

AMENDED IN ASSEMBLY JULY 8, 1999

SENATE BILL

No. 848

Introduced by Senator Vasconcellos

February 25, 1999

An act to add ~~Section 11362.7 to~~ *Article 2.5 (commencing with Section 11362.7) to Chapter 6 of Division 10 of the Health and Safety Code, relating to controlled substances.*

LEGISLATIVE COUNSEL'S DIGEST

SB 848, as amended, Vasconcellos. Medicinal marijuana.

Existing law, the Compassionate Use Act of 1996, prohibits any physician from being punished, or denied any right or privilege, for having recommended marijuana to a patient for medical purposes. The act prohibits the provisions of law making unlawful the possession or cultivation of marijuana from applying to a patient, or to a patient's primary care giver, who possesses or cultivates marijuana for the personal medical purposes of the patient upon the written or oral recommendation or approval of a physician. ~~Existing law establishes a Research Advisory Panel to study and approve research projects concerning marijuana or hallucinogenic drugs.~~

~~This bill would require the state to develop and implement a plan for the safe and affordable distribution of medicinal marijuana.~~

This bill would require the State Department of Health Services to establish and maintain a voluntary program for the issuance of registry identification cards to qualified patients and would establish procedures under which a qualified

patient with a registry identification card may use marijuana for medical purposes.

The bill would impose various duties upon county welfare departments relating to the issuance of registry identification cards, thus creating a state-mandated local program.

The bill would create various crimes related to the registry identification card program, thus imposing 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, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

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.

Vote: majority. 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 hereby finds and~~
 2 SECTION 1. (a) *The Legislature finds and declares*
 3 *all of the following:*
 4 (1) *On November 6, 1996, the People of the State of*
 5 *California enacted the Compassionate Use Act of 1996*
 6 *(hereafter the act), codified in Section 11362.5 of the*
 7 *Health and Safety Code, in order to allow seriously ill*
 8 *residents of the State, who have the oral or written*
 9 *approval or recommendation of a physician, to use*
 10 *marijuana for medical purposes without fear of criminal*
 11 *liability under Sections 11357 and 11358 of the Health and*
 12 *Safety Code.*



1 (2) However, reports from across the state have
2 revealed problems and uncertainties in the act that have
3 impeded the ability of law enforcement officers to
4 enforce its provisions as the voters intended and,
5 therefore, have prevented qualified patients and
6 designated primary caregivers from obtaining the
7 protections afforded by the Act.

8 (3) Furthermore, the enactment of this law, as well as
9 other recent legislation dealing with pain control,
10 demonstrates that more information is needed to assess
11 the number of individuals across the state who are
12 suffering from serious medical conditions that are not
13 being adequately alleviated through the use of
14 conventional medications.

15 (4) In addition, the act called upon the state and the
16 federal government to develop a plan for the safe and
17 affordable distribution of marijuana to all patients in
18 medical need thereof.

19 (b) It is the intent of the Legislature, therefore, to do
20 all of the following:

21 (1) Clarify the scope of the application of the act and
22 facilitate the prompt identification of qualified patients
23 and their designated primary caregivers in order to avoid
24 unnecessary arrest and prosecution of these individuals
25 and provide needed guidance to law enforcement
26 officers.

27 (2) Promote uniform and consistent application of the
28 act among the counties within the state.

29 (3) Collect data to ascertain the extent of serious
30 medical conditions that are not being adequately relieved
31 in order to plan for future research and resource
32 allocation.

33 (4) Enhance the access of patients and caregivers to
34 medical marijuana through collective, cooperative
35 cultivation projects.

36 (c) It is also the intent of the Legislature to address
37 additional issues that were not included within the act,
38 and that must be resolved in order to promote the fair and
39 orderly implementation of the act.



1 (d) The Legislature further finds and declares both of
2 the following:

3 (1) A state registry identification card program will
4 further the goals outlined in this section.

5 (2) With respect to individuals, the registry
6 identification system established pursuant to this act must
7 be wholly voluntary, and a patient entitled to the
8 protections of Section 11362.5 of the Health and Safety
9 Code need not possess a registry identification card in
10 order to claim the protections afforded by that section.

