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.


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 Medical Marijuana Regulation and Control Act.
2. SEC. 2. (a) The Legislature finds and declares all of the following:
3. (1) In 1996, the people of the State of California enacted the Compassionate Use Act of 1996, codified in Section 11362.5 of the Health and Safety Code. The people of the State of California declared that their purpose in enacting the measure was, among other things, “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.”

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

(3) In 2003, the Legislature enacted the Medical Marijuana
Program Act (MMPA), codified in Article 2.5 (commencing with
Section 11362.7) of Chapter 6 of Division 10 of the Health and
Safety Code. Under the guidance of the MMPA, approximately 60
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 this
guidance.

(4) Greater certainty and uniformity are urgently needed
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
nonmedical use.

(5) Despite the passage of the Compassionate Use Act of 1996
and the MMPA, because of the lack of an effective statewide system
for regulating and controlling 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.

(6) Marijuana has widely accepted medical applications that
make it inappropriate to be classified 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.

(7) For the protection of all Californians, the state must act to
regulate and control medical marijuana and not preempt local
government ordinances. 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.

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

(9) 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.

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

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

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

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

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

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

(6) 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 1.

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

Chapter 18. Medical Marijuana Regulation


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

26002. For the purpose of this chapter:
(a) “Division” means the Division of Medical Marijuana Regulation and Enforcement.
(b) “Identification program” means the universal identification card program for mandatory commercial registrants.
(c) “Mandatory commercial registrant” means any individual, partnership, joint venture, association, limited liability company, corporation, estate, trust, receiver, syndicate, or any other group or combination thereof acting as a unit, or any employee thereof, that operates any facility, building, structure, or location where medical marijuana is grown, possessed, stored, manufactured, tested, or sold, other than a location or building in which a patient or a patient’s primary caregiver, as defined by the Compassionate Use Act of 1996, is growing medical marijuana exclusively for patient medical use and not for sale.
(d) “Testing and labeling” means mandatory labeling and a quality assurance plan in place that address all of the following:
(1) Dosage.
(2) Microbiological contaminants, including, but not limited to, all of the following:
(A) Pesticides.
(B) Herbicides.
(C) Pathogens.
(D) Molds.
(E) Fungi.
(3) Random sample testing.
(4) Handling, care, and storage.
(5) Date and location of production and manufacturing.

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

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

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

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

(c) Enacting other laws consistent with this chapter.

Article 2. Administration

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

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

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

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

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

(c) Adopting, amending, and rescinding reasonable regulations, special rulings, and findings as necessary for the regulation and control of the cultivation, manufacturing, testing, transportation, distribution, and sale of medical marijuana and to govern the
procedures of the division to exercise the powers and perform the
duties conferred upon it by this chapter, in accordance with the
provisions of Chapter 3.5 (commencing with Section 11340) of
Part 1 of Division 3 of Title 2 of the Government Code.
(d) Approving or denying mandatory registration applications
for cultivation, manufacturing, testing and labeling, transportation,
distribution, and sale of medical marijuana pursuant to this chapter.
(e) Suspending, fining, restricting, or revoking mandatory
commercial registration upon a violation of this chapter or a rule
or regulation adopted pursuant to this chapter.
(f) Imposing any penalty authorized by this chapter or any rule
or regulation adopted pursuant to this chapter.
(g) Taking any reasonable action with respect to a mandatory
commercial registration application in accordance with procedures
established pursuant to this chapter.
(h) Hearing and determining, at a public hearing, any appeals
of mandatory commercial registration application denial or renewal
application denial and any complaints against a mandatory
commercial registrant.
(i) Administering oaths and issuing subpoenas to require the
presence of individuals and the production of papers, books, and
records necessary to the determination of any hearing. Any hearing
pursuant to this section shall be conducted in accordance with
Chapter 5 (commencing with Section 11500) of Part 1 of Division
3 of Title 2 of the Government Code.
(j) Maintaining the confidentiality of any information obtained
from a mandatory commercial registrant related to the medical
marijuana patients or caregivers in strict compliance with the
federal Health Insurance Portability and Accountability Act (42
U.S.C. Sec. 1320d et seq.), the Confidentiality of Medical
Information Act (Part 2.6 (commencing with Section 56) of
Division 1 of the Civil Code), and the Insurance Information
Privacy Protection Act (Article 6.6 (commencing with Section 79)
of Chapter 1 of Part 2 of Division 1 of the Insurance Code).
(k) Developing any forms, identification cards, and applications
that are necessary or convenient in the reasonable discretion of the
division for the administration of this chapter or any of the rules
or regulations adopted pursuant to this chapter.
(l) Overseeing the operation of the Medical Marijuana Fund
established pursuant to Section 26028.
(m) Establishing reasonable fees for processing all applications, registrations, notices, or reports required to be submitted to the division. The amount of the fees shall reflect, but shall not exceed, the direct and indirect costs of the division for the administration of this chapter and the rules or regulations adopted pursuant to this chapter.

