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AMENDED IN SENATE JUNE 29, 2016

AMENDED IN SENATE JUNE 15, 2016

AMENDED IN ASSEMBLY JUNE 2, 2016

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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~~ *Cannabis* Regulation and Safety Act, administered by the director of the Bureau of ~~Medical-Marijuana~~ *Cannabis* 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~~ *would, for the privilege of doing business as a distributor in this state, impose a tax in specified amounts upon the distribution of medical cannabis flower, immature medical cannabis plant, and medical cannabis product. on every distributor upon all medical cannabis and medical cannabis products distributed to a dispensary in this state, as specified.* 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 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, except as provided, would become inoperative on January 1, 2018, if ~~the Secretary of State Initiative Number 1762, Proposition 64~~, 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:

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4 PART 13.5. MEDICAL CANNABIS TAX LAW

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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 *31001.5. Unless the context otherwise requires, the definitions*
11 *set forth in this chapter and those in the Medical Cannabis*
12 *Regulation and Safety Act (Chapter 3.5 (commencing with Section*
13 *19300) of Division 8 of the Business and Professions Code) shall*
14 *govern the construction of this part.*

15 31002. As used in this part, the following terms have the
16 following definitions:

17 (a) “Board” means the State Board of Equalization.

18 (b) “Cannabis” has the same meaning as that term is defined in
19 Section 19300.5 of the Business and Professions Code.

20 (c) “Cultivator” means a person subject to licensing as a
21 cultivator for purposes of the Medical Marijuana Regulation and
22 Safety Act (Chapter 3.5 (commencing with Section 19300) of
23 Division 8 of the Business and Professions Code).

24 (d) “Distribution” means both of the following:

25 (1) The sale of untaxed medical cannabis flower, immature
26 medical cannabis plant, and medical cannabis product in this state.

27 (2) The use or consumption of untaxed medical cannabis flower,
28 immature medical cannabis plant, and medical cannabis product
29 in this state.

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

- 1 ~~(f)~~
- 2 ~~(b)~~ “Immature medical cannabis plant” means a *live cannabis*
- 3 ~~plant described in subdivision (b)~~ with no observable flowers or
- 4 buds, that is intended to be sold for use by medical cannabis
- 5 patients in California pursuant to the Compassionate Use Act of
- 6 1996 (Proposition 215), found in Section 11362.5 of the Health
- 7 and Safety Code.
- 8 ~~(g)~~
- 9 ~~(c)~~ “Medical cannabis flower” ~~means the flower of a plant~~
- 10 ~~described in subdivision (b), which excludes the leaves and stems,~~
- 11 ~~that are~~ *has the same meaning as a “dried flower” as defined in*
- 12 *the Medical Cannabis Regulation and Safety Act (Chapter 3.5*
- 13 *(commencing with Section 19300) of Division 8 of the Business*
- 14 *and Professions Code), that is* intended to be sold for use by
- 15 medical cannabis patients in California pursuant to the
- 16 Compassionate Use Act of 1996 (Proposition 215), found in
- 17 Section 11362.5 of the Health and Safety Code.
- 18 ~~(h)~~ “Medical cannabis product” means “~~medical cannabis~~” as
- 19 ~~defined in Section 19300.5 of the Business and Professions Code.~~
- 20 ~~(i)~~
- 21 ~~(d)~~ “Qualified nonprofit organization” means an organization
- 22 exempt from tax as an organization described in Section 501(c)(3)
- 23 of the Internal Revenue Code.
- 24 ~~(j)~~ “Person” includes ~~any individual, firm, partnership, joint~~
- 25 ~~venture, limited liability company, association, social club, fraternal~~
- 26 ~~organization, corporation, estate, trust, business trust, receiver,~~
- 27 ~~assignee for the benefit of creditors, trustee, trustee in bankruptcy,~~
- 28 ~~syndicate, or any other group or combination acting as a unit.~~
- 29 ~~(k)~~ “Sale” means ~~the transfer of title or possession for~~
- 30 ~~consideration in any manner or by any means whatever.~~
- 31 ~~(l)~~ “Use” includes ~~the exercise of any right or power over~~
- 32 ~~medical cannabis flower, immature medical cannabis plant, and~~
- 33 ~~medical cannabis product except that it does not include the sale~~
- 34 ~~of medical cannabis flower, immature medical cannabis plant, and~~
- 35 ~~medical cannabis product in the regular course of business. “Use”~~
- 36 ~~includes a withdrawal of medical cannabis flower and immature~~
- 37 ~~medical cannabis plant from inventory and use in the manufacture~~
- 38 ~~of a medical cannabis product.~~