11 SEC. 2. Article 2.5 (commencing with Section
12 11362.7) is added to Chapter 6 of Division 10 of the Health
13 and Safety Code, to read:

14

15 Article 2.5. Medical Marijuana Program

16

17 11362.7. For purposes of this article, the following
18 definitions shall apply:

19 (a) "Attending physician" means any physician who
20 has taken responsibility for an aspect of the medical care,
21 treatment, diagnosis, counseling, or referral of a patient
22 and who has conducted a medical examination of that
23 patient before recording in the patient's medical record
24 the physician's assessment of whether the patient has a
25 serious medical condition and whether the medical use of
26 marijuana is appropriate.

27 (b) "Department" means the State Department of
28 Health Services.

29 (c) "Person with a registry identification card" means
30 an individual who is a qualified patient who has applied
31 for and received a valid registry identification card
32 pursuant to this article.

33 (d) "Physician" means an individual who possesses a
34 license in good standing to practice medicine or
35 osteopathy issued by the Medical Board of California or
36 the Osteopathic Medical Board of California.

37 (e) "Primary caregiver" means the individual,
38 designated by a qualified patient or by a person with a
39 registry identification card, who has consistently assumed



1 responsibility for the housing, health, or safety of that
2 patient or person, and may include any of the following:

3 (1) The owner or operator, or an employee of the
4 owner or operator of a clinic licensed pursuant to Chapter
5 1 (commencing with Section 1200) of Division 2, a health
6 care facility licensed pursuant to Chapter 2 (commencing
7 with Section 1250) of Division 2, a residential care facility
8 for persons with chronic life-threatening illness licensed
9 pursuant to Chapter 3.01 (commencing with Section
10 1568.01) of Division 2, a residential care facility for the
11 elderly licensed pursuant to Chapter 3.2 (commencing
12 with Section 1569) of Division 2, a hospice, or a home
13 health agency licensed pursuant to Chapter 8
14 (commencing with Section 1725) of Division 2, and from
15 which a qualified patient or person with a registry
16 identification card receives medical care or supportive
17 services, or both.

18 (2) An individual who has been designated as a
19 primary caregiver by one or more qualified patients or
20 persons with a registry identification card, or who has
21 been designated as a primary caregiver by only one
22 qualified patient or person with a registry identification
23 card if the designated primary caregiver is in a city or
24 county other than that in which the qualified patient or
25 person with a registry identification card resides.

26 (3) A primary caregiver shall be at least 18 years of age,
27 unless the primary caregiver is the parent of a minor child
28 who is a qualified patient or a person with a registry
29 identification card or the primary caregiver is a person
30 otherwise entitled to make medical decisions under state
31 law pursuant to Sections 6922, 7002, 7050, or 7120 of the
32 Family Code.

33 (f) “Qualified patient” means a person who is entitled
34 to the protections of Section 11362.5, but who does not
35 have a registry identification card issued pursuant to this
36 article.

37 (g) “Registry identification card” means a document
38 issued by the State Department of Health Services which
39 identifies a person authorized to engage in the medical



1 use of marijuana and the person's designated primary
2 caregiver, if any.

3 (h) "Serious medical condition" means all of the
4 following medical conditions:

5 (1) Acquired immune deficiency syndrome (AIDS).

6 (2) Anorexia.

7 (3) Arthritis.

8 (4) Cachexia.

9 (5) Cancer.

10 (6) Chronic pain.

11 (7) Glaucoma.

12 (8) Migraine.

13 (9) Persistent muscle spasms, including, but not
14 limited to, spasms associated with multiple sclerosis.

15 (10) Seizures, including, but not limited to, seizures
16 associated with epilepsy.

17 (11) Severe nausea.

18 (12) Any other chronic or persistent medical symptom
19 that either:

20 (A) Substantially limits the ability of the person to
21 conduct one or more major life activities as defined in the
22 Americans with Disabilities Act of 1990 (Public Law
23 101-336).

