

AMENDED IN SENATE MARCH 15, 2016

SENATE BILL

No. 987

Introduced by Senator McGuire

February 10, 2016

An act to add Part 17 (commencing with Section 37001) to Division 2 of the Revenue and Taxation Code, relating to medical marijuana.

LEGISLATIVE COUNSEL'S DIGEST

SB 987, as amended, McGuire. Taxation: medical marijuana: Marijuana Value Tax Act.

Existing law, the Compassionate Use Act of 1996, an initiative measure enacted by the approval of Proposition 215 at the November 5, 1996, statewide general election, allows the use of marijuana for medical purposes. The Medical Marijuana Regulation and Safety Act, operative beginning on January 1, 2016, provides for the licensure and regulation of commercial medical marijuana activity, as specified. The Fee Collection Procedures Law, the violation of which is a crime, provides procedures for the collection of certain fees and surcharges.

This bill, on and after January 1, 2018, *unless a specified initiative is passed by the voters at the November 8, 2016, statewide general election*, would impose an excise tax on the consumption or other use in this state of medical marijuana purchased from any retailer for the consumption or other use in this state at the rate of 15% of the sales price of the medical marijuana. This bill would provide that a purchaser is liable for that tax and would require every retailer engaged in business in this state and making sales of medical marijuana to a purchaser for the consumption or other use in this state to separately state and collect the tax from a purchaser, as specified. This bill would also make specific

violations of this bill a crime, thereby imposing a state-mandated local program.

This bill would require the State Board of Equalization to administer and collect the tax in accordance with the Fee Collection Procedures Law. By expanding the application of the Fee Collection Procedures Law, the violation of which is a crime, this bill would impose a state-mandated local program. The bill would require a retailer to register for a permit with the board, to prepare and file with the board returns, and to remit the tax quarterly. The bill would require that all revenues, less refunds, be remitted to the State Board of Equalization and deposited in the Marijuana Value Tax Fund, which the bill would establish.

This bill would require moneys in the Marijuana Value Tax Fund to be allocated by the Controller in specified percentages to the General Fund and, upon appropriation by the Legislature, to the Bureau of Medical Marijuana Regulation for the administration of a grant program to distribute grants to local agencies, *including districts*, that oversee *or are affected by* the regulation of cultivating, processing, manufacturing, distributing, and selling of medical *marijuana*, *or that undertake enforcement activities pertaining to the cultivation of marijuana*; the Department of Parks and Recreation for ~~base operations of state parks; to county and city human service departments the stewardship, operation, maintenance, and preservation of state park units; and to counties for allocation to city human services departments~~ for drug and alcohol treatment ~~programs; to the California Natural Resources Agency for restoration and remediation of public and private lands and watersheds damaged by medical marijuana cultivation and for allocation as grants for those purposes.~~ *programs. By requiring counties to allocate funds to city human services departments, 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 provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains

costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

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

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

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

1 SECTION 1. The Legislature finds and declares that edible
2 cannabis products, as defined in Section 19300.5 of the Business
3 and Professions Code and as applicable to Section 2 of this act,
4 are not considered a food product for purposes of Section 34 of
5 Article XIII of the California Constitution.

6 SEC. 2. Part 17 (commencing with Section 37001) is added to
7 Division 2 of the Revenue and Taxation Code, to read:

8
9

PART 17. MARIJUANA VALUE TAX ACT

10

11 37001. This part is known, and may be cited, as the “Marijuana
12 Value Tax Act.”

13 37002. For purposes of this part, the following definitions shall
14 apply:

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

17 (b) “Person” means person as defined in Section 55002.

18 (c) “Primary caregiver” means a person who is exempt from
19 the licensure requirements of the Medical Marijuana Regulation
20 and Safety Act (Chapter 3.5 (commencing with Section 19300) of
21 Division 8 of the Business and Professions Code) pursuant to
22 subdivision (b) of Section 19319 of the Business and Professions
23 Code.

24 (e)

25 (d) “Purchaser” means a person that purchases medical
26 marijuana for consumption or other use in this state.

27 (e) “Qualified patient” means a person who is entitled to the
28 protections of the Compassionate Use Act of 1996 (Section 11362.5
29 of the Health and Safety Code).

