

AMENDED IN ASSEMBLY MAY 24, 2013
AMENDED IN ASSEMBLY APRIL 15, 2013
AMENDED IN ASSEMBLY MARCH 19, 2013
CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 473

Introduced by Assembly Member Ammiano

February 19, 2013

An act to add Chapter 18 (commencing with Section 26000) to Division 9 of the Business and Professions Code, relating to medical marijuana, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 473, as amended, Ammiano. Medical marijuana: state regulation and enforcement.

Existing law, the Compassionate Use Act of 1996, an initiative measure enacted by the approval of Proposition 215 at the November 6, 1996, statewide general election, authorizes the use of marijuana for medical purposes. Existing law enacted by the Legislature requires the establishment of a program for the issuance of identification cards to qualified patients so that they may lawfully use marijuana for medical purposes, and requires the establishment of guidelines for the lawful cultivation of marijuana grown for medical use.

This bill would *enact the Medical Marijuana Regulation and Control Act and would* create the Division of Medical Marijuana Regulation and Enforcement within the Department of Alcoholic Beverage Control. The bill would grant the division all power necessary to, among other things, establish statewide standards for the cultivation, manufacturing, testing, transportation, distribution, and sales of medical marijuana and

medical marijuana products and a statewide fee scale in relation to these activities. The bill would require the division to assist in the development of uniform policies for the taxation of medical marijuana businesses and establish a mandatory commercial registration program, as specified, which would include an identification card program.

This bill would authorize the division to assess penalties for violation of these provisions. The bill would establish the Medical Marijuana Fund and would require deposit of fees and penalties into distinct accounts within the fund. The bill would continuously appropriate moneys within the fees account to the division for the purposes of administering the program. The bill would require the division to work in conjunction with law enforcement entities throughout the state to implement and enforce the rules and regulations regarding medical marijuana and to take appropriate action against businesses and individuals who fail to comply with the law. The bill would specify that its provisions are severable. *The bill would make related findings and declarations.*

The bill would make certain violations of its provisions a crime, thereby 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.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: yes.

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

- 1 *SECTION 1. This act shall be known, and may be cited, as the*
- 2 *Medical Marijuana Regulation and Control Act.*
- 3 *SEC. 2. (a) The Legislature finds and declares all of the*
- 4 *following:*
- 5 *(1) In 1996, the people of the State of California enacted the*
- 6 *Compassionate Use Act of 1996, codified in Section 11362.5 of*
- 7 *the Health and Safety Code. The people of the State of California*
- 8 *declared that their purpose in enacting the measure was, among*
- 9 *other things, "to ensure that seriously ill Californians have the*
- 10 *right to obtain and use marijuana for medical purposes where that*
- 11 *medical use is deemed appropriate and has been recommended*

1 *by a physician who has determined that the person's health would*
2 *benefit from the use of marijuana in the treatment of cancer,*
3 *anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis,*
4 *migraine, or any other illness for which marijuana provides relief."*

5 *(2) The Compassionate Use Act of 1996 called on state*
6 *government to implement a plan for the safe and affordable*
7 *distribution of marijuana to all patients in medical need of*
8 *marijuana.*

9 *(3) In 2003, the Legislature enacted the Medical Marijuana*
10 *Program Act (MMPA), codified in Article 2.5 (commencing with*
11 *Section 11362.7) of Chapter 6 of Division 10 of the Health and*
12 *Safety Code. Under the guidance of the MMPA, approximately 60*
13 *California cities and counties have created medical marijuana*
14 *access ordinances that can act as a guide for the state. However,*
15 *many other cities and counties are calling for more guidance and*
16 *regulation from the state and have passed bans or moratoria on*
17 *medical marijuana cultivation and distribution while awaiting this*
18 *guidance.*

19 *(4) Greater certainty and uniformity are urgently needed*
20 *regarding the rights and obligations of medical marijuana*
21 *facilities, and for the imposition and enforcement of regulations*
22 *to prevent unlawful cultivation and the diversion of marijuana to*
23 *nonmedical use.*

24 *(5) Despite the passage of the Compassionate Use Act of 1996*
25 *and the MMPA, because of the lack of an effective statewide system*
26 *for regulating and controlling medical marijuana, local law*
27 *enforcement officials have been confronted with uncertainty about*
28 *the legality of some medical marijuana cultivation and distribution*
29 *activities, and many cities and counties have passed local*
30 *ordinances that in some cases ban the cultivation or distribution*
31 *of medical marijuana.*