24 (B) If not alleviated, may cause serious harm to the
25 patient's safety or physical or mental health.

26 (i) "Written documentation" means accurate
27 reproductions of those portions of a patient's medical
28 records that have been created by the attending
29 physician, containing the information required by
30 paragraph (2) of subdivision (a) of Section 11362.715,
31 which the patient may submit to a county health
32 department or its designee as part of an application for a
33 registry identification card.

34 11362.71. (a) The department shall establish and
35 maintain a voluntary program for the issuance of registry
36 identification cards to qualified patients who satisfy the
37 requirements of this article and voluntarily apply to the
38 registry identification card program.

39 (b) Every county health department shall do all of the
40 following:



1 (1) Provide applications upon request to individuals
2 seeking to join the registry identification card program.

3 (2) Receive and process completed applications in
4 accordance with Section 11362.72.

5 (3) Maintain records of registry identification card
6 programs in accordance with Section 11362.75.

7 (4) Utilize protocols developed by the department
8 pursuant to paragraph (2) of subdivision (d).

9 (c) The county health department may designate
10 another governmental or a nongovernmental entity or
11 organization to perform the functions described in
12 subdivision (b), except for an entity or organization that
13 cultivates or distributes marijuana.

14 (d) The department shall develop both of the
15 following:

16 (1) Protocols that shall be used by county health
17 departments and their designees to implement the
18 responsibilities described in subdivision (b), including,
19 but not limited to, protocols to confirm the accuracy of
20 information contained in an application and to protect
21 the confidentiality of program records.

22 (2) Application forms that shall be issued to requesting
23 applicants.

24 (e) The county health department or its designee shall
25 submit an annual report to the department indicating the
26 number of persons whose applications for registry
27 identification cards have been approved and the types of
28 serious medical conditions from which the applicants
29 suffer. However, except as provided in subdivision (b) of
30 Section 11362.72, in no case shall the identities of persons
31 be reported to the department.

32 (f) No person or designated primary caregiver with a
33 valid registry identification card shall be subject to arrest
34 for possession, transportation, delivery, or cultivation of
35 medical marijuana in an amount approved by the
36 department pursuant to Section 11362.77, unless there is
37 reasonable cause to believe that the information
38 contained in the card is false or falsified, the card has been
39 obtained by means of fraud, or the person is otherwise in
40 violation of the provisions of this article.



1 (g) *It shall not be necessary for a person to obtain a*
2 *registry identification card in order to claim the*
3 *protections of Section 11362.5.*

4 *11362.715. (a) A person who seeks a registry*
5 *identification card shall pay the fee, if any, as provided in*
6 *Section 11362.755, and provide all of the following to the*
7 *county health department or its designee:*

8 *(1) The name, address, telephone number, social*
9 *security number, and date of birth of the person, and*
10 *proof of his or her residency within the county.*

11 *(2) Written documentation by the attending*
12 *physician in the person's medical records stating that the*
13 *person has been diagnosed with a serious medical*
14 *condition and that the medical use of marijuana is*
15 *appropriate.*

16 *(3) The name, office address, office telephone*
17 *number, and California license number of the person's*
18 *attending physician.*

19 *(4) The name, address, telephone number, social*
20 *security number, and date of birth of the person's*
21 *designated primary caregiver, if any, and the duties of the*
22 *primary caregiver.*

23 *(5) A copy of a photo identification card of the person*
24 *and of the designated primary caregiver, if any. If the*
25 *applicant is a person under 18 years of age, a certified*
26 *copy of a birth certificate shall be deemed sufficient proof*
27 *of identity.*

28 *(b) If the person applying for a registry identification*
29 *card lacks the capacity to make medical decisions, the*
30 *application may be made by the person's legal*
31 *representative, including, but not limited to, any of the*
32 *following:*

33 *(1) A conservator with authority to make medical*
34 *decisions.*

35 *(2) An attorney-in-fact under a durable power of*
36 *attorney for health care or surrogate decisionmaker*
37 *authorized under another advanced health care*
38 *directive.*