1 ~~(d)~~

2 (f) “Retail sale” or “sale at retail” means a sale for any purpose
3 other than resale in the regular course of business in the form of
4 medical marijuana.

5 ~~(e)~~

6 (g) (1) “Retailer” includes every person that makes any retail
7 sale or sales of medical marijuana. “Retailer” also includes a person
8 holding a dispensary license issued pursuant to the Medical
9 Marijuana Regulation and Safety Act (Chapter 3.5 (commencing
10 with Section 19300) of Division 8 of the Business and Professions
11 Code).

12 (2) Every person making more than two retail sales of medical
13 marijuana during any 12-month period shall be considered a retailer
14 within the provisions of this part.

15 ~~(f)~~

16 (h) “Retailer engaged in business in this state” means any retailer
17 that has substantial nexus with this state for purposes of the
18 commerce clause of the United States Constitution and any retailer
19 upon whom federal law permits this state to impose a tax collection
20 duty.

21 ~~(g)~~

22 (i) (1) “Sale” or “purchase” means and includes any transfer
23 of title or possession, exchange, or barter, conditional or otherwise,
24 in any manner or by any means whatsoever, of medical marijuana
25 for a consideration. “Transfer of possession” includes only
26 transactions found by the board to be in lieu of a transfer of title,
27 exchange, or barter.

28 (2) *Notwithstanding paragraph (1), “sale” or “purchase” does*
29 *not include the transfer of title or possession, exchange, or barter*
30 *of medical marijuana for a consideration between a qualified*
31 *patient and his or her primary caregiver.*

32 ~~(h)~~

33 (j) “Sales price” means the total amount for which medical
34 marijuana is sold, valued in money, whether paid in money or
35 otherwise, without any deduction on account of the cost of any
36 expenses.

37 ~~(i)~~

38 (k) “Use” includes the exercise of any right or power over
39 medical marijuana incident to the ownership of that medical

1 marijuana, except that it does not include the sale of that medical
2 marijuana in the regular course of business.

3 37003. On and after January 1, 2018, there is hereby imposed
4 an excise tax on the consumption or other use in this state of
5 medical marijuana purchased from any retailer for the consumption
6 or other use in this state at the rate of 15 percent of the sales price
7 of the medical marijuana.

8 37004. (a) Every purchaser consuming or otherwise using in
9 this state medical marijuana that the purchaser purchased from a
10 retailer for consumption or other use in this state is liable for the
11 tax imposed by Section 37003. That purchaser's liability is not
12 extinguished until the tax has been paid to this state except that a
13 receipt from a retailer engaged in business in this state given to a
14 purchaser pursuant to paragraph (2) of subdivision (b) is sufficient
15 to relieve the purchaser from further liability for the tax to which
16 the receipt refers.

17 (b) (1) Every retailer engaged in business in this state and
18 making sales of medical marijuana to a purchaser shall, at the time
19 of making such a sale, collect the tax as a charge separate from,
20 and not included in, any other fee, charge, or other amount paid
21 by the purchaser.

22 (2) Every retailer engaged in business in this state shall collect
23 the tax from the purchaser and give to the purchaser a receipt
24 therefor in the manner and form prescribed by the board.

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

33 (d) (1) The tax required to be collected by the retailer engaged
34 in business in this state, any tax collected from a purchaser that
35 has not been remitted to the board, and any amount unreturned to
36 a purchaser which is not tax but was collected from the purchaser
37 under the representation by the retailer that it was tax constitutes
38 debts owed by the retailer to this state.

39 (2) A retailer is relieved from liability to collect tax that became
40 due and payable, insofar as the measure of the tax is represented

1 by accounts that have been found to be worthless and charged off
2 by the retailer in accordance with generally accepted accounting
3 principles. A retailer that has previously paid the amount of the
4 tax may, under rules and regulations prescribed by the board, take
5 as a deduction on its return the amount found worthless and
6 charged off by the retailer. If these accounts are thereafter in whole
7 or in part collected by the retailer, the amount collected shall be
8 included in the first return filed after the collection and the amount
9 of the tax shall be paid with the return.

