

SECTION 1. Division 10.3 (commencing with Section 11720) is added to the Health and Safety Code, to read:

*DIVISION 10.3. MARIJUANA*

*11720. (a) This division shall be known and may be cited as the Legalization of Marijuana Act of 2012.*

*(b)(1) The people of the State of California hereby find and declare that the intents of the Legalization of Marijuana Act of 2012 are as follows:*

*It is the intent of the People in enacting this, the Legalization of Marijuana Act of 2012, to do all of the following:*

- (A) To legalize marijuana and its derivatives.*
- (B) To remove all existing civil and criminal penalties for adults 21 years of age or older who cultivate, possess, transport, sell, or use marijuana, without impacting existing laws proscribing dangerous activities while under the influence of marijuana, or certain conduct that exposes younger persons to marijuana.*
- (C) To ensure that medical marijuana patients and caregivers retain their rights as provided under the Compassionate Use Act of 1996, or Health and Safety Code 11362.5, as amended.*
- (D) To ensure that California has an equitable and proper regulatory apparatus for marijuana sale and cultivation.*
- (E) To authorize local governments to adopt reasonable ordinances, rules and regulations regarding licensed cannabis-related businesses, including appropriate zoning, permits, licenses, safety, and environmental laws to protect the general health and welfare of the public.*
- (F) To prevent state and local agencies from supporting any prosecution for federal or other crimes relating to marijuana that are inconsistent with those provided in this Act.*
- (G) To prevent state and local agencies from enacting prohibitive or excessive taxation for commercial cannabis activities.*
- (H) To prevent state and local agencies from taxing the personal possession, use, cultivation or transportation of marijuana.*
- (I) To exclude from the fees and regulations imposed by this act marijuana that is for uses other than smoking or ingestion, and to exclude medicinal marijuana from fees under these provisions.*
- (J) To permit the possession, use, sharing, cultivation, transportation, and other activities related to cannabis by persons over the age of 21.*
- (K) To permit the possession, cultivation, processing, sales, transportation and distribution of industrial hemp.*
- (L) To mandate that the State of California ensure the rights and privacy of individuals who possess or consume marijuana in the privacy of their own home or on their property.*
- (M) To ensure that present tobacco smoking bans, including workplace smoking bans, that broadly define such act(s) properly extend such restrictions to marijuana so as to disambiguate the previous crimes and infractions with new crimes and infractions, while not violating the single-subject rule as defined by Section 8(d) of Article II of the California Constitution.*
- (N) To punish those who violate this Act and prevent any state or local agency from prohibiting or obstructing the terms or spirit of this Act.*
- (O) To impose a set of regulations and laws concerning marijuana comparable to those currently imposed on alcohol.*
- (P) To impose substantial fines for violations of the laws and regulations concerning marijuana.*
- (Q) To encourage the federal government to reconsider its policies concerning marijuana, and to change its laws accordingly.*
- (R) To permit the State of California to fulfill obligations under the United States Constitution to enact laws concerning health, morals, public welfare and safety.*
- (S) To continue to enforce all laws relating to driving under the influence of marijuana and contributing to the delinquency of a minor.*
- (T) To mandate that the state Legislature make cannabis available for scientific, medical, industrial and any other research purposes.*
- (U) To mandate that the state Legislature commission studies and various research on the effects of cannabis on driving and workplace safety.*
- (V) To encourage the federal and state governments to implement a plan to prohibit discrimination of marijuana use for medical or non-medical purposes as a factor in maintaining or applying for employment or education.*
- (2) Nothing in this division shall require the accommodation of marijuana use in the workplace, nor prohibit employers from prohibiting or restricting marijuana intoxication, consumption or use in the workplace.*
- (3) If any provision of this division or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this division that can be given effect without the invalid portion or application, and to this end the provisions of this division are severable. It is the intent of the People that this division would have been adopted regardless if such invalid provision had not been included or any invalid application had not been made.*

*11721. (a) For purposes of this division, "marijuana" means all parts of the plant Cannabis sativa L., whether growing or*

*not; the seeds thereof; the resin extracted from any part of the plant; concentrated cannabis; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant that is incapable of germination.*

*(b) Notwithstanding any other provision of law, it is lawful and not a violation of California law for a person 21 years of age or older to possess, share, or transport not more than eight ounces (avoirdupois) of marijuana.*

*(c) Notwithstanding any other provision of law, it is lawful and not a violation of California law to possess objects, items, tools, equipment, products and materials associated with the consumption, cultivation, possession, purchase or sale of marijuana for medical or non-medical purposes.*

*(d) In a criminal or civil proceeding, a person accused of violating a limitation in this Act shall have the right to an affirmative defense that the cannabis was reasonably related to his or her personal consumption.*

*11722. (a) It is lawful and not a violation of California law for a person 21 years of age or older to possess, smoke or ingest marijuana in one's home, or in any private residence, or upon the grounds of that home or residence; provided that no person shall have in his or her possession more than 8 ounces of marijuana, except as authorized by law.*

*(b) It is lawful and not a violation of state law for a person 21 years of age or older to smoke marijuana in a public place.*

*(c) Counties and cities may retain or enact laws, ordinances or guidelines prohibiting a person from smoking marijuana in a public place; however, the right of a person to smoke or ingest marijuana in ones home, or in any private residence, or upon the grounds of that home or residence, shall not be infringed by the state, a city, a county, or any other governmental entity.*

*(d) A violation of a law, ordinance or guideline, or any other act that has the force of law, of the offense described in subdivision (a) of Section 11726, relating to the public possession of marijuana by persons under 21 years of age, shall preclude the offender from prosecution of any city or county ordinance pursuant to subdivision (c) of Section 11722 only if the violation or violations occurred concurrently.*

*(e) No person in possession of a valid identification card pursuant to Article 2.5 (commencing with Section 11362.7) of Chapter 6 of Division 10 of the Health and Safety Code shall be subject to arrest, citation, or prosecution for smoking or otherwise using marijuana in a public place, unless there is reasonable cause to believe that the information contained in the card is false or falsified, the card has been obtained by means of fraud, or the person is otherwise in violation of the provisions of Article 2.5 (commencing with Section 11362.7) of Chapter 6 of Division 10 of the Health and Safety Code; provided that nothing in this subsection shall require any accommodation of any medical use of marijuana on the property or premises of any place of employment or during the hours of employment or on the property or premises of any jail, correctional facility, or other type of penal institution in which prisoners reside or persons under arrest are detained.*

*(f) Notwithstanding any other subdivision in this section, no law, ordinance or guideline, or any other act that has the force of law, enacted or retained pursuant to subdivision (c) of Section 11722 shall provide for a maximum punishment more severe than an infraction that carries a fine of one hundred dollars (\$100).*

*(g) Notwithstanding any other provision of law, counties and cities may retain or enact laws, ordinances or guidelines permitting a person from possessing amounts of marijuana for non-medical purposes in excess of subdivision (c) of Section 11357; however, no tax or fee shall be levied on the personal possession, personal consumption, or personal and non-commercial cultivation of marijuana.*

*11722.5. Notwithstanding any other provision of law, the landlord or landlords of any leased property shall retain the right to prohibit or restrict tenants from smoking marijuana inside any home, apartment, or in any other indoor area on the leased property.*

*11723. (a) It is lawful and not a violation of California law to sell marijuana to a person 21 years of age or older as provided in Chapter 19 (commencing with Section 26000) of Division 9 of the Business and Professions Code. Except as authorized or otherwise provided by law, any sale or possession for sale of marijuana by a person not licensed as provided by Chapter 19 (commencing with Section 26000) of Division 9 of the Business and Professions Code is a misdemeanor, punishable by imprisonment in the county jail for a period of not more than one year, or by a fine of not more than five thousand dollars (\$5000), or both.*

*11724. It is lawful and not a violation of California law, except as provided in subdivision (f) of Section 647 of the Penal Code, or in Section 11729, for a person to be under the influence of marijuana. This subdivision shall not preclude such activity from being introduced as evidence in a civil or criminal proceeding alleging a violation of California law.*

*11725. Except as otherwise provided by law, it is unlawful for a person not licensed pursuant to Chapter 19 (commencing with Section 26000) of Division 9 of the Business and Professions Code to cultivate marijuana, unless in compliance with the following requirements:*

*(a) Marijuana may be cultivated only by persons 21 years of age or older.*

*(b) Marijuana may be cultivated only in a location in the home, apartment, yard or anywhere else on a residence in which the marijuana is not unreasonably visible from any public place, unless authorized by law. For purposes of this paragraph,*

"public place" does not include air space, or any place from which a viewer would violate the cultivator's legitimate expectation of privacy.

(c) Each person may have in cultivation a total of no more than twelve plants (mature or immature) at any given time, except as provided in Section 11362.77.

(d) A licensed nursery, or a marijuana retailer or off-sale general license holder pursuant to Chapter 19 (commencing with Section 26000) of Division 9 of the Business and Professions Code, may cultivate seedlings for sale to persons 21 years of age or older, but shall destroy any seedling if it has not been purchased before it reaches maturity.

(e) Aside from the sale of seedlings by a licensed nursery, or a marijuana retailer or off-sale general license holder pursuant to Chapter 19 (commencing with Section 26000) of Division 9 of the Business and Professions Code, marijuana cultivated pursuant to this section may not be sold.

11725.25. The landlord or landlords of any leased property shall retain the right to prohibit or restrict tenants from cultivating marijuana in the home, apartment, yard or anywhere else on the leased property.

11725.5. (a) A violation of Section 11725 is a misdemeanor, punishable by imprisonment in the county jail for a period not exceeding ten days, or a fine of not more than thousand dollars (\$1000), or both. This shall not preclude prosecution of any article of law that prohibits unauthorized cultivation of marijuana within a state park or on public lands.

(b) Counties and cities may retain or enact laws, ordinances or guidelines permitting a person from cultivating amounts of marijuana for non-medical purposes in excess of subdivision (c) of Section 11725; however, no tax shall be levied on the personal cultivation of marijuana.

11725.75. (a) Except as authorized or otherwise provided by law, every person 21 years of age or older who sells marijuana to, or purchases or cultivates marijuana for a person under 21 years of age is a misdemeanor, punishable by imprisonment in the county jail for not more than six months, or by a fine of up to five thousand dollars (\$5000), or both. However, this division is not intended to preclude prosecution under Section 272 of the Penal Code, or any similar provision, where appropriate.

(b) Except as authorized or otherwise provided by law, every person 21 years of age or older who provides, gives away or offers to give away marijuana to a person under 21 years of age is guilty of a misdemeanor and shall be punished by imprisonment in the county jail for not more than six months, or by a fine of not more than one thousand dollars (\$1000), or both.

(c) Notwithstanding any other provision of law, every person 21 years of age or older who provides, gives away or offers to give away, not more than five grams (avoirdupois) of marijuana to a person under 21 years of age, but at least 18 years of age, except as authorized by California law, is guilty of an infraction and shall be punished by a fine of not more than one hundred dollars (\$100).

(d) Selling, providing, transporting or possessing marijuana with the intent to sell, provide, or transport that marijuana into a state or territory in which the receiving, purchasing, or possessing marijuana would violate the laws of that state or territory, is a misdemeanor or felony.

(e) Notwithstanding subdivision (d), transporting or possessing not more than eight avoirdupois ounces of marijuana with the intent to sell, provide or transport that marijuana into a state or territory in which the receiving, purchasing, or possessing that marijuana would violate the laws of that state or territory, is an infraction, punishable by a fine of not more than one hundred dollars (\$100).

(f) Except as authorized by law, every person who imports more than 8 ounces (avoirdupois) of marijuana into California from another state or country is guilty of a misdemeanor or felony. In determining a violation of this subsection, vehicles who have one or more passengers shall calculate an allowable amount of 8 ounces per person 21 years of age or older.

11726. (a) Except authorized by law, it is unlawful for any person under the age of 21 years to have any marijuana in his or her possession or consume on any street or highway or in any public place or in any place open to the public. This section does not apply to possession by a person under the age of 21 years or for medicinal purposes as permitted under Health and Safety Code Section 11362.5 and Sections 11362.7 through 11362.9.

(b) Unless otherwise provided by law, where a peace officer has lawfully entered the premises, the peace officer may seize any marijuana product in plain view that is in the possession of, or provided to, a person under the age of 21 years at social gatherings, when those gatherings are open to the public, 10 or more persons under the age of 21 years are participating, persons under the age of 21 years are consuming marijuana products, and there is no supervision of the social gathering by a parent or guardian of one or more of the participants.

(c) Where a peace officer has seized marijuana products pursuant to subdivision (e), the officer may impound any marijuana product in the possession of, or provided to, a person under the age of 21 years, and shall impound those products for a period not to exceed thirty working days pending a request for the release of those products by a person 21 years of age or older who is the lawful owner or resident of the property upon which the marijuana products were seized. If no one requests release of the seized marijuana products within that period, those products may be destroyed.

(d) Subdivision (b) shall not apply to marijuana in cultivation in a home or yard that is owned or leased to at least one

person 21 years of age or older, and that person or such persons are the primary occupant(s) of such home or residence, unless such marijuana in cultivation is otherwise in violation of California law.

(e) A violation of subdivision (a) by a person under the age of 18 years is an infraction punishable by a fine of not more than two hundred fifty dollars (\$250).

(f) A violation of subdivision (a) by a person 18 years of age or older, but younger than 21 years of age, is an infraction punishable by a fine of not more than one hundred dollars (\$100).

11726.1. Nothing in this article shall authorize any person to engage in the smoking of marijuana under any of the following circumstances:

(a) In any place where smoking is prohibited by law, except as provided by subdivision (e) of Section 11722.

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

(c) On a schoolbus or on public transportation.

(d) While operating a boat or motor vehicle.

11726.5. (a) If no regulations to adopt Chapter 19 of Division 9 of the Business and Professions Code, or any other regulatory apparatus adopted by the state in furtherance of the purposes of this Act, adopted before or after November 6, 2012, have been issued on or by April 19th, 2013, it shall be lawful and not a violation of California law on and after April 20, 2013 for a person 21 years of age or older to:

(1) cultivate marijuana for commercial purposes in industrial and commercial zones, and at least 1000 feet from any entrance to any school, except as provided by local law.

(2) cultivate marijuana for commercial purposes at home, subject to the provisions of subdivisions (a) and (b) of Section 11725 of the Health and Safety Code; provided that no at-home commercial cultivator shall have in his or her possession more than 25 immature or mature plants in excess of the cultivation limit of that city or county, or the state guidelines set forth in subdivision (c) of Section 11725 in absence of such guidelines, except as otherwise authorized by law.

(3) sell to, possess for sale for, transfer to, share with, or otherwise distribute marijuana to any off-sale general licensee, including marijuana cultivated in a household, apartment, yard or anywhere else on private property for commercial or non-commercial purposes.

(b) If no regulations to adopt Chapter 19 of Division 9 of the Business and Professions Code have been issued on or by April 19th, 2013, it is lawful and not a violation of California law for off-sale general licensees pursuant to Division 9 (commencing with Section 23000) of the Business and Professions Code to sell, possess for sale, or otherwise transfer, or possess for distribution, marijuana to a person 21 years of age or older on and after April 20, 2013, provided that such licensee pay all fees and taxes pursuant to Part 14.6 (commencing with Section 34001) of Division 2 of the Revenue and Taxation Code, if any such fees or taxes are implemented, administered, assessed or otherwise collected.

