

Amdt. #1S

December 19, 2011

RECEIVED
DEC 20 2011

Initiative Coordinator
Office of the Attorney General
1300 "I" Street
Sacramento, CA 95814-2919

INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

RE: Request to Make Amendments to Initiative 11-0098

Dear Sirs:

Attached are certain amendments to Initiative 11-0098, THE MEDICAL MARIJUANA REGULATION, CONTROL AND TAXATION ACT, originally filed with your office on December 15, 2011.

The proponents respectfully request that a title and summary be prepared for Initiative 11-0098 using this amended language.

All inquiries or correspondence relative to this initiative should be directed to the Law Offices of George W.M. Mull, 1415 L Street, Suite 1000, Sacramento, CA, 95814, (916) 456-0100, Attention: George Mull.

Thank you for your assistance.

Very truly yours,



Don Duncan, Proponent
Americans for Safe Access
California Director



Ron Lind, Proponent
UFCW Local 5
President

Enclosure: Proposed Initiative Measure

Headquarters

1322 Webster St, Suite 402, Oakland, CA 94612
PHONE: 510.251.1856 FAX: 510.251.2036

National Office

1806 Vernon St. NW, Suite 100, Washington DC 20009
PHONE: 202.857.4272 FAX: 202.857.4273

General Information

WEB: www.AmericansForSafeAccess.org
TOLL FREE: 1.888.939.4367

Amdt. #1S

THE MEDICAL MARIJUANA REGULATION, CONTROL, AND TAXATION ACT**SECTION 1. Title.**

This Act shall be known as "The Medical Marijuana Regulation, Control, and Taxation Act" (hereafter the "Act").

SECTION 2. Findings and Declarations.

The people of the State of California hereby find and declare all of the following:

(a) In 1996, California voters approved Proposition 215, which was entitled the "Compassionate Use Act of 1996." The people of the State of California declared that their purpose in enacting the measure was "to ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief."

(b) Proposition 215 called on state government to implement a plan for the safe and affordable distribution of marijuana to all patients in medical need of marijuana.

(c) In 2003, the California legislature enacted Senate Bill 420, the Medical Marijuana Program Act (MMP). Under the guidance of the MMP, approximately sixty California cities and counties have created medical marijuana access ordinances that can act as a guide for the State. However, many other cities and counties are calling for more guidance and regulation from the State and have passed bans or moratoria on medical marijuana cultivation and distribution while awaiting such guidance.

(d) There is an urgent need for greater certainty and uniformity regarding the rights and obligations of medical marijuana facilities, and for the imposition and enforcement of regulations to prevent unlawful cultivation and the diversion of marijuana to non-medical use.

(e) Despite the passage of Proposition 215 and the MMP, because there is no effective statewide system for regulating, controlling and taxing medical marijuana, local law enforcement officials have been confronted with uncertainty about the legality of some medical marijuana cultivation and distribution activities, and many cities and counties have passed local ordinances that in some cases ban the cultivation or distribution of medical marijuana.

(f) Marijuana has widely accepted medical applications that make it inappropriate to classify it as a Schedule I controlled substance in the State of California. Furthermore, current marijuana laws require costly, mandatory felony penalties for minor marijuana offenses,

imposing excessive legal costs in minor medical marijuana cases and unduly burdening the State's law enforcement and prison system

(g) For the protection of all Californians, the State must act to regulate, control and tax medical marijuana. Cities and counties should be allowed to impose reasonable local taxes and enact reasonable zoning regulations and other restrictions applicable to the cultivation and distribution of medical marijuana based on local needs.

(h) A state supplemental sales tax should be imposed upon all medical marijuana grown and sold in this state. State taxation of medical marijuana will result in millions of dollars for the State of California that can be used to control medical marijuana activities and fund vitally needed services such as medical research, public safety, and health care.

(i) A state bureau should be created to regulate and control the mandatory registration of all individuals and entities involved in the commercial cultivation, processing, manufacture, lab testing, transportation, distribution, and sale of medical marijuana in this State. The Bureau of Medical Marijuana Enforcement shall be established within the California Department of Consumer Affairs to ensure that a statewide system for the regulation, control and taxation of medical marijuana is effectively established and administered.

(j) The provisions of this Act are enacted pursuant to the powers reserved to the State of California and its people under the Tenth Amendment to the United States Constitution.

SECTION 3. Purpose and Intent.

The people of the State of California declare their purpose and intent in enacting the Medical Marijuana Regulation, Control and Taxation Act to be all of the following:

(a) To establish a statewide system for regulating, controlling and taxing medical marijuana activities by creating a state bureau to enact and enforce regulations governing the cultivation, processing, manufacturing, lab testing, transportation, distribution, and sale of medical marijuana.