1 (e) “Wholesale cost” means the manufacturer licensee’s or
2 distributor’s sales price of medical cannabis products to the
3 dispensary licensee.

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5 CHAPTER 2. IMPOSITION OF TAX
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7 31005. ~~(a) On and after the operative date set forth in Section~~
8 ~~31030, for the privilege of distributing medical cannabis flower,~~
9 ~~immature medical cannabis plant, and medical cannabis product~~
10 ~~every distributor shall pay a tax upon any distribution of medical~~
11 ~~cannabis flower, immature medical cannabis plant, and medical~~
12 ~~cannabis product at the following rates:~~

13 (1) ~~_____ dollars (\$_____) per ounce of medical cannabis flower~~
14 ~~cultivated by a licensee with a Type 1, Type 1A, or Type 1B~~
15 ~~classification as described in Section 19300.7 of the Business and~~
16 ~~Professions Code.~~

17 (2) ~~Nine dollars and twenty-five cents (\$9.25) per ounce of~~
18 ~~medical cannabis flower cultivated by a licensee with a Type 2,~~
19 ~~Type 2A, or Type 2B classification as described in Section 19300.7~~
20 ~~of the Business and Professions Code.~~

21 (3) ~~_____ dollars (\$_____) per ounce of medical cannabis flower~~
22 ~~cultivated by a licensee with a Type 3, Type 3A, or Type 3B~~
23 ~~classification as described in Section 19300.7 of the Business and~~
24 ~~Professions Code.~~

25 (4) ~~One dollar and twenty-five cents (\$1.25) per immature~~
26 ~~medical cannabis plant.~~

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

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

37 (e) ~~The tax imposed by this part shall not apply to the sale of~~
38 ~~medical cannabis flower and immature medical cannabis plant by~~
39 ~~a cultivator to the distributor.~~

1 31005. (a) On and after the operative date set forth in Section
2 31030, for the privilege of doing business as a distributor in this
3 state, every distributor shall pay a tax on all medical cannabis
4 and medical cannabis products distributed to a dispensary in this
5 state, including distributions to a licensee holding a producing
6 dispensary license, at the following rates:

7 (1) Four dollars and seventy-five cents (\$4.75) per ounce of
8 medical cannabis flowers cultivated by a licensee with, or subject
9 to, a Type 1, Type 1A, or Type 1B classification as described in
10 Section 19300.7 of the Business and Professions Code.

11 (2) Nine dollars and twenty-five cents (\$9.25) per ounce of
12 medical cannabis flowers cultivated by a licensee with, or subject
13 to, a Type 2, Type 2A, or Type 2B classification as described in
14 Section 19300.7 of the Business and Professions Code.

15 (3) Thirteen dollars and twenty-five cents (\$13.25) per ounce
16 of medical cannabis flowers cultivated by a licensee with, or
17 subject to, a Type 3, Type 3A, or Type 3B classification as
18 described in Section 19300.7 of the Business and Professions Code.

19 (4) One dollar and twenty-five cents (\$1.25) per immature
20 medical cannabis plant.

21 (5) (A) At the rate equivalent to the combined rate of taxes on
22 the privilege of selling tangible personal property at retail in this
23 state that are imposed by the Sales and Use Tax Law (Part 1
24 (commencing with Section 6001)) and the California Constitution,
25 upon the wholesale cost of any medical cannabis product
26 manufactured by a licensee with a Type 6 or Type 7 classification
27 as described in Section 19300.7 of the Business and Professions
28 Code.