(c) If no regulations to adopt Chapter 19 of Division 9 of the Business and Professions Code have been issued on or by April 19th, 2013, it is lawful for marijuana cultivated for medical purposes by a person authorized by Health and Safety Code 11362.5, or any person or entity authorized pursuant to Article 2.5 (commencing with Section 11362.7) of Chapter 6 of Division 10 of the Health and Safety Code, to be sold to, possessed for sale for, transferred to, shared with, or otherwise distributed to, any off-sale general licensee.

(d) Notwithstanding Section 1172X or Section 11357, if no regulations to adopt Chapter 19 of Division 9 of the Business and Professions Code have been issued on or by April 19th, 2013, unlawful sale or possession for sale of marijuana is a violation of this subsection, punishable by an infraction and a fine of not more than one hundred dollars (\$100) per transaction. This subdivision shall not preclude prosecution pursuant to any other provision of law that applies to the furnishing or sale of marijuana to a person under 21 years of age, or possessing marijuana for non-medical purposes upon the grounds of a school.

11726.6 Beginning 30 days after the operative date of the regulations issued pursuant to Chapter 19 (commencing with Section 26000) of Division 9 of the Business and Professions Code, all operation of Section 11726.5 shall be suspended.

11726.7 Notwithstanding Section 11726.6, if the commercial regulations issued pursuant to Chapter 19 (commencing with Section 26000) of Division 9 of the Business and Professions Code are no longer in effect, or are invalidated, and no other regulatory apparatus currently occupies the field in which it operates under state law, Section 11726.5 shall be reinstated; provided that 30 days after the operative date of any laws or regulations lawfully adopted in the pursuit of a statewide regulatory apparatus for non-medical marijuana, the provisions of Section 11726.5 shall be re-suspended.

11726.8. Any other violation of this division is an infraction, punishable by a fine of up to one hundred dollars (\$100).

11727. Notwithstanding any other law, it is lawful and not a violation of California law to possess, transport, or sell the mature stalks of the plant *Cannabis sativa* L., fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom, which is regulated as marijuana), fiber, oil, or cake, or the sterilized seed of the plant that is incapable of germination.

11728. Notwithstanding any other provision of law, state or local funds may not be expended on, and state or local law enforcement or other personnel may not assist in, the enforcement of any federal or other laws that are inconsistent with this division, or provide for greater sanctions for conduct prohibited by this division.

11729. Notwithstanding any other provision of law, this division may not be construed to affect or limit any criminal statute that forbids impairment while engaging in dangerous activities like driving, or that penalizes bringing marijuana to a school enrolling pupils in kindergarten or any of grades 1 to 12, inclusive.

11729.5. Notwithstanding any other provision of law, no person shall be punished, fined, discriminated against, or be denied any right or privilege for lawfully engaging in any conduct permitted by the Legalize Marijuana Act of 2012, or permitted by Division 10.3 (commencing with Section 11720) of the Health and Safety Code or as authorized by Section 11362.5 of the Health and Safety Code. Provided however, that the existing right of an employer to maintain a drug-free workplace with respect to on-site consumption, or the existing right of an employer to address consumption or use that impairs on-the-job performance by an employee, shall not be affected.

11730 (a) This Act shall be retroactive, and by operation of law expunges the conviction of everyone convicted of a cannabis or marijuana offense no longer a violation under California law. With respect to current trials, upon determining the defendant is guilty, the conviction and arrest shall immediately be expunged from the defendant's record. This Act shall mandate the immediate and timely destruction of records of the arrest and conviction for such offenses which are now lawful under state law.

(b) Subdivision (a) shall apply to an arrest or conviction of a cannabis or marijuana-related offense(s) as existed prior to November 7, 2012, but shall not be limited to: Health and Safety Code Sections 11014.5 and 11364 [relating to drug paraphernalia], but only if a violation would not have existed under revised statute(s); 11357 [relating to possession]; 11358 [relating to cultivation], with exception to offenses involving marijuana cultivated on public lands; 11359 [relating to possession for sale]; 11360 [relating to transportation and sales]; 11361 [related to minors], as amended; 11366 and 11366.5 [related to maintaining a place for cultivation, sales]; Vehicle Code sections 23222 and 40000.15 [relating to possession].

(c) No records shall be destroyed pursuant to subdivision (a) if the defendant or a codefendant has filed a civil action against the peace officers or law enforcement jurisdiction which made the arrest or instituted the prosecution and if the agency which is the custodian of those records has received a certified copy of the complaint in the civil action, until the civil action has finally been resolved. Immediately following the final resolution of the civil action, records subject to subdivision (a) shall be destroyed pursuant to subdivision (c) of Section 11361.5 of the Health and Safety Code.

## SECTION 2. COMMERCIAL PRODUCTION AND SALE OF MARIJUANA

Chapter 19 (commencing with Section 26000) is added to Division 9 of the Business and Professions Code, to read:

### *Chapter 19. Commercial Marijuana Production and Sale*

26000. (a) This chapter is an exercise of the police powers of the state for the protection of the safety, welfare, health, peace, and morals of the people of the state, to eliminate the evils of unlicensed and unlawful production, selling, and disposing of marijuana, and to promote temperance in the use and consumption of marijuana. It is hereby declared that the subject matter of this chapter involves in the highest degree the economic, social, and moral well-being and the safety of the state and of all its people. All provisions of this chapter shall be liberally construed for the accomplishment of these purposes.

(b) It is the intention of the People in enacting this chapter to ensure the strict, honest, impartial, and uniform administration and enforcement of marijuana laws throughout the state governing the production, sale, disposal, and promotion of temperance in the use and consumption of marijuana.

(c) The Department of Alcoholic Beverage Control shall administer and enforce this chapter. The department shall make and prescribe those reasonable rules as may be necessary or proper to carry out the purposes and intent of, and to enable it to exercise the powers and perform the duties conferred upon it by, this chapter.

26000.5. If any provision of this division or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this division that can be given effect without the invalid portion or application, and to this end the provisions of this division are severable. It is the intent of the People that this division would have been adopted regardless if such invalid provision had not been included or any invalid application had not been made.

26010. For purposes of this chapter, "marijuana" means all parts of the plant *Cannabis sativa* L., whether growing or not; the seeds thereof; the resin extracted from any part of the plant; concentrated cannabis; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or of its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound,

manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant that is incapable of germination. For purposes of this chapter, "marijuana" does not include "medical marijuana" that is regulated under Article 2.5 (commencing with Section 11362.7) of Chapter 6 of Division 10 of the Health and Safety Code.

26011. The department may create a Marijuana Products Compliance Task Force for the purpose of advising the department on marijuana products health, risk, safety and tax compliance issues that may include, but not be limited to, representatives from the following:

- (a) The department.
- (b) The office of the Attorney General.
- (c) The State Department of Health Services.
- (d) One person from each of the categories of persons required by this division to have a license.
- (e) Other states engaged in marijuana products health, safety and tax compliance efforts.
- (f) Local law enforcement agencies.
- (g) The Board of Equalization.

26012. Commencing April 25, 2015, the Bureau of State Audits shall conduct a performance audit of the licensing and enforcement provisions of this division, and shall report its findings to the department and the Legislature by July 1, 2015. The report shall include, but not be limited to:

- (a) The actual costs of the program.
- (b) The level of additional revenue generated by the program compared to the period before its implementation.
- (c) Tax compliance rates.
- (d) The costs of enforcement at the varying levels.
- (e) The appropriateness of penalties assessed in this division.
- (f) The overall effectiveness of enforcement programs.

26013. Any notice required by this division shall be served personally or by mail. If by mail, the notice shall be placed in a sealed envelope, with postage paid, addressed to the licensee at the address as it appears in the records of the department. The giving of notice shall be deemed complete at the time of deposit of the notice in the United States Post Office, or a mailbox, subpost office, substation, or mail chute, or other facility regularly maintained or provided by the United States Postal Service, without extension of time for any reason. In lieu of mailing, a notice may be served personally by delivering to the person to be served and service shall be deemed complete at the time of delivery. Personal service to a corporation may be made by delivery of a notice to any person designated in the Code of Civil Procedure to be served for the corporation with summons and complaints in a civil action.

26014. The department shall, upon request, provide to the State Department of Health Services, the office of the Attorney General, a law enforcement agency, and any agency authorized to enforce local marijuana control ordinances, access to the department's database of licenses issued to retailers within the jurisdiction of that agency or law enforcement agency. The agencies authorized by this section to access the department's database shall only access and use the department's database for purposes of enforcing marijuana control laws and shall adhere to all state laws, policies, and regulations pertaining to the protection of personal information and individual privacy.

26015. (a) (1) Any peace officer, or department employee granted limited peace officer status pursuant to paragraph (6) of subdivision (a) of Section 830.11 of the Penal Code, upon presenting appropriate credentials, is authorized to enter any place as described in paragraph (3) and to conduct inspections in accordance with the following paragraphs, inclusive.

(2) Inspections shall be performed in a reasonable manner and at times that are reasonable under the circumstances, taking into consideration the normal business hours of the place to be entered.

(3) Inspections may be at any place at which marijuana products are sold, produced, cultivated or stored or at any site where evidence of activities involving evasion of marijuana products tax and violations of Section 30165.1 of the Revenue and Taxation Code may be discovered.

(4) Inspections shall be requested or conducted no more than once in a 24-hour period.

(b) Any person that refuses to allow an inspection shall be subject to the penalties imposed pursuant to Section 26096.

26016. (a) Except as authorized by law, a person or entity that engages in the business of selling or producing marijuana products in this state either without a valid license or after a license has been suspended or revoked, and each officer of any corporation that so engages in this business, is guilty of a misdemeanor punishable as provided in Section 26096.

(b) Each day after notification by the department or by a law enforcement agency that a manufacturer, wholesaler, distributor, importer, retailer, or any other person required to be licensed under this division offers marijuana products for sale or exchange without a valid license for the location from which they are offered for sale shall constitute a separate violation.

(c) Continued sales or gifting of marijuana products either without a valid license or after a notification of suspension or

revocation shall constitute a violation punishable as provided in Section 26096, and shall result in the seizure of all marijuana products in the possession of the person by the department or a law enforcement agency. Any marijuana products seized by the department or by a law enforcement agency shall be deemed forfeited.

26017. (a) Licenses issued pursuant to this division shall be subject to suspension or revocation for violations of this division or the Revenue and Taxation Code as provided in this section.

(1) In addition to any applicable fines or penalties for a violation, upon first conviction of a violation, a licensee shall receive a written notice from the department detailing the suspension and revocation provisions of this division. At its discretion, the department may also suspend a license for up to 90 days.

(2) In addition to any applicable fines or penalties for a violation, upon a second conviction of a violation within four years of a previous violation, the license shall be revoked.

(b) The date of the occurrence of a violation shall be used to calculate the duration between subsequent violations. A violation shall be noted in the license record at the department only after judicial conviction or final adjudication of a violation.

(c) Upon updating a record for a violation triggering a suspension, the department shall serve the licensee with a notice of suspension and shall order the licensee to cease the sale, gifting, or displaying for sale of marijuana products for the period of the suspension. The notice of suspension shall inform the licensee of the effective dates of the suspension.

(d) Continued sales or gifting of marijuana products after the effective date of the suspension shall constitute a violation of this division and result in the revocation of a license.

(e) Upon completion of a suspension period, a license shall be reinstated by the department upon certification that all outstanding debts of that retailer or wholesaler that are owed to a wholesaler or distributor for the purchase of marijuana products are paid.

(f) Upon updating a record for a violation triggering a revocation, the department shall serve the licensee with a notice of revocation and shall order the licensee to cease the sale, gifting, or displaying for sale of marijuana products on and after the effective date of the revocation. The notice of revocation shall inform the licensee of the effective date of the revocation.

(g) After a revocation, a previously licensed applicant may apply for a new license after six months. The department may, at its discretion, issue a new license.

(h) Upon updating a license record for a violation, suspension, or revocation to a license of a person or entity that owns or controls more than one location, the department shall send notice in writing of the violations, suspensions, or revocations within 15 days of the department's action to the address included in the application and listed on the license for receipt of correspondence or notices from the department.

(i) Upon suspension or revocation of a license pursuant to this section, the department shall notify all licensed distributors and wholesalers by electronic mail within 48 hours of the suspension or revocation of that license. All licensed distributors and wholesalers shall provide the department and shall update, as necessary, an electronic mail address that the department can use for purposes of making the notifications required by this subdivision.

(j) Violations by a licensee at one location may not be accumulated against other locations of that same licensee. Violations accumulated against a prior owner at a licensed location may not be accumulated against a new owner at the same licensed location.

(k) For purposes of this section, a violation includes violations of the Revenue and Taxation Code relating to marijuana products, and violations of this division. Only one violation per discrete action shall be counted toward a suspension or revocation of a license.

26018. A person who, after receiving a notice of suspension or revocation, continues to display for sale marijuana products shall be subject to a civil penalty of one thousand dollars (\$1,000) for each offense, and shall not be subject to Section 26096.

26019. Notwithstanding any other provision of law, having in place or maintaining a valid license to engage in the cultivation, processing, production, sale or distribution of marijuana pursuant to California law shall not require or mandate the license holder to engage in activities that are in violation of federal law, nor suggest that the license holder or agents of such licensees are acting in violation of federal law, regardless of its legal status under California law.

26020. (a) The department shall license commercial cultivators of marijuana. The fee for the license shall be set at an amount that will reasonably cover the costs of assuring compliance with the regulations to be issued, but may not exceed two thousand dollars (\$2,000) for an initial application, or one thousand dollars (\$1,000) per year for each annual renewal.

(b) Regulations adopted by the department pursuant to this chapter shall require background checks of applicants be conducted. At the request of the department, the Attorney General or any local agency shall provide summary criminal history information to the department as provided in Sections 11105 and 13300 of the Penal Code.

26030. The department shall, with consideration for the risks posed by cultivation of a valuable crop with public health implications that is subject to significant fees, issue and enforce regulations concerning commercial cultivators of marijuana that provide for all of the following:

(a) Adequate security to reasonably protect against unauthorized access to the marijuana crop at all stages of cultivation, harvesting, drying, processing, packing, and delivery to licensed sales outlets or wholesalers. Each licensee shall be required to provide a detailed crop security plan, along with satisfactory proof of the financial ability of the licensee to provide for that security.

(b) Appropriate employment rules, including the rule that a person under 21 years of age may not have access to marijuana during cultivation, storage, drying, or packing, or at any other time.

(c) Safeguards to ensure that a person under 21 years of age may not transport marijuana on behalf of a commercial buyer or commercial seller.

(d) Restrictions to ensure that marijuana is not used or consumed on the premises of a commercial cultivator, except for medical purposes.

(e) An inspection and tracking system to reasonably ensure that all marijuana produced by the cultivator that is eventually sold is assessed pursuant to Part 14.6 (commencing with Section 34001) of Division 2 of the Revenue and Taxation Code.

(f) Recordkeeping consistent with the regulatory needs of the department, but with an effort to maximize confidentiality where possible.

(g) Ensure that all applicable statutory environmental and agricultural requirements are followed in the cultivation of marijuana.