39 *(3) Any other individual authorized by statutory or*
40 *decisional law to make medical decisions for the person.*



1 (c) *The legal representative described in subdivision*
2 *(b) may also designate in the application an individual,*
3 *including himself or herself, to serve as a primary*
4 *caregiver for the person, provided that the individual*
5 *meets the definition of a primary caregiver.*

6 (d) *The person or legal representative submitting the*
7 *written information and documentation described in*
8 *subdivision (a) shall retain a copy thereof, as well as proof*
9 *of date of mailing or other method of delivery to the*
10 *county health department or its designee.*

11 11362.72. (a) *Within 30 days of receipt of an*
12 *application for a registry identification card, a county*
13 *health department or its designee shall do all of the*
14 *following:*

15 (1) *For the purpose of processing the application, as*
16 *well as for the purpose of obtaining data to assess the*
17 *number of individuals in this state suffering from serious*
18 *medical conditions that are not being adequately*
19 *alleviated through the use of conventional medications,*
20 *verify that the information contained in the application*
21 *is accurate. In any case where the person is less than 18*
22 *years of age, the county health department or its designee*
23 *shall also contact the parent with legal authority to make*
24 *medical decisions, legal guardian, or other person or*
25 *entity with legal authority to make medical decisions, to*
26 *verify the information. In any case where proof of*
27 *identity is uncertain, the county health department or its*
28 *designee may require an in-person meeting with the*
29 *person or primary caregiver, or the production of*
30 *additional identification materials for verification*
31 *purposes, or both. In all cases, the county health*
32 *department or its designee shall do both of the following:*

33 (A) *Verify with the Medical Board of California or the*
34 *Osteopathic Medical Board of California that the*
35 *attending physician has a license in good standing to*
36 *practice medicine or osteopathy in the state.*

37 (B) *Contact the attending physician by telephone or*
38 *mail to confirm that the medical records submitted by the*
39 *patient are a true and correct copy of those contained in*
40 *the physician's office records. When contacted by a*



1 county health department or its designee, the attending
2 physician shall confirm or deny that the contents of the
3 medical records are accurate.

4 (2) Take a photograph or otherwise obtain an
5 electronically transmissible image of the applicant and of
6 the designated primary caregiver, if any.

7 (3) Approve or deny the application. If an applicant
8 who meets the requirements of Section 11362.715 can
9 establish that a registry identification card is needed on
10 an emergency basis, the county or its designee shall issue
11 a temporary registry identification card.

12 (b) If the county health department or its designee
13 approves the application, it shall, within 24 hours, or by
14 the end of the next working day of that determination,
15 electronically transmit the following information to the
16 department:

17 (1) The name of the applicant.

18 (2) The name of the designated primary caregiver, if
19 any, of the applicant.

20 (3) The photographic image of the applicant and of
21 the designated primary caregiver, if any.

22 (4) The name and telephone number of the county
23 health department or its designee that has approved the
24 application.

25 (c) The department shall issue a registry identification
26 card to the applicant and to his or her designated primary
27 caregiver, if any, within five working days of receipt of
28 that determination.

29 (d) In any case involving an incomplete application,
30 the county health department shall send notice of a
31 deficiency within 30 days of receipt of an application. The
32 applicant shall have 30 days from the date of receipt of
33 that notification to rectify the deficiency. The county
34 shall have 14 days from the receipt of information from
35 the applicant pursuant to this subdivision to approve or
36 deny the application. If the applicant does not provide
37 the county with information that rectifies the deficiency
38 within the 30-day period, the application may be denied
39 in accordance with Section 11362.74.



1 11362.735. (a) A registry identification card issued by
2 the department shall be serially numbered and shall state
3 all of the following:

4 (1) The cardholder's name, home address, and date of
5 birth.

6 (2) The date of expiration of the registry identification
7 card.

8 (3) The name and telephone number of the county
9 health department or its designee that has approved the
10 application.

11 (4) A 24-hour, toll-free telephone number which will
12 enable state and local law enforcement officers to have
13 immediate access to information necessary to verify the
14 validity of the card.