(b) To allow cities and counties to enact reasonable zoning regulations or other restrictions applicable to the cultivation processing, manufacturing, lab testing and distribution of medical marijuana based on local needs.

(c) To impose a reasonable state supplemental sales tax upon all medical marijuana grown and sold in this State.

(d) To prohibit the issuance and use of fraudulent or forged physician's recommendations for medical marijuana.

(e) To establish the Bureau of Medical Marijuana Enforcement to be located within the California Department of Consumer Affairs to provide a governmental agency which will

ensure the strict, honest, impartial, and uniform administration and enforcement of the medical marijuana laws throughout the State.

(f) To fulfill the promise of Proposition 215 to “implement a plan for the safe and affordable distribution of marijuana to all patients in medical need of marijuana”.

(g) To support the Legislature in creating a more appropriate schedule for marijuana that recognizes its medical use in the state of California.

(h) To reduce the cost of medical marijuana enforcement by providing law enforcement guidelines to more easily determine whether or not a person is acting in conformance with the state’s medical marijuana laws and by providing courts and prosecutors flexibility in the punishment of minor marijuana offenses.

SECTION 4. Article 2.8 (commencing with Section 11362.84) is added to Chapter 6 of Division 10 of the Health and Safety Code, to read:

Article 2.8. Regulation, Control and Taxation of Medical Marijuana.

11362.84. State Preemption.

(a) Except as provided in Section 11362.85, it is the intent of the people of California to enact this Act to preempt cities or counties from regulating, taxing and controlling medical marijuana and this Act shall be exclusive of all local laws or regulations relating to the regulation, taxation and control of medical marijuana. It is hereby declared that it is the policy of this State that each county and city shall permit the development of sufficient numbers and types of medical marijuana facilities as are commensurate with local needs.

(b) A city, county, or city and county shall not prohibit the operation of persons registered pursuant to this Act or so restrict their location or operation so as to either frustrate the provisions of this article or to render the application or enforcement of this article impractical or impossible or so restrict the location of medical marijuana dispensaries so as to authorize less than one medical marijuana dispensary per 50,000 residents, except as otherwise provided in Section 11362.85.

11362.85. Local Authority.

(a) A city, a county, or a city and county may enact reasonable zoning regulations relating to the location, size and number of medical marijuana facilities. Such regulations shall allow at least one medical marijuana dispensary per 50,000 residents and allow for not less than one dispensary in every county and any city over 50,000 residents. Except as provided in subdivision (b), (c), and (d) of this section, if a city, county or city and county does not enact a medical marijuana dispensary zoning ordinance medical marijuana dispensaries in that jurisdiction shall be wholly regulated by the State pursuant to this article and medical marijuana dispensaries that are mandatory registrants may locate in that jurisdiction in any location that the

Bureau finds to be appropriately zoned, subject to the restrictions of Section 11362.768 of the Health and Safety Code as it read on January 1, 2012.

(b) Any city, county, or city and county that wishes to prohibit the establishment of medical marijuana dispensaries within its jurisdiction, or to limit the number of allowed medical marijuana dispensaries to a number below one per 50,000 residents, may enact legislation in conflict with such provisions of this article if an initiative authorizing such a restriction has been approved by the voters of such city, county or city and county in accordance with the provisions of Chapter 2 (commencing with Section 9100) or Chapter 3 (commencing with Section 9200) of Division 9 of the Elections Code. In no event may a city, county, or city and county enact legislation that impairs the rights granted to qualified patients and their caregivers pursuant to Proposition 215 (Section 11362.5) and the Medical Marijuana Program Act, Article 2.5 (commencing with Section 11362.7) of this chapter.

(c) A city with a population of less than 50,000 residents may prohibit the establishment of a medical marijuana dispensary within its jurisdiction provided that the city council make a written finding to the Bureau supported by evidence adduced during at least one public hearing that medical marijuana is reasonably available to its residents by other means.

(d) A legislative body of a city, a county, or a city and county with existing medical marijuana regulations may provide the Bureau with a list of regulated persons which it finds to be in good standing under its local medical marijuana regulations in force as of the effective date of this article, which shall be accompanied by a certified copy of any ordinance regulating the location, operation or taxation of medical marijuana facilities in that jurisdiction. Such listed persons shall automatically be deemed mandatory registrants for purposes of this article, and shall be exempt from renewal procedures for three years from the effective date of this article.

11362.86. Applicability of Article to Qualified Patients and Primary Caregivers.

This article shall not apply to, and shall have no diminishing effect on, the rights and protections currently granted to individual patients, and primary caregivers pursuant to The Compassionate Use Act (Health and Safety Code Section 11362.5) or the Medical Marijuana Program Act (Article 2.5 of Chapter 6 of Division 10 of the Health and Safety Code)

11362.87. Definitions.

- (a) "Board" means the California State Board of Equalization.
- (b) "Bureau" means the Bureau of Medical Marijuana Enforcement.
- (c) "Executive Director" means the Executive Director of the Bureau of Medical Marijuana Enforcement.
- (d) "Financial institution" means a state or federal chartered bank or a state or federal chartered credit union.
- (e) "Mandatory registrant" means any person holding a mandatory registration issued by the Bureau.