26040. (a) The department shall license marijuana wholesalers, who shall be allowed to package and prepare marijuana for sale, and who shall be authorized to transport, distribute, deliver or sell marijuana to licensed sales outlets. The fee for the license shall be set in an amount that will reasonably cover the costs of compliance with the regulations to be issued, but may not exceed two thousand dollars (\$2,000) for an initial application, or one thousand dollars (\$1,000) per year for each annual renewal.

(b) The department shall issue regulations that include a requirement that all applicants for licensure receive background checks. At the request of the department, the Attorney General or any local agency shall provide summary criminal history information to the department as provided in Sections 11105 and 13300 of the Penal Code.

26045. The department shall, with consideration for the risks posed by a valuable commodity with public health implications that is subject to significant fees, issue and enforce regulations concerning the sale, packaging, and labeling of marijuana by wholesale licensees. Those regulations shall provide for all of the following:

(a) Adequate security to reasonably protect against unauthorized access to marijuana at all stages of the wholesaler's possession of the marijuana, including receiving, processing, packing, storage, and delivery to licensed sales outlets. Each wholesaler shall be required to provide a detailed product security plan, along with satisfactory proof of the financial ability of the licensee to provide for that security.

(b) Appropriate employment rules, including the rule that a person under 21 years of age may not have access to marijuana during receiving, processing, packing, storage, and delivery or at any other time, except for medical purposes.

(c) Safeguards to ensure that a person under 21 years of age may not transport marijuana on behalf of a commercial buyer or commercial seller.

(d) Restrictions to ensure that marijuana is not used or consumed on the premises of a wholesaler, except for medical purposes.

(e) An inspection and tracking system to reasonably ensure that all marijuana received by the wholesaler that is eventually sold is assessed pursuant to Part 14.6 (commencing with Section 34001) of Division 2 of the Revenue and Taxation Code.

(f) Recordkeeping consistent with the regulatory needs of the department, but with an effort to maximize confidentiality where possible.

(g) Adequate labeling of packages of marijuana to describe the purity, potency, processing, and any adulteration of the product.

26050. The department shall issue and enforce regulations concerning the sale of marijuana by off-sale general licensees. Those regulations shall provide for all of the following:

(a) An inspection and tracking system to ensure that marijuana may not be sold by a licensee if that marijuana has not been made subject to an assessment provided for in Part 14.6 (commencing with Section 34001) of Division 2 of the Revenue and Taxation Code.

(b) Marijuana shall be kept behind a counter, in a shelf, or in any other area not directly accessible to any customer, and shall be stored in a locked area during non-business hours.

(c) Marijuana may not be sold to anyone under 21 years of age.

(d) Punishments for violations in actions against licensees that are in substantial accord with those applicable to the regulation of alcohol sales, including heavy penalties for permitting persons under 21 years of age to purchase these products and other appropriate regulatory provisions concerning matters as the time of sale, deliveries, and signage. It is the intent of the people in enacting this act that the regulation of marijuana sales be consistent with the statutory guidance regarding alcohol sales in Chapter 16 (commencing with Section 25600), to the extent that consistency is feasible.

(e) Recordkeeping consistent with the regulatory needs of the department, but with an effort to maximize confidentiality where possible.

26060. The department shall administer a statewide program to license retailers of marijuana products as an alternative to holding an off-sale general license.

26061. (a) Commencing April 20, 2013, a retailer shall have in place and maintain a license to engage in the sale of marijuana products. A retailer that owns or controls more than one retail location shall obtain a separate license for each retail location, but may submit a single application for those licenses.

(b) The retailer shall conspicuously display the license at each retail location in a manner visible to the public.

(c) A license is not assignable or transferable. A person who obtains a license as a retailer who ceases to do business as specified in the license, or who never commenced business, or whose license is suspended or revoked, shall immediately surrender the license to the department.

(d) A license shall be valid for a 12-month period, and shall be renewed annually.

(e) Notwithstanding subdivision (a), having in place or maintaining a valid off-sale general license shall be sufficient to comply with the provisions with this section.

26062. (a) Notwithstanding Section 26061 or Section 26064, the department may issue to a retailer a temporary license with a scheduled expiration date, as determined by the department, that occurs on or before January 1, 2014.

(b) A temporary license issued pursuant to this section shall be automatically terminated upon the department's issuance of a license pursuant to Section 26064.

(c) A temporary license issued pursuant to this section is subject to the same suspension, revocation, and forfeiture provisions that apply to licenses issued by the department pursuant to Section 26064.

26063. (a) An application for a license shall be filed on a form prescribed by the department and shall include the following:

(1) The name, address, and telephone number of the applicant.

(2) The business name, address, and telephone number of each retail location. For applicants who control more than one retail location, an address for receipt of correspondence or notices from the department, such as a headquarters or corporate office of the retailer, shall also be included on the application and listed on the license. Citations issued to licensees shall be forwarded to all addressees on the license.

(3) A statement by the applicant affirming that the applicant has not been convicted of a felony and has not violated and will not violate or cause or permit to be violated any of the provisions of this division or any rule of the department applicable to the applicant or pertaining to the manufacture, sale, or distribution of marijuana products. If the applicant is unable to affirm this statement, the application shall contain a statement by the applicant of the nature of any violation or the reasons that will prevent the applicant from complying with the requirements with respect to the statement.

(4) If any other licenses or permits have been issued by the department or the Department of Alcoholic Beverage Control to the applicant, the license or permit number of those licenses or permits then in effect.

(5) A statement by the applicant that the contents of the application are complete, true, and correct. Any person who signs a statement pursuant to this subdivision that asserts the truth of any material matter that he or she knows to be false is guilty of a misdemeanor punishable by imprisonment of up to one year in the county jail, or a fine of not more than one thousand dollars (\$1,000), or both the imprisonment and the fine.

(6) The signature of the applicant.

(7) Any other information the department may require.

(b) The department may investigate to determine the truthfulness and completeness of the information provided in the application. The department may issue a license without further investigation to an applicant for a retail location if the applicant holds a valid license from the Department of Alcoholic Beverage Control for that same location.

(c) The department shall provide electronic means for applicants to download and submit applications.

(d) (1) A one-time license fee of one thousand dollars (\$1000) shall be submitted with each application. An applicant that owns or controls more than one retail location shall obtain a separate license for each retail location, but may submit a single application for those licenses with a one-time license fee of one hundred dollars (\$100) per location.

(2) The one-time fee required by this subdivision does not apply to an application for renewal of a license for a retail location for which the one-time license fee has already been paid. If a license is reinstated after its expiration, the retailer, as a condition precedent to its reinstatement, shall pay a reinstatement fee of one thousand dollars (\$1000).

26064. (a) The department shall issue a license to a retailer upon receipt of a completed application and payment of the fees prescribed in Section 26063, unless any of the following apply:

(1) The retailer, or if the retailer is not an individual, any person controlling the retailer, has previously been issued a license that is suspended or revoked by the department for violation of any of the provisions of this division.

(2) The application is for a license or renewal of a license for a retail location that is the same retail location as that of a retailer whose license was revoked or is subject to revocation proceedings for violation of any of the provisions of this

division, unless:

(A) It has been more than five years since a previous license for the retail location was revoked.

(B) The person applying for the license provides the department with documentation demonstrating that the applicant has acquired or is acquiring the premises or business in an arm's length transaction. For purposes of this section, an "arm's length transaction" is defined as a sale in good faith and for valuable consideration that reflects the fair market value in the open market between two informed and willing parties, neither under any compulsion to participate in the transaction. A sale between relatives, related companies or partners, or a sale for the primary purpose of avoiding the effect of the violations of this division that occurred at the retail location, is presumed not to be made at "arm's length."

(3) The retailer, or if the retailer is not an individual, any person controlling the retailer, has been convicted of a felony pursuant to Section 30473 or 30480 of the Revenue and Taxation Code.

(b) (1) Any retailer who is denied a license may petition for a redetermination of the department's denial of the license within 30 days after service upon that retailer of the notice of the denial of the license. If a petition for redetermination is not filed within the 30-day period, the determination of denial becomes final at the expiration of the 30-day period.

(2) Every petition for redetermination shall be in writing and shall state the specific grounds upon which the petition is founded. The petition may be amended to state additional grounds at anytime prior to the date on which the department issues its order or decision upon the petition for redetermination.

(3) If the petition for redetermination is filed within the 30-day period, the department shall reconsider the determination of the denial and, if the retailer has so requested in the petition, shall grant the retailer an oral hearing and shall give the retailer at least 10 days' notice of the time and place of the hearing. The department may continue the hearing from time to time as may be necessary.

(4) The order or decision of the department upon a petition for redetermination becomes final 30 days after mailing of notice thereof.

26065. (a) A retailer whose license has been suspended or revoked by order of the department shall conspicuously post a notice at both of the following locations:

(1) Each public entrance to the retail location. The notice shall directly face any person who enters the retail location and shall not be obstructed from view or placed at a height of less than four feet or greater than nine feet from the floor.

(2) Each cash register and other point of retail sale. The notice shall be posted so as to be readily viewable by a person standing at or approaching the cash register or other point of retail sale. The notice shall directly face the purchaser and shall not be obstructed from view or placed at a height of less than four feet or greater than nine feet from the floor.

(b) The notices described in this section shall be in the size and form prescribed by the department. The notice shall be provided by the department and may be reproduced in the same size and form in order to comply with subdivision (a).

(c) A retailer whose license was suspended shall post the notice at the retail location that was the subject of the suspension for the duration of the suspension.

(d) A retailer whose license was revoked shall post the notice at the retail location that was the subject of the revocation for a 30-day period from the effective date of the revocation.

(e) Every retailer who fails to post the notices as required by this section, who alters the notice provided by the department, or who removes the notice before the posting period required in subdivision (c) or (d), as appropriate, expires, shall be subject, notwithstanding Section 26096, to a civil penalty of one thousand dollars (\$1,000) for each offense.

26070. Unless otherwise prohibited by California law, cities and counties may:

(a) retain or enact laws, ordinances or guidelines prohibiting a person from smoking marijuana in a public place pursuant to Section 11722 of the Health and Safety Code; however, the right of a person to smoke or ingest marijuana in ones home, or in any private residence, or upon the grounds of that home or residence, shall not be infringed by the state, a city, a county, or any other governmental entity.

(b) retain or enact reasonable ordinances, rules and regulations regarding licensed cannabis-related businesses who offer for sale or sell marijuana as provided by Chapter 19 (commencing with Section 26000) of Division 9 of the Business and Professions Code, including appropriate and reasonable zoning, safety, and environmental laws to protect the general health and welfare of the public.

(c) prohibit or reasonably restrict the sale of marijuana for non-medical purposes by off-sale license holders as provided by Chapter 19 (commencing with Section 26000) of Division 9 of the Business and Professions Code, or by on-sale license holders as governed by other provisions of California law; however, such violations shall be charged and prosecuted using the provisions set forth in Section 1172X of the Health and Safety Code.

(d) retain or enact laws, ordinances or guidelines permitting a person from possessing or cultivating amounts of marijuana in excess of subdivision (c) of Section 11357 of the Health and Safety Code, as specified in Section 11357.5 of the Health and Safety Code and Section 11725.5 of the Business and Professions Code; however, no tax or fee shall be levied on the personal or medical possession, personal or medical consumption, or personal or medical or non-commercial cultivation of marijuana. This paragraph shall not prohibit cities and governments from mandating or offering a low-cost non-invasive fire

*safety education program in permitting the non-commercial cultivation of marijuana in excess amounts provided under Section 11725.5 of the Health and Safety Code; provided that the right to cultivate amounts in excess of Section 11725.5 of the Health and Safety Code by patients or caregivers pursuant to Section 11362.77 of the Health and Safety Code shall not be infringed.*

*(e) retain or enact appropriate environmental and public health controls to ensure that any licensed premises or licensed cultivators of marijuana minimizes any harm to the environment, adjoining and nearby landowners, and persons passing by.*

*(f) retain or enact laws, regulations, or ordinances that have the force of law, authorizing or regulating kitchens or other establishment that offers for sale marijuana in an edible, liquid other otherwise consumable form;*

*(g) retain or enact laws, ordinances or guidelines prohibiting or restricting the possession or cultivation of marijuana by a commercial cultivator licensed pursuant to Section 26020, or a marijuana wholesaler licensed pursuant to Section 26040, within its jurisdiction.*

*26075. Notwithstanding the provisions of Section 26070, or any other provision of law, cities and counties are prohibited from:*

*(a) enacting or assessing taxes or fees on the possession or cultivation of marijuana; provided that cities and counties may adopt taxes on the retail transactions of marijuana as provided in Section 34041 of the Revenue and Taxation Code.*

*(b) arresting, citing or prosecuting patients who possess a valid identification card pursuant to Article 2.5 (commencing with Section 11362.7) of Chapter 6 of Division 10 of the Health and Safety Code for the public consumption of marijuana, unless there is reasonable cause to believe that the information contained in the card is false or falsified, the card has been obtained by means of fraud, or the person is otherwise in violation of the provisions of Article 2.5 (commencing with Section 11362.7).*

*(c) prohibiting medical marijuana patients and caregivers from cultivating or distributing marijuana collectively, or cooperatively, with or without remuneration; provided that cities and counties shall have the right to enact equitable, appropriate and reasonable zoning laws to ensure the public safety and welfare.*

*(d) prohibiting commercial cultivation, wholesale, retail or off-sale general licensees, or persons lawfully acting on their behalf, from transporting marijuana commercially within the state of California, including within a city or county that prohibits the sale of marijuana within its jurisdiction.*

*26080. (a) Notwithstanding any other provision of law, no person or entity may collect, attempt to collect, sell, attempt to sell, give away, attempt to give away, furnish, attempt to furnish, allow the distribution of, include in a database, or create a database with, any thumbprint or other biometric data, from any person or entity who applies, attempts to apply, renews, attempts to renew, possesses, uses or attempts to use any commercial cultivation or wholesale license, or any license that specifically deals with marijuana-related activities.*

*(b) Notwithstanding any other provision of law, any records of a person or entity who applies, attempts to apply, renews, attempts to renew, possesses, uses or attempts to use a marijuana commercial cultivation or wholesale license, or any license which specifically deals only with marijuana-related activities, shall remain confidential. This subdivision shall not restrict or prohibit the Department from collecting and sharing information that is necessary for its essential regulatory operations.*

*26085. Notwithstanding any other provision of law, it is lawful and not a violation of California law for a commercial cultivator licensed pursuant to Section 26020, a marijuana wholesaler licensed pursuant to Section 26040, an off-sale general licensee, or a retailer licensed pursuant to Section 26060, to transport marijuana within the state of California, regardless of municipal laws, ordinances or other acts that have the force of law that provide for the contrary.*

*26090. Beginning 30 days after the operative date of the regulations issued pursuant to this chapter, the department shall begin to enforce the provisions of this chapter; provided that Sections 26070, 26075 and 26080 shall take effect immediately.*

*26095. (a) If the department fails to adopt regulations to implement this chapter on or by the end of the evening of April 19, 2013, any citizen may commence a mandamus action in Superior Court to compel the department to perform the actions mandated under this chapter.*

*(b) If the department fails to issue a license within thirty days of the submission of a valid application or renewal pursuant to the regulations adopted by this chapter, the license shall be deemed issued, and a copy of the license application or renewal is deemed a valid license, except as provided by subdivision (c) or otherwise provided by this chapter. Such licensee shall be governed by the appropriate regulations and provisions set forth in this chapter.*