29 (B) In the case where a distributor does not make a sale to a
30 dispensary at the time of distribution, the distributor shall maintain
31 a copy of the contract provided in paragraph (3) of subdivision
32 (c) of Section 19326 of the Business and Professions Code
33 indicating the price and quantity of medical cannabis or medical
34 cannabis products to be distributed and any other information
35 deemed necessary by the board. In the case of a licensee with a
36 Type 10A classification (producing dispensary license) where the
37 cultivator or manufacturer licensee and dispensary licensee to
38 whom the medical cannabis or medical cannabis product is
39 distributed are the same person, a distributor shall maintain any

1 *information deemed necessary by the board to ascertain wholesale*
2 *cost.*

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

5 31005.3. The board may prescribe by regulation a method and
6 manner for payment of the tax imposed by this part that utilizes
7 tax stamps or state-issued product bags that indicate that all
8 required tax has been paid on the distribution of the medical
9 cannabis flower, immature medical cannabis plant, and medical
10 cannabis product to which the tax stamp is affixed or in which the
11 medical cannabis flower, immature medical cannabis plant, and
12 medical cannabis product are packaged.

13 31006. The Legislative Analyst’s Office shall regularly review
14 the tax levels established under this part, at a minimum of every
15 other year, beginning in 2020, and make recommendations to the
16 Legislature, as appropriate, regarding adjustments that would
17 further the goal of addressing public safety and the environmental
18 impacts caused by the proliferation of cannabis cultivation.

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CHAPTER 3. ADMINISTRATION

22 31010. The board shall administer and collect the tax imposed
23 by this part pursuant to the Fee Collection Procedures Law (Part
24 30 (commencing with Section 55001)), except that Article 1.1
25 (commencing with Section 55050) of Chapter 3 of Part 30 shall
26 not apply. For purposes of this part, the references in the Fee
27 Collection Procedures Law to “fee” shall include the tax imposed
28 by this part, and references to “feepayer” shall include a *any* person
29 required to pay the tax imposed by this part.

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

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

1 regulation is an emergency and shall be considered by the Office
2 of Administrative Law as necessary for the immediate preservation
3 of the public peace, health and safety, and general welfare.

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

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

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

12 31012.1. (a) A distributor required to pay the tax imposed
13 under this part shall register for a permit with the board. Every
14 application for registration shall be made in a form prescribed by
15 the board and shall set forth the name under which the applicant
16 transacts or intends to transact business, the location of the
17 distributor's place or places of business, and any other information
18 that the board may require. An application for registration shall
19 be authenticated in a form or pursuant to methods as may be
20 prescribed by the board.

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

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

29 31012.3. Whenever any distributor fails to comply with any
30 provision of this part or any rule or regulation of the board
31 prescribed and adopted under this part, the board upon hearing,
32 after giving the distributor at least 10 days' notice in writing
33 specifying the time and place of the hearing and requiring the
34 distributor to show cause why the permit should not be suspended
35 or revoked, may suspend or revoke the permit held by the
36 distributor. The board shall give to the distributor written notice
37 of the suspension or revocation of any of the distributor's permits.
38 The notices herein required may be served personally or by mail
39 in the manner prescribed for service of notice of a deficiency
40 determination. The board shall not issue a new permit after the

1 revocation of a permit unless it is satisfied that the former holder
2 of the permit will comply with the provisions of this part and the
3 regulations of the board prescribed and adopted under this part.