- (f) "Mandatory registration" means a registration authorized to be issued by the Bureau pursuant to this division.
- (g) "Medical marijuana dispensary" means any facility, building, structure, or location where medical marijuana is sold to qualified patients, primary caregivers, or persons with identification cards.
- (h) "Medical marijuana facility" means any facility, building, structure, or location, other than a private residence where medical marijuana is grown for personal use and not for sale, where medical marijuana is grown, processed, stored, manufactured, tested, or sold.
- (i) "Medical marijuana industry union" is a union which has at its core jurisdictions retail, agriculture, food and processing and/ or textiles that currently has members working in the medical marijuana industry.
- (j) "Person" includes any individual, partnership, joint venture, association, limited liability company, corporation, estate, trust, receiver, syndicate, or any other group or combination of any of the above acting as a unit.
- (k) "Act" means the initiative measure entitled The Medical Marijuana Regulation, Control, and Taxation Act

11362.88. Establishment of Bureau; Administration; Bureau Funding

There is within the Department of Consumer Affairs a Bureau of Medical Marijuana Enforcement. The Bureau shall be administered through a governing body as defined in Section 11362.99 and a civil executive officer, appointed by the Director of the Department of Consumer Affairs, who shall be known as the Executive Director of Medical Marijuana Enforcement. Funds for the establishment and support of the Bureau shall be advanced by the Department of Consumer Affairs and shall be derived from the payment of fees as established by the Bureau.

11362.881. Membership of the Bureau.

- a. The governing body of the Bureau shall consist of 21 members appointed as follows:
 - (1) Two members appointed by the Attorney General, one of whom shall be a representative of the Department of Justice and one a full time peace officer.
 - (2) One member appointed by the Director of the Department of Health Services.
 - (3) One member appointed by the Medical Board of California.
 - (4) One member appointed by the Chairman of the Board of Equalization.
 - (5) One member appointed by the Lieutenant Governor who is a representative from a medical marijuana industry union as defined in Section 11362.87.
 - (6) Two members that are medical marijuana patient advocates from the state at large, one of which shall be appointed by the Lieutenant Governor, and one appointed by the Speaker of the Assembly.
 - (7) Two members who are qualified patients from the state at large, one of whom shall be appointed by the Lieutenant Governor, and one appointed by the Speaker of the Assembly.
 - (8) One member with extensive experience in the scientific or therapeutic research on medical marijuana appointed by the Lieutenant Governor.
 - (9) Two members, one which shall be a California licensed physician and one a licensed nurse, appointed by the Lieutenant Governor.
 - (10) Two members with experience in medical marijuana policy and regulations, one of whom

shall be appointed by the Lieutenant Governor, and one appointed by the Speaker of the Assembly.

(11) Six members with experience in areas of dispensary operations, infused product manufacturing, cultivation practices, or lab testing selected from six regions of California as defined in this subsection. The Lieutenant Governor shall select one member each from the Region 1, Region 2, and Region 4 and the Speaker of the Assembly shall select one member each from Region 3, Region 5, and Region 6.

For purposes of this Section, these regions are defined as follows:

(A) Region 1 consists of the Counties of Del Norte, Humboldt, Lake, Mendocino, Napa, Solano, and Sonoma.

(B) Region 2 consists of the Counties of Alpine, Amador, Butte, Calaveras, Colusa, El Dorado, Glenn, Lassen, Modoc, Mono, Nevada, Placer, Plumas, Sacramento, San Joaquin, Shasta, Sierra, Siskiyou, Sutter, Tehama, Trinity, Yolo, and Yuba

(C) Region 3 consists of Counties of County of Alameda, Contra Costa, Marin, Monterey, San Benito, Santa Clara, Santa Cruz, San Francisco, and San Mateo

(D) Region 4 consists of the Counties of Fresno, Kern, Kings, Madera, Mariposa, Merced, Stanislaus, Tulare and Tuolumne.

(E) Region 5 consists of the Counties of Los Angeles, Orange, Santa Barbara and San Luis Obispo. Ventura

(F) Region 6 consists of the Counties of Inyo, Imperial, Riverside, San Bernardino and San Diego.

(b) The appointments of the Lieutenant Governor, and the Speaker of the Assembly, pursuant to paragraphs (5)-(11) of subdivision (a) shall be made as prescribed in this section. Within 45 days from the effective date of this article the Lieutenant Governor and Speaker of the Assembly shall solicit applicants and nominations. Within 90 days of the effective date of this article the Lieutenant Governor and Speaker of the Assembly shall make appointments.