10 (3) The board may by regulation promulgate such other rules
11 with respect to uncollected or worthless accounts as it shall deem
12 necessary to the fair and efficient administration of this part.

13 (e) It is unlawful for any retailer to advertise or hold out or state
14 to the public or to any purchaser, directly or indirectly, that the tax
15 or any part thereof will be assumed or absorbed by the retailer or
16 that it will not be added to the selling price of the medical
17 marijuana sold or that if added it or any part thereof will be
18 refunded. Any person violating this subdivision is guilty of a
19 misdemeanor.

20 (f) The tax required to be collected by the retailer engaged in
21 business in this state from the purchaser shall be displayed
22 separately from the list price, the price advertised in the premises,
23 the marked price, or other price on the sales check or other proof
24 of sales. Any person violating this subdivision is guilty of a
25 misdemeanor.

26 (g) (1) The board may prescribe, adopt, and enforce regulations
27 relating to the administration and enforcement of this part.

28 (2) The board may prescribe, adopt, and enforce any emergency
29 regulations as necessary to implement this part. Any emergency
30 regulation prescribed, adopted, or enforced pursuant to this section
31 shall be adopted in accordance with Chapter 3.5 (commencing
32 with Section 11340) of Part 1 of Division 3 of Title 2 of the
33 Government Code, and, for purposes of that chapter, including
34 Section 11349.6 of the Government Code, the adoption of the
35 regulation is an emergency and shall be considered by the Office
36 of Administrative Law as necessary for the immediate preservation
37 of the public peace, health and safety, and general welfare.

38 (h) (1) The tax imposed by this part is due and payable to the
39 board quarterly on or before the last day of the month next
40 succeeding each quarterly period.

1 (2) On or before the last day of the month following each
2 quarterly period, a return for the preceding quarterly period shall
3 be filed using electronic media with the board. Returns shall be
4 authenticated in a form or pursuant to methods as may be
5 prescribed by the board.

6 37005. (a) A retailer required to collect the tax imposed under
7 this part shall register for a permit with the board. Every application
8 for registration shall be made in a form prescribed by the board
9 and shall set forth the name under which the applicant transacts
10 or intends to transact business, the location of the retailer's place
11 or places of business, and any other information that the board
12 may require. An application for registration shall be authenticated
13 in a form or pursuant to methods as may be prescribed by the
14 board.

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

18 (c) A permit issued pursuant to this section is not assignable
19 and is valid only for the person in whose name it is issued and for
20 the transaction of business at the place designated therein. It shall
21 at all times be conspicuously displayed at the place for which it is
22 issued.

23 37005.3. Whenever any retailer fails to comply with any
24 provision of this part or any rules or regulations of the board
25 prescribed and adopted under this part, the board upon hearing,
26 after giving the retailer at least 10 days' notice in writing specifying
27 the time and place of the hearing and requiring the retailer to show
28 cause why the permit should not be revoked, may revoke or
29 suspend the permit held by the retailer. The board shall give to the
30 retailer written notice of the suspension or revocation of any of
31 the retailer's permits. The notices herein required may be served
32 personally or by mail in the manner prescribed for service of notice
33 of a deficiency determination. The board shall not issue a new
34 permit after the revocation of a permit unless it is satisfied that the
35 former holder of the permit will comply with the provisions of this
36 part and the regulations of the board prescribed and adopted under
37 this part.

38 37005.5. (a) The board may refuse to issue a permit to any
39 person submitting an application for a permit as required in Section
40 37005 if the person desiring to engage in or conduct business as

1 a retailer within this state has an outstanding final liability with
2 the board for any amount due under this part.

3 (b) The board may also refuse to issue a permit if the person
4 desiring to engage in or conduct business as a retailer within this
5 state is not a natural person or individual and any person controlling
6 the person desiring to engage in or conduct business as a seller
7 within this state has an outstanding final liability with the board
8 as provided in subdivision (a). For the purposes of this section,
9 “controlling” has the same meaning as defined in Section 22971
10 of the Business and Professions Code.

11 (c) For purposes of this section, a liability will not be deemed
12 to be outstanding if the person has entered into an installment
13 payment agreement pursuant to Section 55209 for any liability
14 and is in full compliance with the terms of the installment payment
15 agreement.