32 *(6) Marijuana has widely accepted medical applications that*
33 *make it inappropriate to be classified as a Schedule I controlled*
34 *substance in the State of California. Furthermore, current*
35 *marijuana laws require costly, mandatory felony penalties for*
36 *minor marijuana offenses, imposing excessive legal costs in minor*
37 *medical marijuana cases and unduly burdening the state's law*
38 *enforcement and prison system.*

39 *(7) For the protection of all Californians, the state must act to*
40 *regulate and control medical marijuana and not preempt local*

1 government ordinances. Cities and counties should be allowed to
2 impose reasonable local taxes and enact reasonable zoning
3 regulations and other restrictions applicable to the cultivation and
4 distribution of medical marijuana based on local needs.

5 (8) A state entity shall be created to regulate and control the
6 mandatory registration of all individuals and entities involved in
7 the commercial cultivation, processing, manufacturing, testing,
8 transportation, distribution, and sale of medical marijuana in this
9 state.

10 (9) The provisions of this act are enacted pursuant to the powers
11 reserved to the State of California and its people under the Tenth
12 Amendment to the United States Constitution.

13 (b) It is therefore the intent of the Legislature, in enacting this
14 act, to accomplish all of the following:

15 (1) To establish a statewide system for regulating and
16 controlling medical marijuana activities by creating a state entity
17 to enact and enforce regulations governing the cultivation,
18 processing, manufacturing, testing, transportation, distribution,
19 and sale of medical marijuana.

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

24 (3) To establish the Division of Medical Marijuana Enforcement
25 to be located within the Department of Alcoholic Beverage Control
26 to provide a governmental agency that will ensure the strict, honest,
27 impartial, and uniform administration and enforcement of the
28 medical marijuana laws throughout the state.

29 (4) To fulfill the promise of the Compassionate Use Act of 1996
30 to “implement a plan for the safe and affordable distribution of
31 marijuana to all patients in medical need of marijuana.”

32 (5) To establish a statewide registration process to identify for
33 law enforcement which individuals and entities are exempt from
34 state criminal penalties.

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

1 ~~SECTION 1.~~

2 *SEC. 3.* Chapter 18 (commencing with Section 26000) is added
3 to Division 9 of the Business and Professions Code, to read:

4
5 CHAPTER 18. MEDICAL MARIJUANA REGULATION

6
7 Article 1. General Provisions

8
9 26000. It is the intent of the Legislature in enacting this chapter
10 to provide for the comprehensive regulation of the cultivation,
11 manufacturing, testing, transportation, distribution, and sale of
12 medical cannabis and the enforcement of laws relating to these
13 activities.

14 26002. For the purpose of this chapter:

15 (a) “Division” means the Division of Medical Marijuana
16 Regulation and Enforcement.

17 (b) “Identification program” means the universal identification
18 card program for mandatory commercial ~~restraints~~ *registrants*.

19 (c) “Mandatory commercial registrant” means any individual,
20 partnership, joint venture, association, limited liability company,
21 corporation, estate, trust, receiver, syndicate, or any other group
22 or combination thereof acting as a unit, or any employee thereof,
23 that operates any facility, building, structure, or location where
24 medical marijuana is grown, possessed, stored, manufactured,
25 tested, or sold, other than a location or building in which a patient
26 or a patient’s primary caregiver, as defined by the Compassionate
27 Use Act of 1996, is growing medical marijuana exclusively for
28 patient medical use and not for sale.

29 (d) “Testing and labeling” means mandatory labeling and a
30 quality assurance plan in place that address all of the following:

31 (1) Dosage.

32 (2) Microbiological contaminants, including, but not limited to,
33 all of the following:

34 (A) Pesticides.

35 (B) Herbicides.

36 (C) Pathogens.

37 (D) Molds.

38 (E) Fungi.

39 (3) Random sample testing.

40 (4) Handling, care, and storage.

1 (5) Date and location of production and manufacturing.

2 (e) “Fund” means the Medical Marijuana Fund established
3 pursuant to Section 26028.

4 26010. *This chapter does not prevent a city or county from*
5 *doing any of the following:*

6 (a) *Adopting local ordinances that regulate the location,*
7 *operation, or establishment of a medical cooperative or collective.*

8 (b) *The civil or criminal enforcement of the ordinances*
9 *described in subdivision (a).*

10 (c) *Enacting other laws consistent with this chapter.*

11
12 Article 2. Administration

13
14 26020. (a) There is hereby created in the Department of
15 Alcoholic Beverage Control the Division of Medical Marijuana
16 Regulation and Enforcement. The division shall be administered
17 by a chief executive to be appointed by the director.