(c) A member of the Bureau serving pursuant to paragraphs (1), (2), (3), and (4) of subdivision (a), shall be a designated within 90 days of the effective date of this article.

(d) In making their appointments pursuant to this article, the Lieutenant Governor, and the Speaker of the Assembly shall make good faith efforts to assure that their appointments, as a whole, reflect, to the greatest extent feasible, the economic, social, and geographic diversity of the state.

(e) A majority of the total appointed membership of the Bureau shall constitute a quorum. Any action taken by the Bureau under this article requires a majority vote of the members present at the meeting of the Bureau, with a quorum being present, unless otherwise specifically provided for in this division.

(f) The Bureau shall elect a chairperson and vice chairperson from among its members and shall meet at least quarterly on call of the Director, the chairperson, or three members of the Bureau.

11362.882. Term of Office; Staggered Terms.

The term of office of Bureau members shall be as follows:

(a) Except as otherwise provided in this section, the terms of the members of the Bureau shall be three calendar years, commencing January 1 of the year of appointment. No member shall serve more than two consecutive full terms; provided, however, that a term or part of a term served pursuant to paragraph (1) or (2) of subdivision (b) shall not be included in this limitation.

(b) The terms for the members of the governing board of the Bureau shall be staggered as follows:

(1) The first members appointed on or after January 1st of the year following the effective date of this article pursuant to subdivisions (1), (2), (3), (4), (5) and (6) of paragraph (a) of Section 11362.881 shall serve from the date of appointment to the end of that calendar year, plus one additional year.

(2) The first members appointed on or after January 1st of the year following the effective date of this article pursuant to subdivisions (7), (8), (9) and (10) of paragraph (a) of Section 11362.881 shall serve from the date of appointment to the end of that calendar year, plus two additional years.

(3) The first members appointed on or after January 1st of the year following the effective date of this article pursuant to subdivision (11) of paragraph (a) of Section 11362.881 shall be from the date of appointment to the end of that calendar year, plus three additional years.

(c) If a vacancy occurs prior to the expiration of the term for the vacated seat, the appointing authority of that vacant seat shall appoint a replacement member for the remainder of the unexpired term within 30 days after the occurrence of the vacancy

11362.883. Powers and Duties of the Bureau.

(a) The Bureau shall:

(1) Approve or deny mandatory registration applications for the cultivation, manufacture, distribution, testing and sale of medical marijuana as provided by law; suspend, fine, restrict, or revoke such registration upon a violation of this article, or a rule promulgated pursuant to this article; and impose any penalty authorized by this article or any rule promulgated pursuant to this article. The Bureau may take any reasonable action with respect to a mandatory registration application, in accordance with the procedures established pursuant to this article;

(2) Adopt, amend, and rescind such reasonable regulations, special rulings and findings as necessary for the regulation and control of the cultivation, manufacture, testing, and distribution, and sale of medical marijuana, and to govern the procedures of the Bureau to exercise the powers and perform the duties conferred upon it by this article, in accordance with the provisions of the Administrative Procedures Act, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(3) Hear and determine at a public hearing any appeals of a mandatory registration application denial and any complaints against a registered person, and administer oaths and issue subpoenas to require the presence of individuals and the production of papers, books, and records necessary to the determination of any hearing so held to exercise the powers and perform the duties conferred upon it by this article, not inconsistent with any statute of this state, including particularly this article and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(4) Maintain the confidentiality of any information obtained from a registered person related to medical marijuana patients or caregivers in strict compliance with the Health Insurance Portability and Accountability Act (HIPPA), 42 U.S.C. section 1320d; Confidentiality of Medical Information Act (CMIA), part 2.6 (commencing with Section 56) of Division 1 of the Civil Code, and the Insurance Information and Privacy Protection Act (IIPPA), Article 6.6 (commencing with Section 791) of Chapter 1 of Part 2 of Division 1 of the Insurance Code

(5) Develop such forms, identification cards and applications as are necessary or convenient in the reasonable discretion of the Bureau for the administration of this article or any of the rules promulgated under this article.

(6) Oversee the operation of the Medical Marijuana Fund and to act as trustees of the funds created by the Act.