4 31012.4. (a) (1) *Any peace officer, or board employee granted*
5 *limited peace officer status pursuant to paragraph (6) of*
6 *subdivision (a) of Section 830.11 of the Penal Code, upon*
7 *presenting appropriate credentials, is authorized to enter any place*
8 *as described in paragraph (3) and to conduct inspections in*
9 *accordance with this section.*

10 (2) *Inspections shall be performed in a reasonable manner and*
11 *at times that are reasonable under the circumstances, taking into*
12 *consideration the normal business hours of the place to be entered.*

13 (3) *Inspections may be at any place at which medical cannabis*
14 *flowers, immature medical cannabis plants, and medical cannabis*
15 *products are sold, produced, or stored or at any site where*
16 *evidence of activities involving evasion of the tax imposed pursuant*
17 *to this part may be discovered.*

18 (4) *Inspections shall be requested or conducted no more than*
19 *once in a 24-hour period.*

20 (b) *The board shall forward the business name, address, license*
21 *number, and any other information necessary, to the appropriate*
22 *licensing authority for any person that refuses to allow an*
23 *inspection. Any refusal to allow an inspection shall be grounds*
24 *for disciplinary action and subject to any disciplinary action*
25 *imposed pursuant to the Medical Cannabis Regulation and Safety*
26 *Act (Chapter 3.5 (commencing with Section 19300) of Division 8*
27 *of the Business and Professions Code).*

28 (c) *Upon discovery by the board that a dispensary or any other*
29 *person possesses, stores, owns, or has made a retail sale of medical*
30 *cannabis flower, immature medical cannabis plant, and medical*
31 *cannabis products on which tax is due but has not been paid to*
32 *the board, a licensing authority shall affix a tag or other*
33 *appropriate marking and take other action as provided in Section*
34 *19347.8 of the Business and Professions Code.*

35 31012.5. *A licensing authority may enter into memoranda of*
36 *understanding with the board for data sharing purposes for*
37 *administration and collection of the tax imposed under this part.*

38 31013. (a) *The Cannabis Production and Environment*
39 *Mitigation Fund is hereby created in the State Treasury. All taxes,*
40 *interest, penalties, and other amounts collected and paid to the*

1 board pursuant to this part, less payments of refunds and costs of
2 administration, shall be deposited in the fund.

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

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

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

33 (3) Thirty percent to the Natural Resources Agency for
34 environmental cleanup restoration and protection of public and
35 private lands that have been damaged by illegal cannabis
36 cultivation. Where appropriate, the agency may administer funds
37 using competitive grant programs established pursuant to Chapter
38 3.8 (commencing with Section 5750) of Division 5 of the Public
39 Resources Code and described in subdivision (a) and paragraph
40 (1) of subdivision (l) of Section 75050 of the Public Resources

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

22 (4) Eight percent to the Open Space Subvention Payment
23 Account of the California Land Conservation Act of 1965 (Chapter
24 7 (commencing with Section 51200) of Part 1 of Division 1 of
25 Title 5 of the Government Code). Administrative costs to the
26 Department of Conservation shall be no more than the reasonable
27 costs to administer the program and shall be no more than 0.5
28 percent of the 8 percent.

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

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36 CHAPTER 4. REPORT TO THE LEGISLATURE

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38 31025. (a) The board shall submit a report to the Legislature
39 on the total amount of revenue that was collected for the two-year
40 period commencing on the operative date of this part. The report

1 is due to the Legislature on or before the last day of the month
2 commencing 180 days after the two-year period commencing on
3 the operative date of this part.

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

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CHAPTER 5. OPERATIVE DATE AND FUNDING

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10 31030. This part shall become operative on or after the first
11 day of the first calendar quarter commencing more than 270 days
12 after adequate funding has been received by the board to implement
13 and administer this part. The board shall post a notice on its Internet
14 Web site when this condition has been satisfied.

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CHAPTER 6. NO PREEMPTION OF LOCAL TAXATION AUTHORITY

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

SEC. 2. No reimbursement is required by this act pursuant to
Section 6 of Article XIII B of the California Constitution because
the only costs that may be incurred by a local agency or school

1 district will be incurred because this act creates a new crime or
2 infraction, eliminates a crime or infraction, or changes the penalty
3 for a crime or infraction, within the meaning of Section 17556 of
4 the Government Code, or changes the definition of a crime within
5 the meaning of Section 6 of Article XIII B of the California
6 Constitution.

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

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