*(c) No licenses shall be deemed valid until the operative date of these regulations.*

*(d) Cities and counties may provide fair, appropriate and reasonable regulations, or may prohibit, the commercial cultivation of marijuana in industrial zones to ensure the public safety and welfare.*

*26096. Any violation of this division by any person, except as otherwise provided, is a misdemeanor. Each offense shall be punished by a fine not to exceed five thousand dollars (\$5,000), or imprisonment not exceeding one year in a county jail, or both the fine and imprisonment. The court shall order any fines assessed be deposited in the Marijuana Products Compliance Fund.*

*26097. Any prosecution for a violation of any of the penal provisions of this division shall be instituted within four years*

*after the commission of the offense.*

SECTION 3. Part 14.6 (commencing with Section 34001) is added to Division 2 of the Revenue and Taxation Code, to read:

*PART 14.6. MARIJUANA FEES*

*CHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS*

*34001. It is the intent of the people in enacting this part to raise revenue for the State by enacting a supplemental fee on marijuana.*

*34002. This part shall be known and may be cited as the "Marijuana Supplemental State Fee Law."*

*34003. Except where the context otherwise requires, the definitions set forth in Part 1 (commencing with Section 6001) govern the construction of this part.*

*34004. For purposes of this part:*

*(a) "Marijuana" includes all marijuana, concentrated cannabis, and their derivatives, except that marijuana containing less than one-half of 1 percent tetrahydrocannabinol by weight is not subject to this supplemental fee. However, no fee shall be imposed under this part on marijuana used medicinally with a doctor's recommendation as specified in Section 11362.5 of the Health and Safety Code.*

*(b) "Retailer" means any retailer licensed pursuant to Section 23394.1 of the Business and Professions Code who sells marijuana at retail.*

*CHAPTER 2. IMPOSITION OF FEE*

*34011. Until a different fee is determined pursuant to Section 34032 there is hereby imposed a fee of twenty five dollars (\$25) per ounce (avoirdupois) for the sale of non-medical marijuana sold at retail in this state on or after the date determined by Section 26090 of the Business and Professions Code.*

*CHAPTER 3. COLLECTION AND ADMINISTRATION*

*34021. To the extent feasible or practicable, the provisions of Chapter 5 (commencing with Section 6451), Chapter 6 (commencing with Section 6701), Chapter 7 (commencing with Section 6901), and Chapter 8 (commencing with Section 7051) of Part 1 shall govern returns and payments, determinations, collections of fees, overpayments and refunds, and administration under this part.*

*34022. The board shall enforce this part and may prescribe, adopt, and enforce rules and regulations relating to the administration and enforcement of this part. The board may prescribe the extent to which any ruling and regulation shall be applied without retroactive effect.*

*34023. The fee shall not apply to transactions of marijuana conducted in violation of California law.*

*CHAPTER 4. DISPOSITION OF PROCEEDS AND ADJUSTMENT OF THE FEE*

*34031. Any amount required to be paid to the state under this part, except as provided in Chapter 5 (commencing with Section 34041), shall be paid to the board in the form of a remittance payable to the State Board of Equalization. The board shall transmit the payments to the Treasurer to be deposited in the General Fund. The board shall transmit the payments to the Treasurer to be deposited in the Statewide Marijuana Fee Collection Account, which is hereby created in the General Fund. Upon appropriation, the moneys in the fund shall be expended exclusively for the everyday operations of state and local law enforcement agencies, and the Department of Alcoholic Beverage Control, or any successor to that agency that administers marijuana regulations, for the regulatory operations to ensure the public safety and welfare and compliance with marijuana laws and regulations, as well as expended for drug education, awareness, and rehabilitation programs under the jurisdiction of the State Department of Alcohol and Drug Programs, or any successor to that agency.*

*34032. The fee imposed pursuant to Chapter 2 shall be annually reviewed by the Department of Alcoholic Beverage Control, or any successor to that agency that administers marijuana regulations, to determine whether a fee less than that specified in Chapter 2 should be applied in lieu of the current amount. Based on this annual review, the Department of Alcoholic Beverage Control shall adjust that fee to an amount not to exceed twenty five dollars (\$25) per ounce (avoirdupois) of marijuana, and that amount shall be collected in place of the fee specified in Chapter 2.*

CHAPTER 5. LOCAL TAXATION

34041. A city or county may retain or enact special taxes or fees on retail or certain medical transactions of marijuana, for which would be paid to the Treasurer of that city or county, or the agency chiefly involved in municipal tax collection or administration, provided that such imposed taxes shall not total more than:

(1) Six percent (6%) of the sale, donation or compensation price or amount for non-medical marijuana transactions; provided that the combination of state and local taxes on the sale, donation or compensation price or amount for non-medical marijuana shall not exceed fourteen per cent (14%).

(2) Three percent (3%) of the sale, donation or compensation amount for medical marijuana transactions to qualified patients not in possession of a valid identification card; provided that the transaction occur through a collective, cooperative, pharmacy, or other dispensary pursuant to Article 2.5 (commencing with Section 11362.7) of Chapter 6 of Division 10 of the Health and Safety Code, and provided that the combination of state and local taxes on the sale, donation or compensation for medical marijuana transactions to or amongst qualified patients not in possession of a valid identification card shall not exceed eleven per cent (11%).

(3) Zero percent (0%) of the sale, donation or compensation for medical marijuana transactions to or amongst qualified patients in possession of a valid identification card; provided that the transaction occur through a collective, cooperative, pharmacy, other dispensary pursuant to Article 2.5 (commencing with Section 11362.7) of Chapter 6 of Division 10 of the Health and Safety Code, .

34042. Section 34041 shall not apply to transactions of marijuana conducted in violation of California law.

SECTION 4. MEDICAL MARIJUANA

Article 2.5 of Chapter 6 of Division 10 shall now commence with Section 11362.5. Section 11362.5 of the Health and Safety Code is amended to read:

11362.5. (a) This section shall be known and may be cited as the Compassionate Use Act of 1996.

(b) (1) The people of the State of California hereby find and declare that the purposes of the Compassionate Use Act of 1996 are as follows:

(A) 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) To ensure that patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction.

(C) To encourage the federal and state governments to implement a plan to provide for the safe and affordable distribution of marijuana to all patients in medical need of marijuana.

(2) Nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, nor to condone the diversion of marijuana for nonmedical purposes.

(c) Notwithstanding any other provision of law, no physician in this state shall be punished, or denied any right or privilege, for having recommended marijuana to a patient for medical purposes.

(d) *Notwithstanding any other provision of law, subdivisions (a) and (b) of Section 11726 and subdivisions (a) and (b) of Section 11357, relating to the possession of marijuana, and Section 11358, subdivision (a) of Section 11725, relating to the cultivation of marijuana, shall not apply to a patient, or to a patient's primary caregiver, who possesses or cultivates marijuana for the personal medical purposes of the patient upon the written or oral recommendation or approval of a physician.*

(e) For the purposes of this section, "primary caregiver" means the individual designated by the person exempted under this section who has consistently assumed responsibility for the housing, health, or safety of that person.

Section 11362.77 of the Health and Safety Code is amended to read:

11362.77. (a) A qualified patient or primary caregiver may possess no more than eight ounces of dried marijuana per qualified patient. In addition, a qualified patient or primary caregiver may also maintain no more than ~~six~~ *twenty five* mature or ~~12~~ immature marijuana plants per qualified patient.

(b) ~~If~~ *Notwithstanding any other provision of law, if* a qualified patient or primary caregiver has a *written* doctor's recommendation that this quantity does not meet the qualified patient's medical needs, the qualified patient or primary caregiver may possess, cultivate, or transport an amount of marijuana consistent with the patient's ~~needs~~ *needs*, provided that the amount necessary is explicitly written or otherwise explicitly specified in the recommendation, and justified by appropriate medical documentation, except as prohibited by law, which shall provide detailed reasoning regarding the

*exemption.*

(c) Counties and cities may retain or enact medical marijuana guidelines allowing qualified patients or primary caregivers to exceed the state limits set forth in subdivision (a).

(d) Only the dried mature processed flowers of female cannabis plant or the plant conversion shall be considered when determining allowable quantities of marijuana under this section.

~~—(e) The Attorney General may recommend *modifications* to the possession or cultivation limits set forth in this section. These recommendations, if any, shall be made to the Legislature no later than December 1, 2005, and may be made only after public comment and consultation with interested organizations, including, but not limited to, patients, health care professionals, researchers, law enforcement, and local governments. Any recommended modification shall be consistent with the intent of this article and shall be based on currently available scientific research.~~

(~~⊕~~) (e) A qualified patient or a person holding a valid identification card, or the designated primary caregiver of that qualified patient or person, may possess amounts of marijuana consistent with this article.

Health and Safety Code 11362.775 is amended to read:

11362.775. (a) Qualified patients, persons with valid identification cards, and the designated primary caregivers of qualified patients and persons with identification cards, who associate within the State of California in order collectively or cooperatively to cultivate marijuana for medical purposes, shall not solely on the basis of that fact be subject to state criminal or civil sanctions under *Health and Safety Code* Section 11357, ~~11358, 11359, 11360,~~ 11366, 11366.5, ~~or 11570,~~ 11725, or 11726.

(b) *Notwithstanding any other provision of law, qualified patients, persons with valid identification cards, and the designated primary caregivers of qualified patients and persons with identification cards, who associate within the State of California in order collectively or cooperatively to cultivate marijuana for medical purposes pursuant to Article 2.5 (commencing with Section 11362.7) of Chapter 6 of Division 10 of the Health and Safety Code, shall not be prohibited from, punished, or restricted from doing such acts; provided that cities and counties may enact reasonable environmental and other public health regulations to such collectives, cooperatives and dispensaries in order to ensure the public safety and welfare, and provided that nothing in this subsection authorizes the cultivation of marijuana on public lands.*

(c) *Qualified patients, persons with valid identification cards, and the designated primary caregivers of qualified patients and persons with identification cards arrested or cited for a marijuana-related offense under state or local law shall have the right to raise an affirmative defense that their actions were lawful under State or local law, or were reasonably related to the personal medical use of the patient or the caregiver.*

Section 11362.79 of the Health and Safety Code is amended to read:

11362.79. Nothing in this article shall authorize a qualified patient or person with an identification card to engage in the smoking of medical marijuana under any of the following circumstances:

(a) In any place where smoking is prohibited by ~~law-~~ law, *except as provided by subdivision (e) of Section 11722.*

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

(c) On a schoolbus- *or on public transportation.*

(d) While ~~in a~~ operating a boat or motor vehicle ~~that is being operated.~~

~~(e) While operating a boat.~~

## SECTION 5. REMOVAL FROM CONTROLLED SUBSTANCES LIST.

Section 11054 of the Health and Safety Code is amended to read:

11054. (a) The controlled substances listed in this section are included in Schedule I.

(b) Opiates. Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers whenever the existence of those isomers, esters, ethers, and salts is possible within the specific chemical designation:

(1) Acetylmethadol.

(2) Allylprodine.

(3) Alphacetylmethadol (except levoalphacetylmethadol, also known as levomethadyl acetate, or LAAM).

(4) Alphameprodine.

(5) Alphamethadol.

(6) Benzethidine.

(7) Betacetylmethadol.

(8) Betameprodine.

- (9) Betamethadol.
- (10) Betaprodine.
- (11) Clonitazene.
- (12) Dextromoramide.
- (13) Diampromide.
- (14) Diethylthiambutene.
- (15) Difenoxin.
- (16) Dimenoxadol.
- (17) Dimepheptanol.
- (18) Dimethylthiambutene.
- (19) Dioxaphetyl butyrate.
- (20) Dipipanone.
- (21) Ethylmethylthiambutene.
- (22) Etonitazene.
- (23) Etoxidine.
- (24) Furethidine.
- (25) Hydroxypethidine.
- (26) Ketobemidone.
- (27) Levomoramide.
- (28) Levophenacilmorphan.
- (29) Morpheridine.
- (30) Noracymethadol.
- (31) Norlevorphanol.
- (32) Normethadone.
- (33) Norpipanone.
- (34) Phenadoxone.
- (35) Phenampromide.
- (36) Phenomorphan.
- (37) Phenoperidine.
- (38) Piritramide.
- (39) Proheptazine.
- (40) Properidine.
- (41) Propiram.
- (42) Racemoramide.
- (43) Tilidine.
- (44) Trimeperidine.
- (45) Any substance which contains any quantity of acetylfentanyl (N-[1-phenethyl-4-piperidinyl] acetanilide) or a derivative thereof.
- (46) Any substance which contains any quantity of the thiophene analog of acetylfentanyl (N-[1-[2-(2-thienyl)ethyl]-4-piperidinyl] acetanilide) or a derivative thereof.
- (47) 1-Methyl-4-Phenyl-4-Propionoxypiperidine (MPPP).
- (48) 1-(2-Phenethyl)-4-Phenyl-4-Acetyloxypiperidine (PEPAP).
- (c) Opium derivatives. Unless specifically excepted or unless listed in another schedule, any of the following opium derivatives, its salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation:
  - (1) Acetorphine.
  - (2) Acetyldihydrocodeine.
  - (3) Benzylmorphine.
  - (4) Codeine methylbromide.
  - (5) Codeine-N-Oxide.
  - (6) Cyprenorphine.
  - (7) Desomorphine.
  - (8) Dihydromorphine.
  - (9) Drotebanol.
  - (10) Etorphine (except hydrochloride salt).
  - (11) Heroin.

- (12) Hydromorphenol.
- (13) Methyldesorphine.
- (14) Methyldihydromorphine.
- (15) Morphine methylbromide.
- (16) Morphine methylsulfonate.
- (17) Morphine-N-Oxide.
- (18) Myrophine.
- (19) Nicocodeine.
- (20) Nicomorphine.
- (21) Normorphine.
- (22) Pholcodine.
- (23) Thebacon.