(b) Regulations promulgated pursuant to paragraph (2) of subsection (a) of this section shall be reasonable and may include the following:

- (1) Procedures and grounds for denying, suspending, fining, restricting or revoking a state registration issued pursuant to this article;
- (2) Requirements for inspections, investigations, searches, and seizures in accordance with the State and Federal Constitutions by the Bureau;
- (3) Civil penalties for violation of the provisions of this article;
- (4) Prohibition of misrepresentation and unfair practices;
- (5) Best practices guiding advertisements promoting the purchase of medical marijuana;
- (6) Security requirements for premises subject to mandatory registration pursuant to this article, including lighting, physical security, alarm requirements, and reporting requirements for changes, alterations, or modifications to the premises;
- (7) Regulations for the storage and transportation of medical marijuana;
- (8) Requirements for waste disposal and recycling;
- (9) Labeling, packaging, and testing best practices;
- (10) Guidelines regarding cultivation including use of pesticides and fungicides and the reduction of environmental impacts;
- (11) Establishment of exemptions from registration or reduced fees for non-commercial collectives, not-for-profit registrants and other qualified persons;
- (12) Protocols to prevent unlawful diversion of marijuana; and
- (13) Any other regulation in furtherance of this article.

(c) Nothing in this article shall be construed as delegating to the Bureau the power to set prices for medical marijuana.

11362.89. Medical Marijuana Funds.

(a) The Bureau shall establish fees for processing all applications, registrations, notices or reports required to be submitted to the Bureau. The amount of fees shall reflect the actual and indirect costs of the Bureau in the administration and enforcement of this article and shall be assessed on a sliding fee scale to reflect the projected revenue of the particular registrant.

(b) All moneys collected by the Bureau pursuant to this article shall be deposited in the State Treasury, to the credit of the Medical Marijuana Fund, which fund is hereby established in the Treasury of the State of California and referred to in this section as the "fund". The moneys in the fund shall be expended for the administration of the Bureau, including its pro rata share of the administrative expenses of the Department of Consumer Affairs, and for the purpose of carrying out the provisions this article.

(c) All money remaining after compliance with subdivision (b) shall be allocated to the Medical Marijuana Trust Fund, which is hereby established in the Treasury of the State of California. Allocation of this fund will be distributed by the Bureau as defined in subdivision (d).

(d) Revenue deposited into the Medical Marijuana Trust Fund, including sums deposited pursuant to Part 13.5 (commencing with Section 31101) of Division 2 of the Revenue and Taxation Code, shall be apportioned as follows:

- (1) Thirty percent (30%) shall be allocated to the University of California's Center for Medicinal Marijuana Research (CMCR) to fund scientific studies of the medical efficacy of marijuana in accordance with Section 11362.9 of the Health and Safety Code establishing the Marijuana Research Program, notwithstanding subsection (f) thereof.
- (2) Thirty Percent (30%) shall be allocated for the reimbursement of physicians for losses incurred in providing uncompensated emergency services. These funds shall be used to augment the Maddy Emergency Medical Services Fund established pursuant to Section 1797.98a of the Health and Safety Code for physicians and surgeons in the same manner as Health and Safety Code Section 1797.98a(b)(5)(A) as this section existed on January 1, 2011. The total amount granted pursuant to this provision shall be divided among counties with Maddy Emergency Services Funds. Each county shall receive a percentage share of the total funds thus allocated that is the same as the county's percentage of self pay emergency department visits in California based on the latest available Office of Statewide Health Planning and Development data. Funds shall be transmitted to counties quarterly. Counties shall disperse all funds to physicians and surgeons in the same manner as distributed to physicians and surgeons pursuant to all applicable Health and Safety Code Sections 1797.98a-1797.98g as these sections existed on January 1, 2011.

- (3) Thirty percent (30%) shall be allocated by way of grants to programs that offer medical marijuana education, low-income assistance and additional health services.
- (4) Ten percent (10%) shall be allocated for the purpose of funding studies regarding best practices for medical marijuana cultivation to reduce the impact of energy use, pesticides and fungicides, and for providing grants to promote and encourage the implementation and use of environmentally sound cultivation practices.

(e) Funds deposited into the Medical Marijuana Fund and the Medical Marijuana Trust Fund, may be placed into the Pooled Money Investment Account for investment only, and interest earned shall be credited to the Fund and deposited, apportioned and expended only in accordance with the provisions of this article and its purposes.

(f) Funds deposited into the Medical Marijuana Fund and the Medical Marijuana Trust Fund, together with interest earned by those funds, are hereby continually appropriated for the purposes of this article without regard to fiscal year, and shall be used solely for the purposes of this article and shall not be subject to appropriation, reversion or transfer by the Legislature, the Governor, Lieutenant Governor, or the Director of Finance for any other purpose and may not be loaned to the General Fund, or any other fund, for any purpose.

11362.90. Application of Specified Business and Professions Code Provisions

The provisions of Division 1 of the Business and Professions Code shall govern and apply to the conduct of the Bureau in every respect the same as if such provisions were herein set forth at length, and wherever in that chapter the term "head of the Bureau" or similar designation occurs, for the purposes of this section it shall mean the Executive Director.

11362.901. Power of Executive Director to Appoint Employees; Responsibility of Employees to Executive Director;

The Executive Director shall be the appointing authority of all employees within the Bureau, and all heads of divisions, committees and other employees in the Bureau shall be responsible to the Executive Director for the proper carrying out of the duties and responsibilities of their respective positions.