18 (b) The chief executive shall be the appointing authority of all
19 employees within the division. All heads of subdivisions or
20 advisory committees within the division shall be responsible to
21 the chief executive for the proper carrying out of the duties and
22 responsibilities of their respective positions.

23 26022. The division shall have all power necessary for
24 administration of this chapter, including, but not limited to, the
25 following:

26 (a) Establishing statewide standards for the cultivation,
27 manufacturing, testing, transportation, distribution, and sales of
28 medical marijuana and medical marijuana products.

29 (b) Establishing a scale of fees, to be imposed by the state, for
30 the cultivation, manufacturing, testing, transportation, distribution,
31 and sale of medical marijuana and medical marijuana products.
32 The division may charge separate fees for each mandatory
33 commercial registration application for cultivation, manufacturing,
34 transportation, distribution, and sales. The total fees imposed
35 pursuant to this chapter shall not exceed the total costs of
36 administering this chapter.

37 (c) Adopting, amending, and rescinding reasonable regulations,
38 special rulings, and findings as necessary for the regulation and
39 control of the cultivation, manufacturing, testing, transportation,
40 distribution, and sale of medical marijuana and to govern the

1 procedures of the division to exercise the powers and perform the
2 duties conferred upon it by this chapter, in accordance with the
3 provisions of Chapter 3.5 (commencing with Section 11340) of
4 Part 1 of Division 3 of Title 2 of the Government Code.

5 (d) Approving or denying mandatory registration applications
6 for cultivation, manufacturing, testing and labeling, transportation,
7 distribution, and sale of medical marijuana pursuant to this chapter.

8 (e) Suspending, fining, restricting, or revoking mandatory
9 commercial registration upon a violation of this chapter or a rule
10 or regulation adopted pursuant to this chapter.

11 (f) Imposing any penalty authorized by this chapter or any rule
12 or regulation adopted pursuant to this chapter.

13 (g) Taking any reasonable action with respect to a mandatory
14 commercial registration application in accordance with procedures
15 established pursuant to this chapter.

16 (h) Hearing and determining, at a public hearing, any appeals
17 of mandatory commercial registration application denial or renewal
18 application denial and any complaints against a mandatory
19 commercial registrant.

20 (i) Administering oaths and issuing subpoenas to require the
21 presence of individuals and the production of papers, books, and
22 records necessary to the determination of any hearing. Any hearing
23 pursuant to this section shall be conducted in accordance with
24 Chapter 5 (commencing with Section 11500) of Part 1 of Division
25 3 of Title 2 of the Government Code.

26 (j) Maintaining the confidentiality of any information obtained
27 from a mandatory commercial registrant related to the medical
28 marijuana patients or caregivers in strict compliance with the
29 federal Health Insurance Portability and Accountability Act (42
30 U.S.C. Sec. 1320d et seq.), the Confidentiality of Medical
31 Information Act (Part 2.6 (commencing with Section 56) of
32 Division 1 of the Civil Code), and the Insurance Information
33 Privacy Protection Act (Article 6.6 (commencing with Section 79)
34 of Chapter 1 of Part 2 of Division 1 of the Insurance Code).

35 (k) Developing any forms, identification cards, and applications
36 that are necessary or convenient in the reasonable discretion of the
37 division for the administration of this chapter or any of the rules
38 or regulations adopted pursuant to this chapter.

39 (l) Overseeing the operation of the Medical Marijuana Fund
40 established pursuant to Section 26028.

1 (m) Establishing reasonable fees for processing all applications,
2 registrations, notices, or reports required to be submitted to the
3 division. The amount of the fees shall reflect, but shall not exceed,
4 the direct and indirect costs of the division for the administration
5 of this chapter and the rules or regulations adopted pursuant to this
6 chapter.

7 26024. The division shall assist in the development of uniform
8 policies for the taxation of medical marijuana businesses.

9 26026. The division shall identify successful regulatory
10 structures for the purpose of supporting cities and counties in
11 appropriately governing activities related to medical marijuana.

12 26028. (a) The Medical Marijuana Fund is hereby established
13 within the State Treasury. Notwithstanding Section 16305.7 of the
14 Government Code, the fund shall include any interest and dividends
15 earned on the money in the fund.