(d) Hallucinogenic substances. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation, which contains any quantity of the following hallucinogenic substances, or which contains any of its salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation (for purposes of this subdivision only, the term "isomer" includes the optical, position, and geometric isomers):

- (1) 4-bromo-2,5-dimethoxy-amphetamine--Some trade or other names: 4-bromo-2,5-dimethoxy-alpha-methylphenethylamine; 4-bromo-2,5-DMA.
- (2) 2,5-dimethoxyamphetamine--Some trade or other names: 2,5-dimethoxy-alpha-methylphenethylamine; 2,5-DMA.
- (3) 4-methoxyamphetamine--Some trade or other names: 4-methoxy-alpha-methylphenethylamine, paramethoxyamphetamine, PMA.
- (4) 5-methoxy-3,4-methylenedioxy-amphetamine.
- (5) 4-methyl-2,5-dimethoxy-amphetamine--Some trade or other names: 4-methyl-2,5-dimethoxy-alpha-methylphenethylamine; "DOM"; and "STP."
- (6) 3,4-methylenedioxy amphetamine.
- (7) 3,4,5-trimethoxy amphetamine.
- (8) Bufotenine--Some trade or other names: 3-(beta-dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5-indolol; N,N-dimethylserolonin, 5-hydroxy-N, Ndimethyltryptamine; mappine.
- (9) Diethyltryptamine--Some trade or other names: N,N-Diethyltryptamine; DET.
- (10) Dimethyltryptamine--Some trade or other names: DMT.
- (11) Ibogaine--Some trade or other names: 7-Ethyl-6,6beta,7,8,9,10,12,13-octahydro-2-methoxy-6,9-methano-5H-pyrido [1',2':1,2] azepino [5,4-b] indole; Tabernantheiboga.
- (12) Lysergic acid diethylamide.
- ~~(13) Marijuana.~~
- (14) Mescaline.
- (15) Peyote--Meaning all parts of the plant presently classified botanically as *Lophophora williamsii* Lemaire, whether growing or not, the seeds thereof, any extract from any part of the plant, and every compound, manufacture, salts, derivative, mixture, or preparation of the plant, its seeds or extracts (interprets 21 U.S.C. Sec. 812(c), Schedule 1(c)(12)).
- (16) N-ethyl-3-piperidyl benzilate.
- (17) N-methyl-3-piperidyl benzilate.
- (18) Psilocybin.
- (19) Psilocyn.
- (20) ~~Tetrahydrocannabinols~~— Synthetic *tetrahydrocannabinols not derived from cannabis plants*. Synthetic equivalents of the substances contained in the plant, or in the resinous extractives of *Cannabis*, sp. ~~and/or~~ or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following: delta 1 cis or trans tetrahydrocannabinol, and their optical isomers; delta 6 cis or trans tetrahydrocannabinol, and their optical isomers; delta 3,4 cis or trans tetrahydrocannabinol, and its optical isomers. (Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered).
- (21) Ethylamine analog of phencyclidine--Some trade or other names: N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl) ethylamine, N-(1-phenylcyclohexyl) ethylamine, cyclohexamine, PCE.
- (22) Pyrrolidine analog of phencyclidine--Some trade or other names: 1-(1-phenylcyclohexyl)-pyrrolidine, PCP, PHP.
- (23) Thiophene analog of phencyclidine--Some trade or other names: 1-[1-(2 thienyl)-cyclohexyl]-piperidine, 2-thienyl analog of phencyclidine, TPCP, TCP.

(e) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or

preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Mecloqualone.
- (2) Methaqualone.

(3) Gamma hydroxybutyric acid (also known by other names such as GHB; gamma hydroxy butyrate; 4-hydroxybutyrate; 4-hydroxybutanoic acid; sodium oxybate; sodium oxybutyrate), including its immediate precursors, isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, including, but not limited to, gammabutyrolactone, for which an application has not been approved under Section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 355).

(f) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its isomers:

- (1) Cocaine base.
- (2) Fenethylamine, including its salts.
- (3) N-Ethylamphetamine, including its salts.

SECTION 6. AMENDMENTS TO OTHER MARIJUANA-RELATED STATUTES IN HEALTH AN SAFETY CODE

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

~~—11357. (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 in the state prison.~~

~~—(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 and shall be punished 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 the 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 the county jail for a period of not more than 10 days, or both.~~

*11357. (a) Except as authorized by law, every person 18 years of age or over who possesses marijuana or 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 the county jail for a period of not more than 10 days, or both.*

~~—(e)~~  
*(b) Except as authorized by law, every person under the age of 18 18 years of age who possesses not more than 28.5 grams of marijuana, other than concentrated cannabis, marijuana 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) Except as authorized by state or local law, every person who possesses more than eight ounces (avoirdupois) of marijuana but not more than sixteen ounces (avoirdupois) is guilty of an infraction punishable by a fine of not more than five hundred dollars (\$500), and is subject to forfeiture of the excess marijuana at the discretion of the peace officer.*

*(d) Except as authorized by law, every person who possesses more than sixteen avoirdupois ounces of marijuana, but not more than twenty avoirdupois pounds of marijuana is guilty of a misdemeanor and shall be punished by imprisonment in the county jail for a period of not more than ninety days, or by a fine of not more than one thousand dollars (\$1000), or by both such fine and imprisonment, and is subject to forfeiture of the excess marijuana at the discretion of the peace officer.*

*(e) Except as authorized by law, every person who possesses more than twenty avoirdupois pounds of marijuana is guilty of a misdemeanor and shall be punished by imprisonment in the county jail for a period of not more than six months, or by a*

*fine of not more than one thousand dollars (\$5000), or by both such fine and imprisonment, and is subject to forfeiture of the excess marijuana at the discretion of the peace officer.*

Section 11357.5 is added to the Health and Safety Code, and is to read:

*11357.5. (a) In an effort to minimize law enforcement expenditures regarding the enforcement of marijuana laws, in determining whether an amount of marijuana is or is not in excess of the amounts permitted, the following shall apply:*

*(1) only the active amount of the cannabis in an edible cannabis product shall be included, provided that twenty-five edible or consumable cannabis products, confections, or drinks, shall not be applied to the possession limit as established by subdivision (c) of Section 11357, subdivision (b) of Section 11721, or other law or ordinance that has the full force of law enacted pursuant to Section 11357.5 of this code.*

*(2) Living and harvested cannabis plants shall be assessed by total plant count, not by weight; in absence of the plants, the marijuana shall be assessed by weight.*

*(3) The limitations on the possession of marijuana assessed by weight shall be assessed on a per person basis.*

*(4) The limitations on the total amount of marijuana plants lawfully cultivated under California law shall be assessed on a per person, patient or caregiver basis.*

*(5) A person or persons who lawfully cultivate(s) marijuana in locations specified in subdivision (d) of Section 11725 shall be allowed to cultivate their marijuana concurrently in the same area or upon the same property.*

*(6) In addition to the statewide possession floor amount specified in Section 11722, a person or persons who lawfully cultivate(s) marijuana in locations specified in subdivision (d) of Section 11725 shall not be prohibited from having in private possession no more than a total of the product of one-half pound and the cultivation ceiling amounts pursuant to local law in which the person is permitted under state law to grow the marijuana, or the product of one-half pound and the statewide floor limits specified in subdivision (c) of this section, or the product of one-half pound and the amounts explicitly written on the recommendation for medical marijuana pursuant to subdivision (a) or subdivision (b) of Section 11362.77 per patient, whichever of those amounts is greatest.*

*(b) Notwithstanding any other provision of law, the right of a person to have in his or her possession or cultivation amounts of marijuana consistent with California law shall not be abridged or infringed; provided that in any instance of a violation of a marijuana possession or cultivation law or ordinance under state or local law, the person accused shall retain the lawful amounts of marijuana possessed consistent with California law; and provided that landlords may retain the right to prohibit the cultivation within or on the property of lawfully leased premises.*

Section 11358 of the Health and Safety Code is repealed.

~~—11358. 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 the state prison.~~

Section 11359 of the Health and Safety Code is repealed.

~~—11359. Every person who possesses for sale any marijuana, except as otherwise provided by law, shall be punished by imprisonment in the state prison.~~

Section 11360 of the Health and Safety Code is repealed.

~~—11360. (a) Except as otherwise provided by this section or as authorized 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 the state prison for a period of two, three or four years.~~

~~—(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 11361 of the Health and Safety Code is amended to read:

HS 11361. ~~(a) Every~~ *Except as authorized by law, every* person 18 years of age or over who hires, employs, or uses a minor in unlawfully transporting, carrying, selling, giving away, preparing for sale, or peddling any marijuana, who unlawfully sells, or offers to sell, any marijuana to a minor, or who furnishes, administers, or gives, or offers to furnish, administer, or give any marijuana to a minor under 14 years of age, or who ~~induces~~ *forces* a minor ~~under 14 years of age~~ to use marijuana in violation of law shall be punished by imprisonment in the state prison for a period of ~~three, five, or seven years. not less than one year and not more than three years, or by punishment in the county jail for not more than one year.~~

~~(b) Every person 18 years of age or over who furnishes, administers, or gives, or offers to furnish, administer, or give, any marijuana to a minor 14 years of age or older shall be punished by imprisonment in the state prison for a period of three, four, or five years.~~

Section 11370 of the Health and Safety Code is amended to read:

11370. (a) Any person convicted of violating Section 11350, 11351, 11351.5, 11352, 11353, 11355, ~~11357, 11359, 11360, 11361, 11363, 11366, or 11368~~, or of committing any offense referred to in those sections, shall not, in any case, be granted probation by the trial court or have the execution of the sentence imposed upon him or her suspended by the court, if he or she has been previously convicted of any offense described in subdivision (c).

(b) Any person who was 18 years of age or over at the time of the commission of the offense and is convicted for the first time of selling, furnishing, administering, or giving a controlled substance which is (1) specified in subdivision (b), (c), (e), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055, or (2) which is a narcotic drug classified in Schedule III, IV, or V, to a minor or inducing a minor to use such a controlled substance in violation of law shall not, in any case, be granted probation by the trial court or have the execution of the sentence imposed upon him or her suspended by the court.

(c) Any previous conviction of any of the following offenses, or of an offense under the laws of another state or of the United States which, if committed in this state, would have been punishable as such an offense, shall render a person ineligible for probation or suspension of sentence pursuant to subdivision (a) of this section:

(1) Any felony offense described in this division involving a controlled substance specified in subdivision (b), (c), (e), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph ~~(13)~~, (14), (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055.

(2) Any felony offense described in this division involving a narcotic drug classified in Schedule III, IV, or V.

(d) The existence of any previous conviction or fact which would make a person ineligible for suspension of sentence or probation under this section shall be alleged in the information or indictment, and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by a plea of guilty or nolo contendere or by trial by the court sitting without a jury.

Section 11470 of the Health and Safety Code is amended to read:

11470. The following are subject to forfeiture:

(a) All controlled substances which have been manufactured, distributed, dispensed, or acquired in violation of this division.

(b) All raw materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of this division.

(c) All property except real property or a boat, airplane, or any vehicle which is used, or intended for use, as a container for property described in subdivision (a) or (b).

(d) All books, records, and research products and materials, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of this division.

(e) The interest of any registered owner of a boat, airplane, or any vehicle other than an implement of husbandry, as defined in Section 36000 of the Vehicle Code, which has been used as an instrument to facilitate the manufacture of, or possession for sale or sale of 14.25 grams or more of heroin or cocaine base as specified in paragraph (1) of subdivision (f) of Section 11054, or a substance containing 14.25 grams or more of heroin or cocaine base as specified in paragraph (1) of subdivision (f) of Section 11054, or 14.25 grams or more of a substance containing heroin or cocaine base as specified in paragraph (1) of subdivision (f) of Section 11054, or 28.5 grams or more of Schedule I controlled substances except ~~marijuana, peyote,~~

*peyote* or psilocybin; 10 pounds dry weight or more of ~~marijuana, peyote,~~ *peyote* or psilocybin; or 28.5 grams or more of cocaine, as specified in paragraph (6) of subdivision (b) of Section 11055, or methamphetamine; or a substance containing 28.5 grams or more of cocaine, as specified in paragraph (6) of subdivision (b) of Section 11055, or methamphetamine; or 57 grams or more of a substance containing cocaine, as specified in paragraph (6) of subdivision (b) of Section 11055, or methamphetamine; or 28.5 grams or more of Schedule II controlled substances. No interest in a vehicle which may be lawfully driven on the highway with a class C, class M1, or class M2 license, as prescribed in Section 12804 of the Vehicle Code, may be forfeited under this subdivision if there is a community property interest in the vehicle by a person other than the defendant and the vehicle is the sole class C, class M1, or class M2 vehicle available to the defendant's immediate family.

(f) All moneys, negotiable instruments, securities, or other things of value furnished or intended to be furnished by any person in exchange for a controlled substance, all proceeds traceable to such an exchange, and all moneys, negotiable instruments, or securities used or intended to be used to facilitate any violation of Section 11351, 11351.5, 11352, 11355, ~~11359, 11360,~~ 11378, 11378.5, 11379, 11379.5, 11379.6, 11380, 11382, or 11383 of this code, or Section 182 of the Penal Code, or a felony violation of Section 11366.8 of this code, insofar as the offense involves manufacture, sale, possession for sale, offer for sale, or offer to manufacture, or conspiracy to commit at least one of those offenses, if the exchange, violation, or other conduct which is the basis for the forfeiture occurred within five years of the seizure of the property, or the filing of a petition under this chapter, or the issuance of an order of forfeiture of the property, whichever comes first.

(g) The real property of any property owner who is convicted of violating Section 11366, 11366.5, or 11366.6 with respect to that property. However, property which is used as a family residence or for other lawful purposes, or which is owned by two or more persons, one of whom had no knowledge of its unlawful use, shall not be subject to forfeiture.

(h) Subject to the requirements of Section 11488.5 and except as further limited by this subdivision to protect innocent parties who claim a property interest acquired from a defendant, all right, title, and interest in any personal property described in this section shall vest in the state upon commission of the act giving rise to forfeiture under this chapter, if the state or local governmental entity proves a violation of Section 11351, 11351.5, 11352, 11355, ~~11359, 11360,~~ 11378, 11378.5, 11379, 11379.5, 11379.6, 11380, 11382, or 11383 of this code, or Section 182 of the Penal Code, or a felony violation of Section 11366.8 of this code, insofar as the offense involves the manufacture, sale, possession for sale, offer for sale, offer to manufacture, or conspiracy to commit at least one of those offenses, in accordance with the burden of proof set forth in paragraph (1) of subdivision (i) of Section 11488.4 or, in the case of cash or negotiable instruments in excess of twenty-five thousand dollars (\$25,000), paragraph (4) of subdivision (i) of Section 11488.4.

The operation of the special vesting rule established by this subdivision shall be limited to circumstances where its application will not defeat the claim of any person, including a bona fide purchaser or encumbrancer who, pursuant to Section 11488.5, 11488.6, or 11489, claims an interest in the property seized, notwithstanding that the interest in the property being claimed was acquired from a defendant whose property interest would otherwise have been subject to divestment pursuant to this subdivision.

Section 11485 of the Health and Safety Code is repealed.

~~11485. Any peace officer of this state who, incident to a search under a search warrant issued for a violation of Section 11358 with respect to which no prosecution of a defendant results, seizes personal property suspected of being used in the planting, cultivation, harvesting, drying, processing, or transporting of marijuana, shall, if the seized personal property is not being held for evidence or destroyed as contraband, and if the owner of the property is unknown or has not claimed the property, provide notice regarding the seizure and manner of reclamation of the property to any owner or tenant of real property on which the property was seized. In addition, this notice shall be posted at the location of seizure and shall be published at least once in a newspaper of general circulation in the county in which the property was seized. If, after 90 days following the first ation of the notice, no owner appears and proves his or her ownership, the seized personal property shall be deemed to be abandoned and may be disposed of by sale to the public at public auction as set forth in Article 1 (commencing with Section 2080) of Chapter 4 of Title 6 of Part 4 of Division 3 of the Civil Code, or may be disposed of by transfer to a government agency or community service organization. Any profit from the sale or transfer of the property shall be expended for investigative services with respect to crimes involving marijuana.~~

Section 11488 of the Health and Safety Code is amended to read:

11488. (a) Any peace officer of this state, subsequent to making or attempting to make an arrest for a violation of Section 11351, 11351.5, 11352, 11355, ~~11359, 11360,~~ 11378, 11378.5, 11379, 11379.5, 11379.6, or 11382 of this code, or Section 182 of the Penal Code insofar as the offense involves manufacture, sale, purchase for the purpose of sale, possession for sale or offer to manufacture or sell, or conspiracy to commit one of those offenses, may seize any item subject to forfeiture under subdivisions (a) to (f), inclusive, of Section 11470. The peace officer shall also notify the Franchise Tax Board of a seizure where there is reasonable cause to believe that the value of the seized property exceeds five thousand dollars (\$5,000).