11362.902. Injunctive Relief

The Executive Director may bring an action to enjoin a violation or a threatened violation of any provision of this article, including a mandatory registrant's failure to correct objectionable conditions following notice, or any regulation promulgated pursuant to this article. The action may be brought in the county in which the violation occurred or is threatened to occur. Any proceeding brought hereunder shall conform to the requirements of Chapter 3 (commencing with Section 525) of Title 7 of Part 1 of the Code of Civil Procedure.

11362.91. Availability of Mandatory Registration Application Forms; Approval or Denial of Mandatory Registration Applications.

No later than July 1, 2013, the Bureau shall make available mandatory registration application forms for all persons subject to mandatory registration. Upon receipt of an application for mandatory registration and the applicable fee, the Bureau shall make a thorough investigation to determine whether the applicant and the premises for which a mandatory registration is applied qualify for registration, complies with local ordinances and zoning, and whether the provisions of this article have been complied with, and shall investigate all matters connected therewith. The Bureau shall deny an application for mandatory registration if either the applicant or the premises for which a registration is applied do not qualify for registration under this article. A mandatory registration application shall be approved or denied no later than 180 days after a mandatory registration application is filed with the Bureau. If the Bureau fails to act on an application within 180 days, it shall be deemed approved.

11362.92. Classes of Mandatory Registration.

For the purpose of regulating the cultivation, manufacture, transportation, distribution, and sale of medical marijuana, the Bureau in its reasonable discretion, may establish various classes or types of registrations for specific medical marijuana related activities, subject to the provisions and restrictions provided by this article.

11362.93. Mandatory Registration in General.

(a) Except as otherwise provided in this article, a medical marijuana facility may not operate until it has filed a mandatory registration application with the Bureau and the Bureau has approved the mandatory registration application pursuant to this article.

(b) A medical marijuana facility operating in conformance with local zoning requirements as of the effective date of this article may continue its operations until such time as its application for mandatory registration has been approved or denied.

(c) Each mandatory registration application approved by the Bureau pursuant to this article is separate and distinct. An applicant may apply for a mandatory registration in more than one class of specific medical marijuana activities.

(d) All mandatory registration applications that are approved by the Bureau pursuant to this article shall be valid for a period not to exceed two years from the date of approval unless revoked or suspended pursuant to this article or the rules promulgated pursuant to this article.

(e) Ninety days prior to the expiration date of an existing mandatory registration, the Bureau shall notify the person of the expiration date by first class mail at the person's address of record with the Bureau. A person shall apply for the renewal of an existing mandatory registration to the Bureau not less than 60 days prior to the expiration. The Bureau, in its discretion and based upon reasonable grounds, may waive the 60-day time requirement set forth in this paragraph. The Bureau shall act upon a timely filed registration renewal application no later than ten days prior to the expiration of the registration.

(f) Operating a medical marijuana facility without an approved required mandatory registration may result in fines up to \$25,000 and the Bureau may order the destruction of any marijuana being cultivated or possessed in violation of this article.

11362.94. Exemption from Registration Requirements.

Individual patients and caregivers cultivating at their own private primary residences in accordance with local zoning and building codes who do not sell or charge for the cultivation of marijuana are exempt from mandatory registration and taxation.

11362.95. Prohibited Persons.

A mandatory registration application as provided by this article shall be approved unless it is determined by a preponderance of evidence that any of the following is true:

- (a) An applicant is under twenty-one years of age;
- (b) An applicant has failed to provide information reasonably necessary for completion of registration or has knowingly answered a question or request for information falsely on the application form;
- (c) An applicant, or any of its officers or directors, has been convicted of a violent felony, or felony involving fraud or deceit, within the previous five years;
- (e) An applicant is a licensed physician making patient recommendations for medical marijuana;
- (f) An applicant, or the medical marijuana facility location for which the applicant is applying for mandatory registration, fails to meet the requirements of this article.
- (g) An applicant or any of its officers or directors has been sanctioned by the Bureau for operating an unregistered medical marijuana facility or has had a mandatory registration revoked in the previous three years.

11362.96. The Scheduling of Marijuana.

Within 270 days of the effective date of this article, the Bureau shall prepare a report to the legislature with its recommendations regarding the appropriateness of continuing to place marijuana in the Schedule I list of controlled substances at Section 11054.

11362.97. Exemption from Sanctions.

(a) A person whose mandatory registration application has been approved or deemed approved by the Bureau shall not be subject to arrest, prosecution, or other criminal, civil, or administrative sanctions under state or local law for the sale, possession, processing, manufacturing, lab testing, transportation, delivery, distribution or cultivation of medical marijuana conducted pursuant to the provisions of this article. Persons using marijuana medicinally pursuant to Section 11362.5 are entitled to the same rights and protections from civil and criminal liability as users of prescription drugs under California law.