16 (d) If the person submitting an application for a permit pursuant
17 to Section 37005 has entered into an installment payment
18 agreement as provided in subdivision (c) and fails to comply with
19 the terms of the installment payment agreement, the board may
20 seek revocation of the person’s permit pursuant to this section.

21 (e) (1) Whenever any person desiring to engage in or conduct
22 business as a retailer within this state is denied a permit pursuant
23 to this section, the board shall give to the person written notice of
24 the denial. The notice of the denial may be served personally, by
25 mail, or by other means deemed appropriate by the board. If served
26 by mail, the notice shall be placed in a sealed envelope, with
27 postage paid, addressed to the person at the address as it appears
28 in the records of the board. The giving of notice shall be deemed
29 complete at the time of deposit of the notice at the United States
30 Postal Service, or a mailbox, subpost office, substation or mail
31 chute, or other facility regularly maintained or provided by the
32 United States Postal Service, without extension of time for any
33 reason. In lieu of mailing, a notice may be served personally by
34 delivering to the person to be served and service shall be deemed
35 complete at the time of the delivery. Delivery of notice by other
36 means deemed appropriate by the board may include, but is not
37 limited to, electronic transmission. Personal service or delivery by
38 other means deemed appropriate by the board to a corporation may
39 be made by delivery of a notice to any person listed on the
40 application as an officer.

1 (2) Any person that is denied a permit pursuant to this section
2 may request reconsideration of the board's denial of the permit.
3 This request shall be submitted in writing within 30 days of the
4 date of the notice of denial. Timely submission of a written request
5 for reconsideration shall afford the person a hearing in a manner
6 that is consistent with a hearing provided for by Section 37005.3.
7 If a request for reconsideration is not filed within the 30-day period,
8 the denial becomes final at the end of the 30-day period.

9 (f) The board shall consider offers in compromise when
10 determining whether to issue a permit.

11 37006. (a) The Marijuana Value Tax Fund is hereby
12 established in the State Treasury. All revenues, less refunds,
13 collected pursuant to this part shall be made in remittances to the
14 board and shall be deposited in the Marijuana Value Tax Fund.

15 (b) Moneys in the Marijuana Value Tax Fund shall be allocated
16 by the Controller *annually* as follows:

17 (1) Thirty percent to the General Fund.

18 (2) Thirty percent to the Bureau of Medical Marijuana
19 Regulation for the administration of a grant program to distribute
20 grants to local agencies, *including districts*, that oversee or are
21 affected by the regulation of cultivating, processing, manufacturing,
22 distributing, and selling of medical ~~marijuana~~ *marijuana*, or that
23 undertake enforcement activities pertaining to the cultivation of
24 marijuana in violation of state law or local ordinance, upon
25 appropriation by the Legislature. All local agencies, *including*
26 *districts*, shall be eligible for the grants, including, but not limited
27 to, law enforcement and zoning enforcement. The grants shall be
28 made available beginning on or before July 1, 2018. No more than
29 5 percent of any funds allocated may be used for administrative
30 costs of the grant program by the bureau or for any administrative
31 costs of the local agency awarded the grant.

32 (3) Twenty percent to the Department of Parks and Recreation
33 ~~for base operations of state parks~~, *the stewardship, operation,*
34 *maintenance, and preservation of state park units, including units*
35 *operated on behalf of the state by local or regional agencies or*
36 *by nonprofit organizations*, upon appropriation by the Legislature.
37 *The department shall allocate to those local or regional agencies*
38 *or nonprofit organizations a percentage of the funds received*
39 *pursuant to this paragraph that is roughly proportional to the ratio*

1 *of the number of units operated by the agencies or organizations*
 2 *to the number of units operated by the department.*

3 ~~(4) Ten–Twenty percent to county and city human service~~
 4 ~~departments~~ *counties for drug and alcohol treatment programs,*
 5 ~~distributed based on population,~~ *based on the ratio of each county’s*
 6 *population to the total population of all counties, as set forth in*
 7 *the most recent E-1 Cities, Counties, and the State Population*
 8 *Estimates published by the Department of Finance, upon*
 9 *appropriation by the Legislature. Each county shall allocate funds*
 10 *received pursuant to this subdivision to the human services*
 11 *departments of cities within the county. Any funds appropriated*
 12 *shall be used for drug and alcohol treatment and recovery and case*
 13 *management services.*