(b) Receipts for property seized pursuant to this section shall be delivered to any person out of whose possession such property was seized, in accordance with Section 1412 of the Penal Code. In the event property seized was not seized out of anyone's possession, receipt for the property shall be delivered to the individual in possession of the premises at which the property was seized.

(c) There shall be a presumption affecting the burden of proof that the person to whom a receipt for property was issued is the owner thereof. This presumption may, however, be rebutted at the forfeiture hearing specified in Section 11488.5.

Section 11703 of the Health and Safety Code is amended to read:

11703. As used in this division:

(a) "Marketing of illegal controlled substances" means the possession for sale, sale, or distribution of a specified illegal controlled substance, and shall include all aspects of making such a controlled substance available, including, but not limited to, its manufacture.

(b) "Individual user of an illegal controlled substance" means the individual whose use of a specified illegal controlled substance is the basis of an action brought under this division.

(c) "Level 1 offense" means the possession for sale of less than four ounces or the sale or furnishing of less than one ounce of a specified illegal controlled ~~substance, or the cultivation of at least 25 plants but less than 50 plants, the furnishing of more than 28.5 grams, or the possession for sale or sale of up to four pounds, of marijuana~~ substance .

(d) "Level 2 offense" means the possession for sale of four ounces or more but less than eight ounces of, or the sale or furnishing of one ounce or more but less than two ounces of, a specified illegal controlled ~~substance, or the cultivation of at least 50 but less than 75 plants, the possession for sale of four pounds or more but less than eight pounds, or the sale or furnishing of more than one pound but less than five pounds, of marijuana~~ substance .

(e) "Level 3 offense" means the possession for sale of eight ounces or more but less than 16 ounces of, or the sale or furnishing of two ounces or more but less than four ounces of, a specified illegal controlled ~~substance, or the cultivation of at least 75 but less than 100 plants, the possession for sale of eight pounds or more but less than 16 pounds, or the sale or furnishing of more than five pounds but less than 10 pounds, of marijuana~~ substance .

(f) "Level 4 offense" means the possession for sale of 16 ounces or more of, or the sale or furnishing of four ounces or more of, a specified illegal controlled ~~substance, or the cultivation of 100 plants or more of, the possession for sale of 16 pounds of, or the sale or furnishing of more than 10 pounds of, marijuana~~ substance .

(g) "Participate in the marketing of illegal controlled substances" means to transport, import into this state, sell, possess with intent to sell, furnish, administer, or give away, or offer to transport, import into this state, sell, furnish, administer, or give away a specified illegal controlled substance. "Participate in the marketing of illegal controlled substances" shall include the manufacturing of an illegal controlled substance, but shall not include the purchase or receipt of an illegal controlled substance for personal use only.

(h) "Person" means an individual, governmental entity, corporation, firm, trust, partnership, or incorporated or unincorporated association, existing under or authorized by the laws of this state, another state, or a foreign country.

(i) "Period of illegal use" means, in relation to the individual user of an illegal controlled substance, the time of the individual's first illegal use of an illegal controlled substance to the accrual of the cause of action.

(j) "Place of illegal activity" means, in relation to the individual user of an illegal controlled substance, each county in which the individual illegally possesses or uses an illegal controlled substance during the period of the individual's use of an illegal controlled substance.

(k) "Place of participation" means, in relation to a defendant in an action brought under this division, each county in which the person participates in the marketing of illegal controlled substances during the period of the person's participation in the marketing of illegal controlled substances.

(l) "Specified illegal controlled substance" means cocaine, phencyclidine, heroin, or methamphetamine and any other illegal controlled substance the manufacture, cultivation, importation into this state, transportation, possession for sale, sale, furnishing, administering, or giving away of which is a violation of Section 11351, 11351.5, 11352, ~~11358, 11359, 11360, 11378.5, 11379.5, or 11383.~~

Section 11705 of the Health and Safety Code is amended to read:

11705. (a) Any one or more of the following persons may bring an action for damages caused by an individual's use of an illegal controlled substance:

- (1) A parent, legal guardian, child, spouse, or sibling of the individual controlled substance user.
- (2) An individual who was exposed to an illegal controlled substance in utero.
- (3) An employer of the individual user of an illegal controlled substance.
- (4) A medical facility, insurer, employer, or other nongovernmental entity that funds a drug treatment program or employee

assistance program for the individual user of an illegal controlled substance or that otherwise expended money on behalf of the individual user of an illegal controlled substance. No public agency other than a public agency medical facility shall have a cause of action under this division.

(5) A person injured as a result of the willful, reckless, or negligent actions of an individual user of an illegal controlled substance.

(b) A person entitled to bring an action under this section may seek damages from one or more of the following:

(1) A person who sold, administered, or furnished an illegal controlled substance to the individual user of the illegal controlled substance.

(2) A person who knowingly participated in the marketing of illegal controlled substances, if all of the following apply:

(A) The place of illegal activity by the individual user of an illegal controlled substance is within the city, city and county, or unincorporated area of the county in which the defendant's place of participation is situated.

(B) The defendant's participation in the marketing of illegal controlled substances was connected with the same type of specified illegal controlled substance used by the individual user of an illegal controlled substance, and the defendant has been convicted of an offense for that type of specified illegal controlled substance.

(C) The defendant participated in the marketing of illegal controlled substances at any time during the period the individual user of an illegal controlled substance illegally used the controlled substance.

(D) The underlying offense for the conviction of the specified illegal controlled substance occurred in the same county as the individual user's place of use.

(c) As used in subdivision (b), ~~knowingly~~ "knowingly participated in the marketing of illegal controlled substances" means a conviction for transporting, importing into this state, selling, possessing with intent to sell, furnishing, administering, or giving away, or offering to transport, import into this state, sell, furnish, administer, or give away a specified illegal controlled substance ~~or a quantity of marijuana~~ specified in subdivision ~~(e), (f), (g)~~ (c), (d), (e), or ~~(h)~~ (f) of Section 11703, which are separate in time.

(d) A person entitled to bring an action under this section may recover all of the following damages:

(1) Economic damages, including, but not limited to, the cost of treatment and rehabilitation, medical expenses, loss of economic or educational potential, loss of productivity, absenteeism, support expenses, accidents or injury, and any other pecuniary loss proximately caused by the use of an illegal controlled substance.

(2) Noneconomic damages, including, but not limited to, physical and emotional pain, suffering, physical impairment, emotional distress, medical anguish, disfigurement, loss of enjoyment, loss of companionship, services and consortium, and other nonpecuniary losses proximately caused by an individual's use of an illegal controlled substance.

(3) Exemplary damages.

(4) Reasonable attorney fees.

(5) Costs of suit, including, but not limited to, reasonable expenses for expert testimony.

## SECTION 7, CANNABIS-RELATED UPDATES IN THE BUSINESSES AND PROFESSIONS CODE

Section 23958 of the Businesses and Professions Code is amended to read:

23958. Upon receipt of an application for a license or for a transfer of a license and the applicable fee, the department shall make a thorough investigation to determine whether the applicant and the premises for which a license is applied qualify for a license and whether the provisions of this division have been complied with, and shall investigate all matters connected therewith which may affect the public welfare and morals. The department shall deny an application for a license or for a transfer of a license if either the applicant or the premises for which a license is applied do not qualify for a license under this division.

The department further shall deny an application for a license if issuance of that license would tend to create a law enforcement problem, or if issuance would result in or add to an undue concentration of licenses, except as provided in Section 23958.4. *This paragraph shall not be construed to affect the denial of applications for an off-sale general license, or the transfer of an off-sale general license, based solely on the fact that their establishment offers for sale or will offer for sale marijuana, or conduct transactions related to marijuana, pursuant to laws and regulations adopted pursuant to the Legalize Marijuana Act of 2012, or pursuant to the law adopted by the State and local or municipal governments working in furtherance of such Act, regardless of the status of federal law pertaining to marijuana in the field in which it operates.*

Section 25632.5 of the Businesses and Professions Code is added to read:

25632.5. Section 23951, relating to the hours of operation, and Section 23952, relating to the consumption on licensed premises outside the hours of operation, shall not apply to the possession, consumption, sale, transfer, purchase, or attempt to purchase marijuana for medical or non-medical purposes.

## SECTION 8. RECORDS

Section 11361.5 of the Health and Safety Code is amended to read:

(a) Records of any court of this state, any public or private agency that provides services upon referral under Section 1000.2 of the Penal Code, or of any state agency pertaining to the arrest or conviction of any person for a *misdemeanor marijuana* violation ~~of subdivision (b), (c), (d), or (e) of Section 11357 or subdivision (b) of Section 11360~~, shall not be kept beyond two years from the date of the conviction, or from the date of the arrest if there was no conviction, except with respect to a violation of subdivision ~~(e)~~(b) of Section 11357 the records shall be retained until the offender attains the age of 18 years at which time the records shall be destroyed as provided in this section. Any court or agency having custody of the records shall provide for the timely destruction of the records in accordance with subdivision (c). The requirements of this subdivision do not apply to records of any conviction occurring prior to January 1, 1976, or records of any arrest not followed by a conviction occurring prior to that date.

(b) This subdivision applies only to records of convictions and arrests not followed by conviction occurring prior to January 1, 1976, for any of the following offenses:

(1) Any violation of Section 11357 or a statutory predecessor thereof.

(2) Unlawful possession of a device, contrivance, instrument, or paraphernalia used for unlawfully smoking marijuana, in violation of Section 11364, as it existed prior to January 1, 1976, or a statutory predecessor thereof.

(3) Unlawful visitation or presence in a room or place in which marijuana is being unlawfully smoked or used, in violation of Section 11365, as it existed prior to January 1, 1976, or a statutory predecessor thereof.

(4) Unlawfully using or being under the influence of marijuana, in violation of Section 11550, as it existed prior to January 1, 1976, or a statutory predecessor thereof.

Any person subject to an arrest or conviction for those offenses may apply to the Department of Justice for destruction of records pertaining to the arrest or conviction if two or more years have elapsed since the date of the conviction, or since the date of the arrest if not followed by a conviction. The application shall be submitted upon a form supplied by the Department of Justice and shall be accompanied by a fee, which shall be established by the department in an amount which will defray the cost of administering this subdivision and costs incurred by the state under subdivision (c), but which shall not exceed thirty-seven dollars and fifty cents (\$37.50). The application form may be made available at every local police or sheriff's department and from the Department of Justice and may require that information which the department determines is necessary for purposes of identification.

The department may request, but not require, the applicant to include a self-administered fingerprint upon the application. If the department is unable to sufficiently identify the applicant for purposes of this subdivision without the fingerprint or without additional fingerprints, it shall so notify the applicant and shall request the applicant to submit any fingerprints which may be required to effect identification, including a complete set if necessary, or, alternatively, to abandon the application and request a refund of all or a portion of the fee submitted with the application, as provided in this section. If the applicant fails or refuses to submit fingerprints in accordance with the department's request within a reasonable time which shall be established by the department, or if the applicant requests a refund of the fee, the department shall promptly mail a refund to the applicant at the address specified in the application or at any other address which may be specified by the applicant. However, if the department has notified the applicant that election to abandon the application will result in forfeiture of a specified amount which is a portion of the fee, the department may retain a portion of the fee which the department determines will defray the actual costs of processing the application, provided the amount of the portion retained shall not exceed ten dollars (\$10).

Upon receipt of a sufficient application, the Department of Justice shall destroy records of the department, if any, pertaining to the arrest or conviction in the manner prescribed by subdivision (c) and shall notify the Federal Bureau of Investigation, the law enforcement agency which arrested the applicant, and, if the applicant was convicted, the probation department which investigated the applicant and the Department of Motor Vehicles, of the application.

(c) Destruction of records of arrest or conviction pursuant to subdivision (a) or (b) shall be accomplished by permanent obliteration of all entries or notations upon the records pertaining to the arrest or conviction, and the record shall be prepared again so that it appears that the arrest or conviction never occurred. However, where (1) the only entries upon the record pertain to the arrest or conviction and (2) the record can be destroyed without necessarily effecting the destruction of other records, then the document constituting the record shall be physically destroyed.

(d) Notwithstanding subdivision (a), ~~or (b)~~, or (f), written transcriptions of oral testimony in court proceedings and published judicial appellate reports are not subject to this section. Additionally, no records shall be destroyed pursuant to subdivision (a) if the defendant or a codefendant has filed a civil action against the peace officers or law enforcement jurisdiction which made the arrest or instituted the prosecution and if the agency which is the custodian of those records has received a certified copy of the complaint in the civil action, until the civil action has finally been resolved. Immediately

following the final resolution of the civil action, records subject to subdivision (a) shall be destroyed pursuant to subdivision (c) if more than two years have elapsed from the date of the conviction or arrest without conviction.

*(e) Records of any court of this state, any public or private agency that provides services upon referral under Section 1000.2 of the Penal Code, or of any state agency pertaining to the arrest or conviction of any person for a marijuana infraction shall not be kept beyond one year from the date of the conviction, or from the date of the arrest if there was no conviction, or from the date of the conviction upon receipt of the fine in-hand by the court. Any court or agency having custody of the records shall provide for the timely destruction of the records in accordance with subdivision (c).*

*(f) Any person subject to an arrest or conviction for a marijuana offense that carries a lesser penalty or severity, or is no longer an offense under California law, may apply to the Department of Justice for destruction of records pertaining to the arrest or conviction. The application shall be submitted upon a form supplied by the Department of Justice and shall be accompanied by a fee, which shall be established by the department in an amount which will defray the cost of administering this subdivision and costs incurred by the state under subdivision (c), but which shall not exceed thirty-seven dollars and fifty cents (\$37.50). The application form may be made available at every local police or sheriff's department and from the Department of Justice and may require that information which the department determines is necessary for purposes of identification.*

*(g) Records pertaining to marijuana offenses held or maintained by any court of this state or of any public or private agency that provides services upon referral under Section 1000.2 of the Penal Code, shall not be shared, transferred, attempt to be transferred, sold, attempted to be sold, utilized, attempt to be utilized, or otherwise disseminated to any other public or private agency.*

Section 68152 of the Government Code is amended to read:

68152. The trial court clerk may destroy court records under Section 68153 after notice of destruction and if there is no request and order for transfer of the records, except the comprehensive historical and sample superior court records preserved for research under the California Rules of Court, when the following times have expired after final disposition of the case in the categories listed:

- (a) Adoption: retain permanently.
- (b) Change of name: retain permanently.
- (c) Other civil actions and proceedings, as follows:
  - (1) Except as otherwise specified: 10 years.
  - (2) Where a party appears by a guardian ad litem: 10 years after termination of the court's jurisdiction.
  - (3) Domestic violence: same period as duration of the restraining or other orders and renewals, then retain the restraining or other orders as a judgment; 60 days after expiration of the temporary protective or temporary restraining order.
  - (4) Eminent domain: retain permanently.
  - (5) Family law, except as otherwise specified: 30 years.
  - (6) Harassment: same period as duration of the injunction and renewals, then retain the injunction as a judgment; 60 days after expiration of the temporary restraining order.
  - (7) Mental health (Lanterman Developmental Disabilities Services Act and Lanterman-Petris-Short Act): 30 years.
  - (8) Paternity: retain permanently.
  - (9) Petition, except as otherwise specified: 10 years.
  - (10) Real property other than unlawful detainer: retain permanently if the action affects title or an interest in real property.
  - (11) Small claims: 10 years.
  - (12) Unlawful detainer: one year if judgment is for possession of the premises; 10 years if judgment is for money.
- (d) Notwithstanding subdivision (c), any civil or small claims case in the trial court:
  - (1) Involuntarily dismissed by the court for delay in prosecution or failure to comply with state or local rules: one year.
  - (2) Voluntarily dismissed by a party without entry of judgment: one year.
 Notation of the dismissal shall be made on the civil index of cases or on a separate dismissal index.
- (e) Criminal.
  - (1) Capital felony (murder with special circumstances where the prosecution seeks the death penalty): retain permanently. If the charge is disposed of by acquittal or a sentence less than death, the case shall be reclassified.
  - (2) Felony, except as otherwise specified: 75 years.
  - (3) Felony, except capital felony, with court records from the initial complaint through the preliminary hearing or plea and for which the case file does not include final sentencing or other final disposition of the case because the case was bound over to the superior court: five years.
  - (4) Misdemeanor, except as otherwise specified: five years.
  - (5) Misdemeanor alleging a violation of the Vehicle Code, except as otherwise specified: three years.