15 (5) Photo identification of the cardholder.

16 (b) A separate registry identification card shall be
17 issued to the person's designated primary caregiver, if
18 any, and shall include a photo identification of the
19 caregiver.

20 11362.74. (a) The county health department or its
21 designee may deny an application only for either of the
22 following reasons:

23 (1) The applicant did not provide the information
24 required by Section 11362.715, and upon notice of the
25 deficiency pursuant to subdivision (e) of Section
26 11362.72, did not provide the information within 30 days.

27 (2) The county health department or its designee
28 determines that the information provided was false.

29 (b) Any person whose application has been denied
30 pursuant to subdivision (a) may not reapply for six
31 months from the date of denial unless otherwise
32 authorized by the county health department or its
33 designee or by a court of competent jurisdiction.

34 (c) The county health department or its designee shall
35 transmit its determination of denial to the department

36 11362.745. (a) A registry identification card shall be
37 valid for a period of one year.

38 (b) No later than 45 days before the expiration of the
39 term of a registry identification card, the county health
40 department or its designee shall send a renewal notice to



1 *the person and to the designated primary caregiver, if*
2 *any, at the addresses shown in the program records, as*
3 *provided in Section 11362.75.*

4 *(c) Upon annual renewal of a registry identification*
5 *card, the county health department or its designee shall*
6 *verify all new information and may verify any other*
7 *information that has not changed.*

8 *(d) The county health department or its designee shall*
9 *transmit its determination of approval or denial of a*
10 *renewal to the department.*

11 *11362.75. (a) The county health department or its*
12 *designee shall keep complete program records,*
13 *including, but not limited to, all of the following:*

14 *(1) All written information and documentation*
15 *contained in an application for a registry identification*
16 *card, including photographic identification of the*
17 *applicant and his or her designated primary caregiver, if*
18 *any.*

19 *(2) The nature and results of the efforts of the county*
20 *health department or its designee to verify the accuracy*
21 *of the information contained in an application.*

22 *(3) A list of persons for whom applications for registry*
23 *identification cards have been approved.*

24 *(4) A list of the persons whose applications for issuance*
25 *or renewal of registry identification cards have been*
26 *denied pursuant to Section 11362.74 or 11362.745,*
27 *including the reason for, and date of, the denial.*

28 *(b) The department shall maintain program records*
29 *containing all of the following:*

30 *(1) The name of each registry identification*
31 *cardholder.*

32 *(2) The name of the designated primary caregiver of*
33 *the registry identification cardholder, if any.*

34 *(3) Photographic identification of the cardholder and*
35 *his or her designated primary caregiver, if any.*

36 *(4) The identification number of the registry*
37 *identification card.*

38 *(5) The name and telephone number of the county*
39 *health department or its designee that has approved the*



1 application for the issuance or renewal of the registry
2 identification card.

3 (c) The records described in subdivisions (a) and (b)
4 shall be confidential and not subject to public disclosure.

5 (d) The department shall transmit the information
6 described in subdivision (b) to the California Law
7 Enforcement Telecommunications System (CLETS)
8 after issuance of a registry identification card.

9 11362.755. The department may establish application
10 and renewal fees for persons seeking to obtain or renew
11 registry identification cards that are sufficient to cover
12 the expenses of administering the registry identification
13 card program. However, upon satisfactory proof of
14 indigence, these fees shall be waived.

15 11362.76. (a) A person who possesses a registry
16 identification card shall:

17 (1) Within seven days, notify the county health
18 department or its designee of any change in the person's
19 name, address, attending physician, or designated
20 primary caregiver, if any.

21 (2) Annually submit to the county health department
22 or its designee the following:

23 (A) Updated written documentation of the person's
24 serious medical condition.

25 (B) The name, home address, and duties of the
26 person's designated primary caregiver, if any, for the
27 forthcoming year.

28 (b) If a person who possesses a registry identification
29 card fails to comply with this section, the card shall be
30 deemed expired. If a registry identification card expires,
31 the registry identification card of any designated primary
32 caregiver of the person shall also expire.