16 (b) All fees collected pursuant to this chapter shall be deposited
17 into the Medical Marijuana Fees Account, which is hereby
18 established within the fund. Notwithstanding Section 13340 of the
19 Government Code, all moneys within the Medical Marijuana Fees
20 Account are hereby continuously appropriated, without regard to
21 fiscal year, to the division solely for the purposes of fully funding
22 and administering this chapter, including, but not limited to, the
23 costs incurred by the Department of Alcoholic Beverage Control
24 for its administrative expenses incurred on behalf of the division.
25 From moneys in the account, the division shall reimburse the
26 department for those costs.

27 (c) All penalties collected pursuant to this chapter shall be
28 deposited into the Medical Marijuana Penalties Account, which
29 is hereby established within the fund. All moneys within the
30 Medical Marijuana Penalties Account shall be available for the
31 purposes of this chapter, upon appropriation by the Legislature.

32 Article 3. Mandatory Commercial Registration

33
34
35 26040. (a) By July 1, 2014, the division shall establish a
36 mandatory commercial registration program and a fee structure
37 for cultivation, manufacturing, testing, transportation, distribution,
38 and sale of medical marijuana and medical marijuana products,
39 and shall make available mandatory commercial registration forms.

1 (b) A mandatory commercial registration application or renewal
2 shall be approved unless the division determines any of the
3 following:

4 (1) The applicant fails to meet the requirements of this chapter
5 or any regulation adopted pursuant to this chapter.

6 (2) The applicant, or any of its officers or directors, is under 21
7 years of age.

8 (3) The applicant has knowingly answered a question or request
9 for information falsely on the application form.

10 (4) The applicant, or any of its officers or directors, has been
11 convicted in the previous five years of a violent felony, as specified
12 in subdivision (c) of Section 667.5 of the Penal Code, a serious
13 felony as specified in subdivision (c) of Section 1192.7 of the Penal
14 Code, a felony offense involving fraud or deceit, or any other
15 felony that, in the division's estimation, would impair the
16 applicant's ability to appropriately operate medical marijuana
17 cultivation, manufacturing, testing, distribution, or sales.

18 (5) The applicant is a licensed physician making patient
19 recommendations for medical marijuana.

20 (6) The applicant, or any of its officers or directors, has been
21 sanctioned by the division for operating unregistered commercial
22 medical marijuana activities, or has had a mandatory commercial
23 registration revoked in the previous three years.

24 26041. For the purpose of regulating the cultivation,
25 manufacturing, testing, transportation, distribution, and sale of
26 medical marijuana, the division, in its reasonable discretion, may
27 establish various classes or types of registration, including
28 distinguishing between operators and employees, for specific
29 medical marijuana-related activities, as set forth in this chapter.

30 26043. Each mandatory commercial registration application
31 approved by the division pursuant to this chapter is separate and
32 distinct. An applicant may apply for mandatory commercial
33 registration in more than one class of specified medical marijuana
34 activities.

35 26044. A mandatory commercial registration application
36 approved by the division pursuant to this chapter shall be valid for
37 a period not to exceed two years from the date of approval unless
38 revoked or suspended pursuant to this chapter or the rules or
39 regulations adopted pursuant to this chapter.

1 26045. Ninety days prior to the expiration date of an existing
2 mandatory commercial registration, the division shall notify the
3 registrant of the expiration date by first-class mail at the person's
4 address of record with the division. A registrant shall apply for the
5 renewal of an existing mandatory commercial registration to the
6 division not less than 60 days prior to the expiration. The division,
7 in its discretion and based upon reasonable grounds, may waive
8 the 60-day time requirement set forth in this section. The division
9 shall act upon a timely filed mandatory commercial registration
10 renewal application within 10 days prior to the expiration of the
11 registration.

12 26046. An application for mandatory commercial registration
13 shall include, but shall not be limited to, all of the following:

14 (a) A plan for conformance with testing *and labeling*
15 *requirements*.

16 (b) A plan to address security for premises where marijuana
17 cultivation, manufacturing, testing, distribution, or sales will occur.

18 (c) ~~A plan for conformance with local zoning requirements~~
19 *showing that any facility proposed in the application has received*
20 *local zoning approval*.

21 (d) Protocols to prevent unlawful diversion of marijuana.

22 (e) *Evidence that the applicant has received a business license*
23 *from the locality in which the facility will be located*.