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

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

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

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

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

Article 3. Mandatory Commercial Registration

26040. (a) By July 1, 2014, the division shall establish a mandatory commercial registration program and a fee structure for cultivation, manufacturing, testing, transportation, distribution, and sale of medical marijuana and medical marijuana products, and shall make available mandatory commercial registration forms.
(b) A mandatory commercial registration application or renewal shall be approved unless the division determines any of the following:

1. The applicant fails to meet the requirements of this chapter or any regulation adopted pursuant to this chapter.
2. The applicant, or any of its officers or directors, is under 21 years of age.
3. The applicant has knowingly answered a question or request for information falsely on the application form.
4. The applicant, or any of its officers or directors, has been convicted in the previous five years of a violent felony, as specified in subdivision (c) of Section 667.5 of the Penal Code, a serious felony as specified in subdivision (c) of Section 1192.7 of the Penal Code, a felony offense involving fraud or deceit, or any other felony that, in the division’s estimation, would impair the applicant’s ability to appropriately operate medical marijuana cultivation, manufacturing, testing, distribution, or sales.
5. The applicant is a licensed physician making patient recommendations for medical marijuana.
6. The applicant, or any of its officers or directors, has been sanctioned by the division for operating unregistered commercial medical marijuana activities, or has had a mandatory commercial registration revoked in the previous three years.

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

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

26044. A mandatory commercial registration application approved by the division pursuant to this chapter shall be valid for a period not to exceed two years from the date of approval unless revoked or suspended pursuant to this chapter or the rules or regulations adopted pursuant to this chapter.
26045. Ninety days prior to the expiration date of an existing mandatory commercial registration, the division shall notify the registrant of the expiration date by first-class mail at the person’s address of record with the division. A registrant shall apply for the renewal of an existing mandatory commercial registration to the division not less than 60 days prior to the expiration. The division, in its discretion and based upon reasonable grounds, may waive the 60-day time requirement set forth in this section. The division shall act upon a timely filed mandatory commercial registration renewal application within 10 days prior to the expiration of the registration.

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

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

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

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

(d) Protocols to prevent unlawful diversion of marijuana.

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

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

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

(a) Clear-cutting.

(b) Road building.

(c) Water diversion.

(d) Use of chemicals.

26049. All mandatory commercial registrants are exempt from 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
testing and labeling requirements set forth in subdivision (d) of Section 26002.

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

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

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

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

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

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

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

SEC. 2.

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

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIIIB of the California Constitution because
the only costs that may be incurred by a local agency or school
district will be incurred because this act creates a new crime or
infraction, eliminates a crime or infraction, or changes the penalty
for a crime or infraction, within the meaning of Section 17556 of
the Government Code, or changes the definition of a crime within
the meaning of Section 6 of Article XIII B of the California
Constitution.