33 (c) If the designated primary caregiver has been
34 changed, the previous primary caregiver shall return his
35 or her registry identification card to the department or to
36 the county health department or its designee.

37 (d) If the owner or operator or an employee of the
38 owner or operator of a provider has been designated as
39 a primary caregiver pursuant to paragraph (1) of
40 subdivision (d) of Section 11362.7, or the qualified patient



1 or person with a registry identification card, the owner or
2 operator shall notify the county health department or its
3 designee, pursuant to Section 11362.715, if a change in the
4 designated primary caregiver has occurred.

5 11362.765. (a) Subject to the requirements of this
6 article, the individuals specified in subdivision (b) shall
7 not be subject, on that sole basis, to criminal liability
8 under Section 11357, 11358, 11359, 11360, 11366, 11366.5,
9 or 11570. However, nothing in this section shall authorize
10 the individual to smoke or otherwise consume marijuana
11 unless otherwise authorized by this article.

12 (b) Subdivision (a) shall apply to all of the following:

13 (1) A qualified patient or a person with a registry
14 identification card who transports or processes marijuana
15 for his or her own personal medical use.

16 (2) A designated primary caregiver who transports,
17 processes, administers, delivers, or gives away marijuana
18 for medical purposes, in amounts not exceeding those
19 established by regulations that shall be adopted by the
20 department pursuant to Section 11362.77, only to the
21 qualified patient of the primary caregiver, or to the
22 person with a registry identification card who has
23 designated the individual as a primary caregiver.

24 (3) Any individual who provides assistance to a
25 qualified patient or a person with a registry identification
26 card, or his or her designated primary caregiver, in
27 administering medical marijuana to the qualified patient
28 or person or acquiring the skills necessary to cultivate or
29 administer marijuana for medical purposes to the
30 qualified patient or person.

31 (c) The following individuals who receive reasonable
32 compensation for services, payment for out-of-pocket
33 expenses incurred, or both, shall not, on the sole basis of
34 that fact, be subject to prosecution or punishment under
35 Section 11359 or 11360:

36 (1) A designated primary caregiver who cultivates,
37 transports, delivers, or administers medical marijuana to
38 a qualified patient or to a person with a registry
39 identification card, in amounts not exceeding those



1 established by regulations to be adopted by the
2 department pursuant to Section 11362.77.

3 (2) Any other individual who delivers, administers, or
4 provides other assistance as described in paragraph (3) of
5 subdivision (b) to a qualified patient or a person with a
6 registry identification card.

7 11362.77. A qualified patient or a person holding a
8 valid registry identification card, or the designated
9 primary caregiver of that qualified patient or person, may
10 possess amounts of marijuana for the qualified patient's or
11 person's own personal medical use in amounts to be
12 determined by emergency regulations that shall be
13 adopted by the department, after public comment and
14 consultation with interested organizations. The
15 regulations shall be based on currently available scientific
16 research and knowledge and shall be reviewed annually
17 to determine if revision is necessary to reflect material
18 changes in research and knowledge.

19 11362.775. Qualified patients, persons with valid
20 registry identification cards, and the designated primary
21 caregivers of qualified patients and persons with registry
22 identification cards, may associate or incorporate, or
23 both, in order collectively or cooperatively to cultivate
24 marijuana for medical purposes and these individuals
25 participating in cooperative cultivation projects shall not
26 solely on the basis of that fact be subject to criminal
27 sanctions under Section 11357, 11358, 11359, 11360, 11366,
28 11366.5, or 11570. The department shall adopt regulations,
29 after public comment and consultation with interested
30 organizations, governing the operation and supervision
31 of these cooperatives, no later than December 31, 2000.
32 The regulations shall specify the only methods or
33 protocols that the cultivation projects shall employ to
34 ensure the consistency of composition, noncontamination
35 and nondiversion of medical marijuana. The county
36 health department or its designee shall have the right to
37 inspect the cultivation projects to ensure compliance
38 with the methods or protocols.