(b) Nothing herein shall prevent the Bureau from enforcing the provisions of this article or prevent a city, county, or city and county from enforcing a zoning ordinance or law of general application. No funds shall be spent by state or local officials to assist federal authorities in enforcing marijuana prohibition on activities carried out by persons in compliance with the provisions in this article. However, nothing in this article shall be construed to limit a law enforcement agency's ability to investigate unlawful activity in relation to a mandatory registrant.

11362.98. Penalties for Use of a Fraudulent Medical Marijuana Recommendation.

Any individual, who knowingly produces, issues, utilizes or sells a falsified, forged or fraudulent physician's recommendation for medical marijuana shall be guilty of a misdemeanor.

11362.99. Permissible activities by financial institution.

A financial institution may provide lending services to persons whose mandatory registration application has been approved by the Bureau pursuant to this article and may secure any such loans to such persons with assets of those persons. Any financial institution owning or possessing medical marijuana or warehouse receipts therefore as security for an obligation or as a result of enforcement of a security interest may, after permission has been given by the Bureau, sell the medical marijuana or warehouse receipts to a registrant authorized to sell for resale such medical marijuana or such warehouse receipts.

Section 5. Medical Marijuana Taxes

Part 13.5 of the Revenue and Taxation Code (commencing with Section 31101) is to be added as follows:

31201. Imposition of Supplemental Sales Tax.

- (a) A separate supplemental sales tax of two and one-half percent (2.5%) is hereby imposed upon the retail distribution of medical marijuana.
- (b) Every person engaging in the retail sale of marijuana or marijuana-infused products in this State shall file a return with the board on or before the first day of the first calendar quarter commencing more than 180 days after the effective date of this section, and each calendar quarter thereafter, on a form prescribed by the board. The amount of the tax due for sales of marijuana in the previous calendar quarter shall be computed and shown on the return.
- (c) Failure to timely file a return required under this section shall be a basis for revocation or suspension of a person's mandatory registration by the Bureau.
- (d) The tax imposed by this section shall be in lieu of any local city or county tax imposed on the sale of medical marijuana that is in excess of 2.5%. Cities, counties, and cities and counties may impose a local tax on the sale of marijuana in an amount not to exceed two and one-half percent (2.5%), but all local taxes in excess of 2.5% imposed specifically on the sale of marijuana, and all local taxes imposed specifically on the cultivation of marijuana,

are hereby preempted in accordance with the provisions of Section 11362.84 of the Health and Safety Code. The foregoing shall not limit the imposition of local fees based upon the direct costs of providing services.

- (e) Notwithstanding any other provision of the law, the taxes created by this article and the revenue derived there from, including investment interest, shall be considered trust funds, to be expended solely for the purposes set forth in Article 2.8 to Chapter 6 of Division 10 of the Health and Safety Code and shall not be considered to be part of the General Fund, as that term is used in Chapter 1 (commencing with Section 16300) of Part 2 of Division 4 of the Government Code, commencing with Section 16300, and shall not be considered General Fund revenue for purposes of Section 8 of Article XVI of the California Constitution, and its implementing statutes. The revenue collected from the supplemental sales tax shall be deposited into the Medical Marijuana Fund provided for in Section 11362.885 of the Health and Safety Code. Retail sales of medical marijuana remain subject to the general sales tax collected by the Board.
- (f) "Marijuana" means "marijuana" as defined in Section 11362.87 of the Health and Safety Code.

31301. Facilitation of Sales and Use Tax Law; Report on Registrations Issued or Transferred

In order to facilitate the Board's administration of the Sales and Use Tax Law, Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code, the Bureau of Medical Marijuana Enforcement shall, each quarter at no cost to the Board, electronically transmit to the Board a report on the registrations issued or transferred pursuant to Article 2.8 (commencing with Section 11362.84) of Chapter 6 of Division 10 of the Health and Safety Code. The report shall include the names and addresses of all persons to whom the registration is issued or transferred, the type of registration issued or transferred, and the effective date of the registration or transfer. With respect to transfers, the report shall additionally include the names and addresses of the transferors. The information shall be transmitted to the board in a format agreed upon by both the Board and the Bureau and shall remain confidential.

SECTION 6. Medical Marijuana Program Clarifications; Offenses and Penalties

A. Section 11362.775 of the Health and Safety Code is hereby amended to read:

Qualified patients, persons with valid identification cards, and the designated primary caregivers of qualified patients and persons with identification cards, may ~~who~~ associate within the State of California as collectives, cooperatives and other business entities ~~in order collectively or cooperatively~~ to cultivate, acquire, process, possess, transport, test, sell and distribute marijuana for medical purposes, and shall not ~~solely~~ on the basis of that fact be subject to arrest, prosecution or state criminal sanctions under Section 11357, 11358, 11359, 11360, 11366, 11366.5, 11379.6, or 11570, unless such persons are not in compliance with the registration requirements of Section 11362.92 and 11362.93. . Members of an entity formed pursuant to this section are not required to contribute to each or any of the activities of the entity.