- (6) Misdemeanor alleging a violation of Section 23103, 23152, or 23153 of the Vehicle Code: 10 years.
- (7) Misdemeanor alleging a violation of Section 14601, 14601.1, 20002, 23104, 23105, 23109, or 23109.1 of the Vehicle Code: five years.
- (8) Misdemeanor alleging a marijuana violation under subdivision ~~(b), (c), (d),~~ (a) or ~~(e)~~ (b) of Section 11357 of the Health and Safety Code, or subdivision (b) of Section 11360 of the Health and Safety Code in accordance with the procedure set forth in Section 11361.5 of the Health and Safety Code: records shall be destroyed two years from the date of conviction or from the date of arrest if no conviction.
- (9) Misdemeanor, infraction, or civil action alleging a violation of the regulation and licensing of dogs under Sections 30951 to 30956, inclusive, of the Food and Agricultural Code or violation of any other local ordinance: three years.
- (10) Misdemeanor action resulting in a requirement that the defendant register as a sex offender pursuant to Section 290 of the Penal Code: 75 years. This paragraph shall apply to records relating to a person convicted on or after September 20, 2006.
- (11) Infraction, except as otherwise specified: three years.
- (12) Parking infractions, including alleged violations under the stopping, standing, and parking provisions set forth in Chapter 9 (commencing with Section 22500) of Division 11 of the Vehicle Code: two years.
- (13) *Infraction alleging a marijuana violation: records shall be destroyed one year from the date of conviction, or upon receipt of the fine by the court upon conviction, or from the date of arrest if no conviction.*
- (f) Habeas corpus: same period as period for retention of the records in the underlying case category.
- (g) Juvenile.
  - (1) Dependent (Section 300 of the Welfare and Institutions Code): upon reaching age 28 or on written request shall be released to the juvenile five years after jurisdiction over the person has terminated under subdivision (a) of Section 826 of the Welfare and Institutions Code. Sealed records shall be destroyed upon court order five years after the records have been sealed pursuant to subdivision (c) of Section 389 of the Welfare and Institutions Code.
  - (2) Ward (Section 601 of the Welfare and Institutions Code): upon reaching age 21 or on written request shall be released to the juvenile five years after jurisdiction over the person has terminated under subdivision (a) of Section 826 of the Welfare and Institutions Code. Sealed records shall be destroyed upon court order five years after the records have been sealed under subdivision (d) of Section 781 of the Welfare and Institutions Code.
  - (3) Ward (Section 602 of the Welfare and Institutions Code): upon reaching age 38 under subdivision (a) of Section 826 of the Welfare and Institutions Code. Sealed records shall be destroyed upon court order when the subject of the record reaches the age of 38 under subdivision (d) of Section 781 of the Welfare and Institutions Code.
  - (4) Traffic and some nontraffic misdemeanors and infractions (Section 601 of the Welfare and Institutions Code): upon reaching age 21 or five years after jurisdiction over the person has terminated under subdivision (c) of Section 826 of the Welfare and Institutions Code. May be microfilmed or photocopied.
  - (5) Marijuana misdemeanor under subdivision ~~(e)~~ (b) of Section 11357 of the Health and Safety Code in accordance with procedures specified in subdivision (a) of Section 11361.5 of the Health and Safety Code: upon reaching age 18 the records shall be destroyed.
- (h) Probate.
  - (1) Conservatorship: 10 years after decree of termination.
  - (2) Guardianship: 10 years after the age of 18.
  - (3) Probate, including probated wills, except as otherwise specified: retain permanently.
  - (i) Court records of the appellate division of the superior court: five years.
  - (j) Other records.
    - (1) Applications in forma pauperis: any time after the disposition of the underlying case.
    - (2) Arrest warrant: same period as period for retention of the records in the underlying case category.
    - (3) Bench warrant: same period as period for retention of the records in the underlying case category.
    - (4) Bond: three years after exoneration and release.
    - (5) Coroner's inquest report: same period as period for retention of the records in the underlying case category; if no case, then permanent.
    - (6) Court orders not associated with an underlying case, such as orders for destruction of court records for telephone taps, or to destroy drugs, and other miscellaneous court orders: three years.
    - (7) Court reporter notes: 10 years after the notes have been taken in criminal and juvenile proceedings and five years after the notes have been taken in all other proceedings, except notes reporting proceedings in capital felony cases (murder with special circumstances where the prosecution seeks the death penalty and the sentence is death), including notes reporting the preliminary hearing, which shall be retained permanently, unless the Supreme Court on request of the court clerk authorizes the destruction.
    - (8) Electronic recordings made as the official record of the oral proceedings under the California Rules of Court: any time

after final disposition of the case in infraction and misdemeanor proceedings, 10 years in all other criminal proceedings, and five years in all other proceedings.

(9) Electronic recordings not made as the official record of the oral proceedings under the California Rules of Court: any time either before or after final disposition of the case.

(10) Index, except as otherwise specified: retain permanently.

(11) Index for cases alleging traffic violations: same period as period for retention of the records in the underlying case category.

(12) Judgments within the jurisdiction of the superior court other than in a limited civil case, misdemeanor case, or infraction case: retain permanently.

(13) Judgments in misdemeanor cases, infraction cases, and limited civil cases: same period as period for retention of the records in the underlying case category.

(14) Minutes: same period as period for retention of the records in the underlying case category.

(15) Naturalization index: retain permanently.

(16) Ninety-day evaluation (under Section 1203.03 of the Penal Code): same period as period for retention of the records in the underlying case category, or period for completion or termination of probation, whichever is longer.

(17) Register of actions or docket: same period as period for retention of the records in the underlying case category, but in no event less than 10 years for civil and small claims cases.

(18) Search warrant: 10 years, except search warrants issued in connection with a capital felony case defined in paragraph (7), which shall be retained permanently.

(k) Retention of the court records under this section shall be extended as follows:

(1) By order of the court on its own motion, or on application of a party or an interested member of the public for good cause shown and on those terms as are just. A fee shall not be charged for making the application.

(2) Upon application and order for renewal of the judgment to the extended time for enforcing the judgment.

Section 1596.795 of the Health and Safety Code is amended to read:

1596.795. (a) The smoking of tobacco in a private residence that is licensed as a family day care home shall be prohibited during the hours of operation as a family day care home and in those areas of the family day care home where children are present. Nothing in this section shall prohibit a city or county from enacting or enforcing an ordinance relating to the smoking in a family day care home if the ordinance is more stringent than this section.

(b) The smoking of tobacco on the premises of a licensed day care center shall be prohibited.

(c) The smoking of marijuana in a private residence that is licensed as a family day care home shall be prohibited during the hours of operation as a family day care home and in those areas of the family day care home where children are present. Nothing in this section shall prohibit a city or county from enacting or enforcing an ordinance relating to the smoking in a family day care home if the ordinance is more stringent than this section.

(d) The smoking of marijuana on the premises of a licensed day care center shall be prohibited.

## SECTION 9. REMOVAL OF MARIJUANA-RELATED ACTS FROM DEFINITIONS OF PARAPHERNALIA

Section 11014.5 of the Health and Safety Code is amended to read:

11014.5. (a) "Drug paraphernalia" means all equipment, ~~products~~ *products*, and materials of any kind ~~which~~ *that* are designed for use or marketed for ~~use~~ *use* in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of this division. It includes, but is not limited to:

(1) Kits designed for use or marketed for use in planting, propagating, cultivating, growing, or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived.

(2) Kits designed for use or marketed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances.

(3) Isomerization devices designed for use or marketed for use in increasing the potency of any species of plant which is a controlled substance.

(4) Testing equipment designed for use or marketed for use in identifying, or in analyzing the strength, effectiveness, or purity of controlled substances.

(5) Scales and balances designed for use or marketed for use in weighing or measuring controlled substances.

(6) Containers and other objects designed for use or marketed for use in storing or concealing controlled substances.

(7) Hypodermic syringes, needles, and other objects designed for use or marketed for use in parenterally injecting

controlled substances into the human body.

(8) Objects designed for use or marketed for use in ingesting, inhaling, or otherwise introducing ~~marijuana, cocaine, hashish, or hashish oil~~ *cocaine* into the human body, such as *the following* :

(A) Carburetion tubes and devices.

(B) Smoking and carburetion masks.

(C) Roach clips, meaning objects used to hold burning ~~material, such as a marijuana cigarette,~~ *material* that has become too small or too short to be held in the hand.

(D) Miniature cocaine spoons, and cocaine vials.

(E) Chamber pipes.

(F) Carburetor pipes.

(G) Electric pipes.

(H) Air-driven pipes.

(I) Chillums.

(J) Bongs.

(K) Ice pipes or chillers.

(b) For the purposes of this section, the phrase "marketed for use" means advertising, distributing, offering for sale, displaying for sale, or selling in a manner which promotes the use of equipment, products, or materials with controlled substances.

(c) In determining whether an object is drug paraphernalia, a court or other authority may consider, in addition to all other logically relevant factors, the following:

(1) Statements by an owner or by anyone in control of the object concerning its use.

(2) Instructions, oral or written, provided with the object concerning its use for ingesting, inhaling, or otherwise introducing a controlled substance into the human body.

(3) Descriptive materials accompanying the object which explain or depict its use.

(4) National and local advertising concerning its use.

(5) The manner in which the object is displayed for sale.

(6) Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products.

(7) Expert testimony concerning its use.

(d) If any provision of this section or the application thereof to any person or circumstance is held invalid, it is the intent of the Legislature that the invalidity shall not affect other provisions or applications of the section which can be given effect without the invalid provision or application and to this end the provisions of this section are severable.

Section 11364.5 of the Health and Safety Code add is amended to read:

11364.5. (a) Except as authorized by law, no person shall maintain or operate any place of business in which drug paraphernalia is kept, displayed or offered in any manner, sold, furnished, transferred or given away unless such drug paraphernalia is completely and wholly kept, displayed or offered within a separate room or enclosure to which persons under the age of 18 years not accompanied by a parent or legal guardian are excluded. Each entrance to such a room or enclosure shall be signposted in reasonably

visible and legible words to the effect that drug paraphernalia is kept, displayed or offered in such room or enclosure and that minors, unless accompanied by a parent or legal guardian, are excluded.

(b) Except as authorized by law, no owner, manager, proprietor or other person in charge of any room or enclosure, within any place of business, in which drug paraphernalia is kept, displayed or offered in any manner, sold, furnished, transferred or given away shall permit or allow any person under the age of 18 years to enter, be in, remain in or visit such room or enclosure unless such minor person is accompanied by one of his or her parents or by his or her legal guardian.

(c) Unless authorized by law, no person under the age of 18 years shall enter, be in, remain in or visit any room or enclosure in any place of business in which drug paraphernalia is kept, displayed or offered in any manner, sold, furnished, transferred or given away unless accompanied by one of his or her parents or by his or her legal guardian.

(d) As used in this section, "drug paraphernalia" means all equipment, products, and materials of any kind which are intended for use or designed for use, in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance. "Drug paraphernalia" includes, but is not limited to, all of the following:

(1) Kits intended for use or designed for use in planting, propagating, cultivating, growing or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived.

(2) Kits intended for use or designed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances.

(3) Isomerization devices intended for use or designed for use in increasing the potency of any species of plant which is a controlled substance.

(4) Testing equipment intended for use or designed for use in identifying, or in analyzing the strength, effectiveness or purity of controlled substances.

(5) Scales and balances intended for use or designed for use in weighing or measuring controlled substances.

(6) Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose, and lactose, intended for use or designed for use in cutting controlled substances.

~~(7) Separation gins and sifters intended for use or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana.~~

~~(8)~~

(7) Blenders, bowls, containers, spoons, and mixing devices intended for use or designed for use in compounding controlled substances.

~~(9)~~

(8) Capsules, balloons, envelopes, and other containers intended for use or designed for use in packaging small quantities of controlled substances.

~~(10)~~

(9) Containers and other objects intended for use or designed for use in storing or concealing controlled substances.

~~(11)~~

(10) Hypodermic syringes, needles, and other objects intended for use or designed for use in parenterally injecting controlled substances into the human body.

~~(12)~~

(11) Objects intended for use or designed for use in ingesting, inhaling, or otherwise introducing ~~marijuana, cocaine, hashish, or hashish oil~~ *cocaine* into the human body, such as the following:

(A) Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls.

(B) Water pipes.

(C) Carburetion tubes and devices.

(D) Smoking and carburetion masks.

(E) Roach clips, meaning objects used to hold burning ~~material, such as a marijuana cigarette~~ *material* that has become too small or too short to be held in the hand.

(F) Miniature cocaine spoons, and cocaine vials.

(G) Chamber pipes.

(H) Carburetor pipes.

(I) Electric pipes.

(J) Air-driven pipes.

(K) Chillums.

~~(L) Bongs.~~

(M) Ice pipes or chillers.

(e) In determining whether an object is drug paraphernalia, a court or other authority may consider, in addition to all other logically relevant factors, the following:

(1) Statements by an owner or by anyone in control of the object concerning its use.

(2) Prior convictions, if any, of an owner, or of anyone in control of the object, under any state or federal law relating to any controlled substance.

(3) Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons whom he or she knows, or should reasonably know, intend to use the object to facilitate a violation of this section. The innocence of an owner, or of anyone in control of the object, as to a direct violation of this section shall not prevent a finding that the object is intended for use, or designed for use, as drug paraphernalia.

(4) Instructions, oral or written, provided with the object concerning its use.

(5) Descriptive materials, accompanying the object which explain or depict its use.

(6) National and local advertising concerning its use.

(7) The manner in which the object is displayed for sale.

(8) Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco ~~products~~ *or marijuana products* .

