and fund other state

1 enforcement-related activities pertaining to illegal cannabis
2 cultivation.

3

4

CHAPTER 4. REPORT TO THE LEGISLATURE

5

6

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

12

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

14

15

CHAPTER 5. OPERATIVE DATE AND FUNDING

16

17

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

22

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

27

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

32

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

38

(c) This part shall remain in effect only until January 1, 2025,
39 and as of that date is repealed.

1 CHAPTER 6. NO PREEMPTION OF LOCAL TAXATION AUTHORITY

2
3 31035. The tax shall be in addition to, and shall not limit, any
4 taxes or fees imposed by a county or city and county.

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

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

18 In order to address the damage done by illegal cannabis
19 cultivation at the earliest time possible, it is necessary that this act
20 take effect immediately.