24 26047. The division shall approve, and contract with, one or
25 more laboratories that can document compliance with industry
26 best practices to provide plan-consulting services and to conduct
27 laboratory and testing services to determine compliance with the
28 requirements set forth in subdivision (d) of Section 26002.

29 26048. The division shall approve cultivation registration only
30 in conjunction with the city, county, or city and county land use
31 authority in which the cultivation occurs, where the city, county,
32 or city and county addresses compliance with relevant state and
33 federal environmental impact laws and regulations, including, but
34 not limited to, all of the following:

35 (a) Clear-cutting.

36 (b) Road building.

37 (c) Water diversion.

38 (d) Use of chemicals.

39 26049. All mandatory commercial registrants are exempt from
40 arrest, prosecution, or sanctions under Sections 11357, 11358,

1 11359, 11360, 11366, 11366.5, 11379.6, and 11570 of the Health
2 and Safety Code, unless they do not possess a valid registration
3 under this chapter or the conduct in question is not within the scope
4 of the registration.

5 26050. (a) This chapter shall not apply to, and shall have no
6 diminishing effect on, the rights and protections granted to
7 individual patients and primary caregivers pursuant to the
8 Compassionate Use Act of 1996.

9 (b) Individual patients and caregivers cultivating marijuana at
10 their private residences exclusively for patient medical use who
11 do not sell or charge for the cultivation of marijuana are not
12 considered commercial registrants, and are exempt from mandatory
13 commercial registration.

14 26051. A facility, building, structure, or location operating in
15 conformance with local zoning requirements as of the effective
16 date of this chapter may continue its operations until such time as
17 its application for mandatory commercial registration has been
18 approved or denied under this chapter.

19
20 Article 4. Enforcement
21

22 26060. (a) The division shall work in conjunction with law
23 enforcement entities throughout the state for the purpose of
24 implementing and enforcing the rules and regulations regarding
25 medical marijuana and taking appropriate action against businesses
26 and individuals who fail to comply with the law.

27 (b) Nothing in this chapter shall prevent a city, county, or city
28 and county from enforcing a zoning ordinance or law of general
29 application.

30 26062. Commencing January 1, 2015, no person, except for
31 mandatory commercial registrants, shall offer for sale any product
32 containing marijuana, or operate any facility, building, structure,
33 or location where medical marijuana is grown, processed, stored,
34 manufactured, tested, or sold, other than a location or building in
35 which a patient or a patient's primary caregiver, as defined by the
36 Compassionate Use Act of 1996, is growing medical marijuana
37 exclusively for patient medical use and not for sale.

38 26063. (a) Commencing January 1, 2015, any product
39 containing marijuana that is offered for sale shall be subject to the

1 testing and labeling requirements set forth in subdivision (d) of
2 Section 26002.

3 (b) No person shall steal or fraudulently use any mandatory
4 commercial registrant's identification card or registration status
5 to acquire, possess, cultivate, transport, use, produce, or distribute
6 marijuana.

7 (c) No person shall counterfeit, tamper with, or fraudulently
8 produce an identification card or registration status.

9 (d) Any person who violates this section, or Section 26062, is
10 guilty of a misdemeanor and shall be subject to the following
11 penalties:

12 (1) For the first offense, imprisonment in the county jail for no
13 more than six months or a fine not to exceed one thousand dollars
14 (\$1,000), or both.

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

18 26064. Any person operating an unregistered commercial
19 medical marijuana facility, building, structure, or location may be
20 subject to civil penalties of up to twenty-five thousand dollars
21 (\$25,000), and the division may order the destruction of any
22 marijuana being cultivated, manufactured, or possessed in violation
23 of this chapter. Any civil fines collected pursuant to this section
24 shall be deposited into the Medical Marijuana Penalties Account
25 within the fund.

26 26065. No funds shall be spent by state or local officials to
27 assist federal authorities in enforcing federal marijuana prohibitions
28 with regard to activities carried out by mandatory commercial
29 registrants in compliance with the provisions of this chapter.
30 Nothing in this chapter shall be construed to limit a law
31 enforcement agency's ability to investigate unlawful activity in
32 relation to a mandatory commercial registrant.

33 ~~SEC. 2.~~

34 *SEC. 4.* The provisions of this act are severable. If any
35 provision of this act or its application is held invalid, that invalidity
36 shall not affect other provisions or applications that can be given
37 effect without the invalid provision or application.

38 ~~SEC. 3.~~

39 *SEC. 5.* No reimbursement is required by this act pursuant to
40 Section 6 of Article XIII B of the California Constitution because

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

O