14 ~~(5) Ten percent to the California Natural Resources Agency for~~
 15 ~~restoration and remediation of public and private lands and~~
 16 ~~watersheds damaged by medical marijuana cultivation, including~~
 17 ~~lands affected by medical marijuana cultivation before the operative~~
 18 ~~date of this section, upon appropriation by the Legislature. Fifty~~
 19 ~~percent of any funds appropriated shall be made available as a~~
 20 ~~grant to state and local government agencies and organizations~~
 21 ~~that are exempt from federal income tax as an organization~~
 22 ~~described in Section 501(e)(3) of the Internal Revenue Code for~~
 23 ~~the purpose of restoration and remediation of affected lands. The~~
 24 ~~grants shall be made available beginning on or before July 1, 2018.~~
 25 ~~No more than 5 percent of any funds awarded as grants may be~~
 26 ~~used for the administration of the grant program.~~

27 *37006.5. Commencing 2018, and at least every other year*
 28 *thereafter, the Legislative Analyst shall review and evaluate the*
 29 *tax imposed by this part, and shall provide to the Senate*
 30 *Committees on Governance and Finance, Appropriations, and*
 31 *Budget and Fiscal Review, and to the Assembly Committees on*
 32 *Revenue and Taxation, Appropriations, and Budget, a report that*
 33 *makes recommendations regarding the tax rate of, allocations of*
 34 *revenue from, and any other adjustments to, the tax imposed by*
 35 *this part. The report shall include, but not be limited to, all of the*
 36 *following:*

- 37 *(a) Annual revenues.*
- 38 *(b) Annual costs of implementing this part.*
- 39 *(c) Annual amounts allocated to all of the following:*
- 40 *(1) The General Fund.*

1 (2) *The Bureau of Medical Marijuana Regulation.*

2 (3) *The Department of Parks and Recreation.*

3 (4) *Counties, for drug and alcohol programs.*

4 (d) *Tax compliance rates.*

5 (e) *Board recommendations to improve effective and efficient*
6 *administration and enforcement of this part.*

7 37007. *Nothing in this part shall be interpreted to preclude a*
8 *city, county, or city and county from enacting or continuing to*
9 *enforce a local ordinance that imposes any taxes or other charges*
10 *on the consumption or other use of medical marijuana, as may be*
11 *otherwise authorized by law.*

12 37008. *This part shall only become operative if Secretary of*
13 *State Initiative Number 1762, also known as the Control, Regulate*
14 *and Tax Adult Use of Marijuana Act, is not approved by the voters*
15 *at the November 8, 2016, statewide general election and does not*
16 *take effect.*

17 ~~SEC. 3. No reimbursement is required by this act pursuant to~~
18 ~~Section 6 of Article XIII B of the California Constitution because~~
19 ~~the only costs that may be incurred by a local agency or school~~
20 ~~district will be incurred because this act creates a new crime or~~
21 ~~infraction, eliminates a crime or infraction, or changes the penalty~~
22 ~~for a crime or infraction, within the meaning of Section 17556 of~~
23 ~~the Government Code, or changes the definition of a crime within~~
24 ~~the meaning of Section 6 of Article XIII B of the California~~
25 ~~Constitution.~~

26 *SEC. 3. No reimbursement is required by this act pursuant to*
27 *Section 6 of Article XIII B of the California Constitution for certain*
28 *costs that may be incurred by a local agency or school district*
29 *because, in that regard, this act creates a new crime or infraction,*
30 *eliminates a crime or infraction, or changes the penalty for a crime*
31 *or infraction, within the meaning of Section 17556 of the*
32 *Government Code, or changes the definition of a crime within the*
33 *meaning of Section 6 of Article XIII B of the California*
34 *Constitution.*

35 *However, if the Commission on State Mandates determines that*
36 *this act contains other costs mandated by the state, reimbursement*
37 *to local agencies and school districts for those costs shall be made*

- 1 *pursuant to Part 7 (commencing with Section 17500) of Division*
- 2 *4 of Title 2 of the Government Code.*

O