B. Section 11357 of the Health and Safety Code is hereby amended to read:

(a) Except as authorized by law, every person who possesses any concentrated cannabis shall be punished by imprisonment in the county jail for a period of not more than one year or by a fine of not more than five hundred dollars (\$500), or by both such fine and imprisonment, ~~or shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code.~~

(b) Except as authorized by law, every person who possesses not more than 28.5 grams of marijuana, other than concentrated cannabis, is guilty of an infraction punishable by a fine of not more than one hundred dollars (\$100).

(c) Except as authorized by law, every person who possesses more than 28.5 grams of marijuana, other than concentrated cannabis, shall be punished by imprisonment in a county jail for a period of not more than six months or by a fine of not more than five hundred dollars (\$500), or by both such fine and imprisonment.

(d) Except as authorized by law, every person 18 years of age or over who possesses not more than 28.5 grams of marijuana, other than concentrated cannabis, upon the grounds of, or within, any school providing instruction in kindergarten or any of grades 1 through 12 during hours the school is open for classes or school-related programs is guilty of a misdemeanor and shall be punished by a fine of not more than five hundred dollars (\$500), or by imprisonment in a county jail for a period of not more than 10 days, or both.

(e) Except as authorized by law, every person under the age of 18 who possesses not more than 28.5 grams of marijuana, other than concentrated cannabis, upon the grounds of, or within, any school providing instruction in kindergarten or any of grades 1 through 12 during hours the school is open for classes or school-related programs is guilty of a misdemeanor and shall be subject to the following dispositions:

(1) A fine of not more than two hundred fifty dollars (\$250), upon a finding that a first offense has been committed.

(2) A fine of not more than five hundred dollars (\$500), or commitment to a juvenile hall, ranch, camp, forestry camp, or secure juvenile home for a period of not more than 10 days, or both, upon a finding that a second or subsequent offense has been committed.

C. Section 11358 of the Health and Safety Code is hereby amended to read:

Every person who plants, cultivates, harvests, dries, or processes any marijuana or any part thereof, except as otherwise provided by law, shall be punished by imprisonment in a county jail for a period of not more than one year or by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code.

D. Section 11359 of the Health and Safety Code is hereby amended to read:

Every person who possesses for sale any marijuana, except as otherwise provided by law, shall be punished by imprisonment in a county jail for a period of not more than one year or by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code.

E. Section 11360 of the Health and Safety Code is hereby amended to read:

(a) Except as otherwise provided by law, every person who transports, imports into this state, sells, furnishes, administers, or gives away, or offers to transport, import into this state, sell, furnish, administer, or give away, or attempts to import into this state or transport any marijuana shall be punished by imprisonment in a county jail for a period of not more than one year or by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code.

(b) Except as authorized by law, every person who gives away, offers to give away, transports, offers to transport, or attempts to transport not more than 28.5 grams of marijuana, other than concentrated cannabis, is guilty of a misdemeanor and shall be punished by a fine of not more than one hundred dollars (\$100). In any case in which a person is arrested for a violation of this subdivision and does not demand to be taken before a magistrate, such person shall be released by the arresting officer upon presentation of satisfactory evidence of identity and giving his written promise to appear in court, as provided in Section 853.6 of the penal Code, and shall not be subjected to booking.

SECTION 7. Amendments.

- (a) Except as hereafter provided, this Act may only be amended by the Legislature as provided in Article II, Section 10, subdivision (c) of the California Constitution.
- (b) Notwithstanding the provisions of subdivision (a) of this section, not earlier than two (2) years from the effective date of this Act, the Legislature may amend the provisions of this Act to further the purposes of the Act by a statute passed in each house by roll-call vote entered into the journal, with two thirds of the membership concurring.
- (c) Notwithstanding the provisions of subdivisions (a) and (b) of this section, the Legislature may at any time, by a simple majority vote in each house, amend this Act to change the word "marijuana" to "cannabis" in order to reflect the term traditionally applied to the medical and scientific applications of the plant.

SECTION 8. Severability.

If any word, phrase, section, or provision of this Act or the application thereof to any person or circumstances is held invalid or unconstitutional, such invalidity or unconstitutionality shall not affect any other word, phrase, section, provision, or application of this Act that may be given effect without the invalid or unconstitutional part, and to that end the provisions of this Act are severable. It is the intent of the people of the State of California that this Act would have been adopted regardless of whether such invalid provision had not been included or such invalid application had not been made.