- (9) The existence and scope of legitimate uses for the object in the community.
- (10) Expert testimony concerning its use.
- (f) This section shall not apply to any of the following:
  - (1) Any pharmacist or other authorized person who sells or furnishes drug paraphernalia described in paragraph (11) of subdivision (d) upon the prescription of a physician, dentist, podiatrist or veterinarian.
  - (2) Any physician, dentist, podiatrist or veterinarian who furnishes or prescribes drug paraphernalia described in paragraph (11) of subdivision (d) to his or her patients.
  - (3) Any manufacturer, wholesaler or retailer licensed by the California State Board of Pharmacy to sell or transfer drug paraphernalia described in paragraph (11) of subdivision (d).
- (g) Notwithstanding any other provision of law, including Section 11374, violation of this section shall not constitute a criminal offense, but operation of a business in violation of the provisions of this section shall be grounds for revocation or nonrenewal of any license, permit, or other entitlement previously issued by a city, county, or city and county for the privilege of engaging in such business and shall be grounds for denial of any future license, permit, or other entitlement authorizing the conduct of such business or any other business, if the business includes the sale of drug paraphernalia.

Section 11532 of the Health and Safety Code is amended to read:

11532. (a) It is unlawful for any person to loiter in any public place in a manner and under circumstances manifesting the purpose and with the intent to commit an offense specified in Chapter 6 (commencing with Section 11350) and Chapter 6.5 (commencing with Section 11400).

(b) Among circumstances that may be considered in determining whether a person has the requisite intent to engage in drug-related activity are that the person:

- (1) Acts as a "look-out."
- (2) Transfers small objects or packages for currency in a furtive fashion.
- (3) Tries to conceal himself or herself or any object that reasonably could be involved in an unlawful drug-related activity.
- (4) Uses signals or language indicative of summoning purchasers of illegal drugs.
- (5) Repeatedly beckons to, stops, attempts to stop, or engages in conversations with passersby, whether on foot or in a motor vehicle, indicative of summoning purchasers of illegal drugs.
- (6) Repeatedly passes to or receives from passersby, whether on foot or in a motor vehicle, money or small objects.
- (7) Is under the influence of a controlled substance or possesses narcotic or drug paraphernalia. For the purposes of this paragraph, "narcotic or drug paraphernalia" means any device, contrivance, instrument, or apparatus designed or marketed for the use of smoking, injecting, ingesting, or consuming ~~marijuana, hashish, PCP,~~ PCP or any controlled substance, including, but not limited to, roach clips, cigarette papers, and rollers designed or marketed for use in smoking a controlled substance.

(8) Has been convicted in any court within this state, within five years prior to the arrest under this chapter, of any violation involving the use, possession, or sale of any of the substances referred to in Chapter 6 (commencing with Section 11350) or Chapter 6.5 (commencing with Section 11400), or has been convicted of any violation of those provisions or substantially similar laws of any political subdivision of this state or of any other state.

(9) Is currently subject to any order prohibiting his or her presence in any high drug activity geographic area.

(10) Has engaged, within six months prior to the date of arrest under this section, in any behavior described in this subdivision, with the exception of paragraph (8), or in any other behavior indicative of illegal drug-related activity.

(c) The list of circumstances set forth in subdivision (b) is not exclusive. The circumstances set forth in subdivision (b) should be considered particularly salient if they occur in an area that is known for unlawful drug use and trafficking, or if they occur on or in premises that have been reported to law enforcement as a place suspected of unlawful drug activity. Any other relevant circumstances may be considered in determining whether a person has the requisite intent. Moreover, no one circumstance or combination of circumstances is in itself determinative of intent. Intent must be determined based on an evaluation of the particular circumstances of each case.

#### SECTION 10: MARIJUANA-RELATED GOVERNMENT OPERATION RESTRICTIONS

Section 7597 of the Government Code is amended to read:

7597. (a) No public employee or member of the public shall smoke any tobacco product inside a public building, or in an outdoor area within 20 feet of a main exit, entrance, or operable window of a public building, or in a passenger vehicle, as defined by Section 465 of the Vehicle Code, owned by the state.

*(b) No public employee or member of the public shall smoke any marijuana product inside a public building, or in an outdoor area within 20 feet of a main exit, entrance, or operable window of a public building, or in a passenger vehicle, as defined by Section 465 of the Vehicle Code, owned by the state.*

~~(b)~~ (c) This section shall not preempt the authority of any county, city, city and county, California Community College campus, campus of the California State University, or campus of the University of California to adopt and enforce additional smoking and tobacco control ordinances, regulations, or policies that are more restrictive than the applicable standards required by this chapter.

Section 18901.3 of the Welfare and Institutions Code is amended to read:

18901.3. (a) Subject to the limitations of subdivision (b), pursuant to Section 115(d)(1)(A) of Public Law 104-193 (21 U.S.C. Sec. 862a(d)(1)(A)), California opts out of the provisions of Section 115(a)(2) of Public Law 104-193 (21 U.S.C. Sec. 862a(a)(2)). A convicted drug felon shall be eligible to receive food stamps under this section.

(b) Subdivision (a) does not apply to a person who has been convicted of unlawfully transporting, importing into this state, selling, furnishing, administering, giving away, possessing for sale, purchasing for purposes of sale, manufacturing a controlled substance, possessing precursors with the intent to manufacture a controlled ~~substance, or cultivating, harvesting, or processing marijuana or any part thereof pursuant to Section 11358 of the Health and Safety Code~~ substance .

(c) Subdivision (a) does not apply to a person who has been convicted of unlawfully soliciting, inducing, encouraging, or intimidating a minor to participate in any activity listed in subdivision (b).

(d) As a condition of eligibility to receive food stamps pursuant to subdivision (a), an applicant convicted of a felony drug offense that is not excluded under subdivision (b) or (c) shall be required to provide proof of one of the following subsequent to the most recent drug-related conviction:

- (1) Completion of a government-recognized drug treatment program.
- (2) Participation in a government-recognized drug treatment program.
- (3) Enrollment in a government-recognized drug treatment program.
- (4) Placement on a waiting list for a government-recognized drug treatment program.
- (5) Other evidence that the illegal use of controlled substances has ceased, as established by State Department of Social Services regulations.

(e) Notwithstanding the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), the department may implement this section through an all-county letter or similar instructions from the director no later than January 1, 2005.

(f) The department shall adopt regulations as otherwise necessary to implement this section no later than July 1, 2005. Emergency regulations adopted for implementation of this section may be adopted by the director in accordance with the Administrative Procedure Act. The adoption of emergency regulations shall be deemed to be an emergency and necessary for immediate preservation of the public peace, health and safety, or general welfare. The emergency regulations shall be exempt from review by the Office of Administrative Law. The emergency regulations authorized by this section shall be submitted to the Office of Administrative Law for filing with the Secretary of State and shall remain in effect for no more than 180 days.

## SECTION 11. UNLAWFUL ACTIVITIES AND CHANGES IN VEHICLE CODE

Section 13202.5 of the Vehicle Code is amended to read:

(a) For each conviction of a person for any offense specified in subdivision (d), committed while the person was under the age of 21 years, but 13 years of age or older, the court shall suspend the person's driving privilege for one year. If the person convicted does not yet have the privilege to drive, the court shall order the department to delay issuing the privilege to drive for one year subsequent to the time the person becomes legally eligible to drive. However, if there is no further conviction for any offense specified in subdivision (d) in a 12-month period after the conviction, the court, upon petition of the person affected, may modify the order imposing the delay of the privilege. For each successive offense, the court shall suspend the person's driving privilege for those possessing a license or delay the eligibility for those not in possession of a license at the time of their conviction for one additional year.

As used in this section, the term "conviction" includes the findings in juvenile proceedings specified in Section 13105.

(b) Whenever the court suspends driving privileges pursuant to subdivision (a), the court in which the conviction is had shall require all driver's licenses held by the person to be surrendered to the court. The court shall within 10 days following the conviction transmit certified abstract of the conviction, together with any driver's licenses surrendered, to the department.

(c) (1) After a court has issued an order suspending or delaying driving privileges pursuant to subdivision (a), the court, upon petition of the person affected, may review the order and may impose restrictions on the person's privilege to drive based upon a showing of a critical need to drive.

(2) As used in this section, "critical need to drive" means the circumstances which are required to be shown for the issuance of a junior permit pursuant to Section 12513.

(3) The restriction shall remain in effect for the balance of the period of suspension or restriction in this section. The court

shall notify the department of any modification within 10 days of the order of modification.

(d) This section applies to violations involving controlled substances or alcohol contained in the following provisions:

(1) Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of, and Sections 25658, 25658.5, 25661, and 25662 of, the Business and Professions Code.

(2) Division 10 (commencing with Section 11000) of the Health and Safety Code, *except for Article 2 (commencing with Section 11357), and Article 2.5 (commencing with Section 11362.7), of Chapter 6 of Division 10 of the Health and Safety Code.*

(3) Section 191.5, paragraph (3) of subdivision (c) of Section 192, subdivision (c) or (d) of Section 192.5, and subdivision (f) of Section 647 of the Penal Code.

(4) Section 23103 when subject to Section 23103.5, Section 23140, and Article 2 (commencing with Section 23152) of Chapter 12 of Division 11 of this code, *, except for subdivision (b) and subdivision (c) of Section 23222.*

(e) Suspension, restriction, or delay of driving privileges pursuant to this section shall be in addition to any penalty imposed upon conviction of any violation specified in subdivision (d).

(f) *This section shall not apply to violations specified in Division 10.3 (commencing with Section 11720) of the Health and Safety Code.*

Section 23222 of the Vehicle Code is amended to read:

23222. (a) No person shall have in his or her possession on his or her person, while driving a motor vehicle upon a highway or on lands, as described in subdivision (b) of Section 23220, any bottle, can or receptacle, containing any alcoholic beverage which has been opened, or a seal broken, or the contents of which have been partially removed.

(b) Except as authorized by law, every person who possesses, while driving a motor vehicle upon a highway or on lands, as described in subdivision (b) of Section 23220, ~~not more than one~~ *eight* avoirdupois ~~ounce~~ *ounces* of marijuana, ~~other than concentrated cannabis as defined by Section 11006.5 of the Health and Safety Code,~~ *but not more than sixteen* avoirdupois ounces of marijuana, is guilty of an infraction and shall be punished by a fine of not more than ~~one~~ *five* hundred dollars ~~(\$100).~~ *(\$500).*

(c) *Except as authorized by law, every person who ingests, smokes, vaporizes, or otherwise consumes marijuana while driving a motor vehicle upon a highway or on lands, as described in subdivision (b) of Section 23220, is guilty of an infraction and shall be punished by a fine of not more than two hundred fifty dollars (\$250). This subdivision shall not preclude prosecution pursuant to any other provision of law that applies to the impaired operation of a motor vehicle or other dangerous conduct. The presence of smoke, vapor, or trace amounts of marijuana in the air or immediate space around the vehicle shall not be admissible as evidence in a trial regarding a violation of this subdivision.*

## SECTION 12. FURTHER DUTIES OF THE LEGISLATURE

Section 11731 is added to Division 10.3 (commencing with Section 11720) of the Health and Safety Code, and is to read:

*11731. (a) The People hereby mandate and authorize the state Legislature, in a timely manner in order to ensure the public safety and welfare, to:*

*(i) commission studies and various research on the effects of cannabis on driving and workplace safety;*

*(ii) enact laws prohibiting or minimizing the discrimination of persons using marijuana lawfully under California law in employment;*

*(iii) enact laws concerning the operation of motor vehicles and engaging in hazardous and/or potentially dangerous activities while under the influence of marijuana;*

*(iv) develop a uniform and fair standard to test for impairment of marijuana, and enact laws that effectively govern the rules of evidence in cases of marijuana violations and offenses pursuant to this Act.*

*(b) Any law or legislative act authorized in furtherance of the purposes of this Act, or in accordance with subdivision (a) of this section, shall take immediate effect, unless specified otherwise within the legislation, or unless otherwise required by law.*

## SECTION 13. AMENDMENTS

Pursuant to Article 2, section 10(c) of the California Constitution, this Act may be amended either by a subsequent measure submitted to a vote of the People at a statewide election; or by statute validly passed by the Legislature and signed by the Governor, but only to further the purposes of the Act.

A. The permitted amendments pertaining to marijuana include, but are not limited to:

(a) Enacting amendments to permit an individual to possess or cultivate marijuana for medical or non-medical

purposes in excess amounts than otherwise authorized in the minimum threshold limitations provided in Section 11357(c) or Section 11725(c) of the Health and Safety Code.

(b) Enacting, enhancing or administering new or current laws affecting the commercial cannabis regulatory operations, including license offerings and regulatory rules, administrative affairs, and fines or punishments for violations of laws and rules.

(c) Enacting regulatory rules to proliferate the on-sale of marijuana in establishments for consumption of marijuana

(d) Amending or repealing the provisions of Chapter 19 (commencing with Section 26000) in Division 9 of the Business and Professions Code in order to implement a more effective or appropriate regulatory apparatus for California.

(e) Commissioning research and studies relating to the engaging in dangerous activities including, but not limited to, operating a motor vehicle under the influence of marijuana.

(f) Enacting laws that effectively address the findings of such studies relating to engaging in dangerous activities, including operating a motor vehicle under the influence.

(g) Lowering the age of cultivation or public possession, or to any other article that affects the participation in age-restricted cannabis-related activities in any personal, commercial or other application.

(h) Removing or lowering any imposed taxation specifically related to marijuana.

(i) Fulfilling obligations under the United States Constitution to enact laws concerning health, morals, public welfare and safety.

(j) Eliminating or limiting the scope of the restrictions set forth in Section 26070 of the Businesses and Professions Code, or associated or otherwise related subdivisions; provided that cities and counties may always have the right to expand upon statewide legal personal possession and cultivation guidelines for medical or non-medical purposes, as now codified in subdivision (c) of Section 11357 of the Health and Safety Code.

(k) Protecting marijuana consumers acting in accordance with the laws under the State of California from discrimination in employment, education, or anywhere else where unjust discrimination related to marijuana exists.

(l) Ensuring that marijuana recommended or approved for medical use that calls for excess amounts than the statewide guidelines has proper medical justification, and is not used as a means of unlawfully selling marijuana for non-medical purposes under California law.

B. Notwithstanding the permitted amendments listed above, the prohibited amendments pertaining to marijuana include, but are not limited to:

(a) Raising the age to possess or cultivate marijuana; or otherwise re-criminalizing the possession, consumption or cultivation of marijuana in public or private beyond the provisions set forth in this Act; provided that the state shall still continue to prohibit or otherwise regulate the cultivation of marijuana on public lands.

(b) Raising any license fee related to commercial marijuana above \$2000 for the first year, and \$1000 for annual renewals.

(c) Enacting any fee or fees on the retail sale of marijuana with a grand total of more than twenty-five dollars (\$25) per ounce.

(d) Enacting any tax on marijuana transactions in excess of the amounts provided in Section 34041 of the Revenue and Taxation Code (6% for non-medical, 3% for medical, 0% for medical with state card; state sales tax excluded from all figures).

(e) Enacting any law that establishes a conviction of driving under the influence of marijuana based on the amount of inactive metabolites of marijuana in the bloodstream; provided that in a criminal or civil proceeding, the right to raise evidence of such metabolites of marijuana in the bloodstream shall not be precluded.

#### **SECTION 14. SEVERABILITY**

If any provision of this measure or the application thereof to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of the measure that can be given effect without the invalid provision or application, and to this end the provisions of this measure are severable.