39 11362.78. A state or local law enforcement agency or
40 officer shall not refuse to accept a registry identification



1 card issued by the department unless the state or local law
2 enforcement agency or officer has reasonable cause to
3 believe that the information contained in the card is false
4 or fraudulent, or the card is being used fraudulently.

5 11362.785. (a) Nothing in this article shall require
6 any accommodation of any medical use of marijuana on
7 the property or premises of any place of employment or
8 during the hours of employment or on the property or
9 premises of any jail, correctional facility, or other type of
10 penal institution in which prisoners reside or persons
11 under arrest are detained.

12 (b) Notwithstanding subdivision (a), a person shall
13 not be prohibited or prevented from obtaining and
14 submitting the written information and documentation
15 necessary to apply for a registry identification card on the
16 basis that the person is incarcerated in a jail, correctional
17 facility, or other penal institution in which prisoners
18 reside or persons under arrest are detained.

19 (c) Nothing in this article shall prohibit a jail,
20 correctional facility, or other penal institution in which
21 prisoners reside or persons under arrest are detained,
22 from permitting a prisoner or a person under arrest who
23 has a registry identification card, to use marijuana for
24 medical purposes under circumstances that will not
25 endanger the health or safety of other prisoners or the
26 security of the facility.

27 (d) Nothing in this article shall require a
28 governmental, private, or any other health insurance
29 provider or health care service plan to be liable for any
30 claim for reimbursement for the medical use of
31 marijuana.

32 11362.79. Nothing in this article shall authorize a
33 qualified patient or person with a registry identification
34 card to engage in the smoking of medical marijuana:

35 (a) In any place where smoking is prohibited by law.

36 (b) In or within 1,000 feet of the grounds of a school,
37 recreation center, or youth center, unless the medical use
38 occurs within a residence.

39 (c) On a school bus.

40 (d) While in a motor vehicle that is being operated.



1 (e) While operating a boat.

2 11362.795. With respect to the conditions of probation
3 or parole or release on bail, the burden of proof shall be
4 on the recipient of the conditions to demonstrate that use
5 of medical marijuana by the recipient should not be
6 included in the conditions. The court shall consider the
7 proof and shall provide a written record describing the
8 reasons for its denial of the request.

9 11362.8. No professional licensing board may impose
10 a civil penalty or take other disciplinary action against a
11 licensee based solely on the fact that the licensee has
12 performed acts that are necessary or appropriate to carry
13 out the licensee's role as a designated primary caregiver
14 to a person who is a qualified patient or who possesses a
15 lawful registry identification card issued pursuant to
16 Section 11362.72. However, this section shall not apply to
17 acts performed by a physician relating to the discussion
18 or recommendation of the medical use of marijuana to a
19 patient. These discussions or recommendations, or both,
20 shall be governed by Section 11362.5.

21 11362.81. (a) Any person specified in subdivision (b)
22 shall be punishable as follows:

23 (1) For the first offense, imprisonment in the county
24 jail for no more than six months or a fine not to exceed one
25 thousand dollars (\$1,000), or both.

26 (2) For a second or subsequent offense, imprisonment
27 in the county jail for no more than one year, or a fine not
28 to exceed one thousand dollars (\$1,000), or both.

29 (b) Subdivision (a) applies to any of the following:

30 (1) A person who fraudulently represents a medical
31 condition or fraudulently provides any material
32 misinformation to a physician, county health department
33 or its designee, or state or local law enforcement agency
34 or officer, for the purpose of falsely obtaining a registry
35 identification card.

36 (2) A person who steals or fraudulently uses any
37 person's registry identification card in order to acquire,
38 possess, cultivate, transport, use, produce, or distribute
39 marijuana.



1 (3) A person who counterfeits, tampers with, or
2 fraudulently produces a registry identification card.

3 (4) A person who breaches the confidentiality
4 requirements afforded by this article to information
5 provided to, or contained in the records of, the
6 department or of a county health department or its
7 designee pertaining to a registry identification card
8 program.

9 (c) In addition to the penalties prescribed in
10 subdivision (a), any person described in subdivision (b)
11 may be precluded from attempting to obtain, or
12 obtaining or using, a registry identification card for a
13 period of up to six months at the discretion of the court.

14 11362.82. If any section, subdivision, sentence, clause,
15 phrase, or portion of this article is for any reason held
16 invalid or unconstitutional by any court of competent
17 jurisdiction, that portion shall be deemed a separate,
18 distinct, and independent provision, and that holding
19 shall not affect the validity of the remaining portion
20 thereof.

21 11362.83. Nothing in this article shall prevent a city or
22 other local governing body from adopting and enforcing
23 laws consistent with this article.

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

34 However, notwithstanding Section 17610 of the
35 Government Code, if the Commission on State Mandates
36 determines that this act contains other costs mandated by
37 the state, reimbursement to local agencies and school
38 districts for those costs shall be made pursuant to Part 7
39 (commencing with Section 17500) of Division 4 of Title
40 2 of the Government Code. If the statewide cost of the



1 *claim for reimbursement does not exceed one million*
2 *dollars (\$1,000,000), reimbursement shall be made from*
3 *the State Mandates Claims Fund.*

4 ~~declares all of the following:~~

5 ~~(a) On November 5, 1996, 56 percent of California~~
6 ~~voters approved Proposition 215 to ensure that seriously~~
7 ~~ill Californians have their right to obtain and use~~
8 ~~marijuana for medical purposes.~~

9 ~~(b) Proposition 215 urged the federal and state~~
10 ~~government to implement a plan to provide for the safe~~
11 ~~and affordable distribution of marijuana to all patients in~~
12 ~~medical need of marijuana.~~

13 ~~(c) Since Proposition 215 became law, the state and~~
14 ~~federal governments have failed to respond to the voters'~~
15 ~~call for a distribution plan. Instead, both levels of~~
16 ~~government have dedicated substantial resources to~~
17 ~~closing down every effort to fulfill the wishes of the~~
18 ~~voters.~~

19 ~~(d) In the vacuum created by government inactivity,~~
20 ~~private, local distribution organizations have arisen. The~~
21 ~~activity of these programs has raised legal questions about~~
22 ~~the extent to which Proposition 215 protects these~~
23 ~~collective efforts to distribute medicinal marijuana. As a~~
24 ~~result, while generally well-intentioned, most of these~~
25 ~~programs have been subject to, and often closed because~~
26 ~~of, police and judicial action. The closure of these~~
27 ~~programs has left many patients who need medicinal~~
28 ~~marijuana without access to marijuana.~~

29 ~~(e) A distribution plan is essential not only to ensure~~
30 ~~that patients in medical need of marijuana have safe and~~
31 ~~affordable access to marijuana, but also to prevent~~
32 ~~Proposition 215 from becoming a sieve through which~~
33 ~~illegal activities occur.~~

34 ~~(f) There is widespread consensus among physicians,~~
35 ~~law enforcement, patients, providers, and other~~
36 ~~stakeholders that the most effective solution is for the~~
37 ~~federal government to reschedule marijuana so that it~~
38 ~~can be prescribed under strict protocols. However, until~~
39 ~~the federal government acts, California state and local~~
40 ~~officials must act to implement the will of the voters.~~



1 ~~(g) It is the intent of the Legislature that the issue of~~
2 ~~medicinal marijuana is and should remain a public health~~
3 ~~issue, between physicians and their patients.~~

4 ~~(h) It is the further intent of the Legislature, until the~~
5 ~~federal government acts to reschedule marijuana, to~~
6 ~~respond fully to the wishes of the voters in approving~~
7 ~~Proposition 215 by developing a plan for the safe and~~
8 ~~affordable distribution of medicinal marijuana to persons~~
9 ~~in need.~~

10 ~~SEC. 2. Section 11362.7 is added to the Health and~~
11 ~~Safety Code, to read:~~

12 ~~11362.7. The state shall develop and implement a plan~~
13 ~~for the safe and affordable distribution of medicinal~~
14 ~~marijuana.~~

