



Fw: District 1 - Contact Us (response #414)
Airlin Singewald to: Catrina Christensen

11/02/2015 12:47 PM

Correspondence received on Item 16 for November 3, 2015.

Airlin Singewald
San Luis Obispo County
Department of Planning and Building
(805) 781-5198
asingewald@co.slo.ca.us

----- Forwarded by Airlin Singewald/Planning/COSLO on 11/02/2015 12:47 PM -----

From: Jocelyn Brennan/BOS/COSLO
To: Airlin Singewald/Planning/COSLO@Wings
Date: 10/21/2015 10:40 AM
Subject: Fw: District 1 - Contact Us (response #414)

Sincerely,
Jocelyn Brennan
Legislative Assistant to Supervisor Lynn Compton
San Luis Obispo County, District 4
805 781-4337

----- Forwarded by Jocelyn Brennan/BOS/COSLO on 10/21/2015 10:40 AM -----

From: Vicki Shelby/BOS/COSLO
To: Fmecham@co.slo.ca.us, Ahill@co.slo.ca.us, DArnold@co.slo.ca.us, lcompton@co.slo.ca.us, bgibson@co.slo.ca.us
Cc: Cherie McKee/BOS/COSLO@Wings, Jocelyn Brennan/BOS/COSLO@Wings, Hannah Miller/BOS/COSLO@Wings, Jennifer Caffee/BOS/COSLO@Wings, Trevor Keith/Planning/COSLO@Wings
Date: 10/21/2015 10:06 AM
Subject: Re: District 1 - Contact Us (response #414)

Vicki M. (Shelby) Fogleman
Legislative Assistant for
First District Supervisor Frank R. Mecham
1055 Monterey St., D430
San Luis Obispo CA 93408
(805) 781-4491/FAX (805) 781-1350

email: vshelby@co.slo.ca.us

"Thinking a smile all the time will keep your face youthful" - Frank G. Burgess
"Wrinkles should merely indicate where smiles have been" - Mark Twain

"Internet Webmaster"

District 1 - Contact Us (response #414) Surv...

10/20/2015 10:42:27 PM

From: "Internet Webmaster" <webmaster@co.slo.ca.us>
To: "vshelby@co.slo.ca.us" <vshelby@co.slo.ca.us>
Date: 10/20/2015 10:42 PM

Subject: District 1 - Contact Us (response #414)

District 1 - Contact Us (response #414)

Survey Information

Site:County of SLO

Page Title:District 1 - Contact Us

URL:<http://www.slocounty.ca.gov/bos/District-1/District1ContactUs.htm>

Submission Time/Date:10/20/2015 10:42:07 PM

Survey Response

Name:

Alex

Telephone Number:

Email address:

Comments or questions (8,192 characters max):

Hi my name is Alex and I am writing in regards of the Ethnobotanica medical cannabis dispensary project. I am writing to let you know that I approve of this project. It has helped many people I know and I've seen the benefit it has on people. Some people may not like the idea but we have to have it due to that their are many people who rely and those medications. Who are we to deny them what gets them out of bed and able to function as Normal person. Please help those who Rely on those medications by approving this Ethnobotanica project

Thank you,

Alex

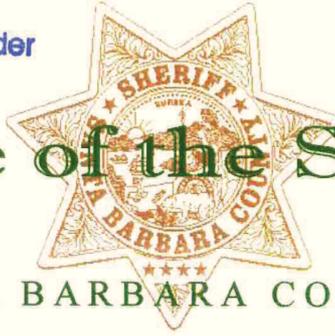
Paso Robles

EACH SUPERVISOR
RECEIVED COPY

Forwarded
to the
Clerk Recorder

Office of the Sheriff

ADMINISTRATIVE OFFICE
15 OCT 30 AM 10:46



SANTA BARBARA COUNTY

HEADQUARTERS

P.O. Box 6427 • 4434 Calle Real • Santa Barbara, California 93160
Phone (805) 681-4100 • Fax (805) 681-4322
www.sbsheriff.org

BILL BROWN
Sheriff - Coroner

BERNARD MELEKIAN
Undersheriff

STATIONS

Buellton
140 W. Highway 246
Buellton, CA 93427
Phone (805) 686-8150

Carpinteria
5775 Carpinteria Avenue
Carpinteria, CA 93013
Phone (805) 684-4561

Isla Vista
6504 Trigo Road
Isla Vista, CA 93117
Phone (805) 681-4179

Lompoc
3500 Harris Grade Road
Lompoc, CA 93436
Phone (805) 737-7737

New Cuyama
70 Newsome Street
New Cuyama, CA 93254
Phone (661) 766-2310

Santa Maria
812-A W. Foster Road
Santa Maria, CA 93455
Phone (805) 934-6150

Solvang
1745 Mission Drive
Solvang, CA 93463
Phone (805) 686-5000

Sheriff - Coroner Office
66 S. San Antonio Road
Santa Barbara, CA 93110
Phone (805) 681-4145

Main Jail
4436 Calle Real
Santa Barbara, CA 93110
Phone (805) 681-4260

COURT SERVICES CIVIL OFFICES

Santa Barbara
1105 Santa Barbara Street
P.O. Box 690
Santa Barbara, CA 93102
Phone (805) 568-2900

Santa Maria
312 E. Cook Street, "O"
P.O. Box 5049
Santa Maria, CA 93456
Phone (805) 346-7430

October 28, 2015

San Luis Obispo County Board of Supervisors
1055 Monterey Street
San Luis Obispo, CA 93408

Subject: Medical Marijuana Dispensary Application - 2122 Hutton Road, Nipomo

Dear Supervisors:

As Sheriff of Santa Barbara County, I would like to join the South County Advisory Council in voicing opposition to the approval of the requested Minor Use Permit (MUP) for the proposed Marijuana Dispensary at 2122 Hutton Road, in Nipomo. It is my opinion the proposed Medical Marijuana Dispensary business will negatively impact communities in both San Luis Obispo County and Santa Barbara County. As you are aware, the proposed dispensary location is located immediately north of the Santa Barbara County line, and is adjacent to Santa Maria, the most populous community within Santa Barbara County.

Marijuana dispensaries negatively impact the safety and well-being of our communities in a number of ways. Marijuana dispensaries are a target for both armed robberies and commercial burglaries, resulting in increased public safety service requirements and increased dangers to our public safety personnel who will need to respond to incidents associated with the dispensary. More importantly, the greatest dangers are those faced by our community members, who may have the misfortune of being caught-up as an innocent bystander during a critical incident stemming from the dispensary. When gauging the dangers posed by the proposed dispensary, it is important to recognize the remoteness of this location will require significant response times for the primary law enforcement agency (San Luis Obispo county Sheriff's Office), as well as other area agencies that will be called upon to assist in handling critical incidents.

For these reasons I oppose the approval of the Minor Use Permit (MUP) for the proposed Marijuana Dispensary at 2122 Hutton Road, in Nipomo.

Sincerely,

BILL BROWN
Sheriff - Coroner

c: South County Advisory Council, Nipomo



Fw: Marijuana Dispensery Location
Airlin Singewald to: Catrina Christensen

11/02/2015 12:49 PM

Correspondence received on Item 16 for November 3, 2015.

Airlin Singewald
San Luis Obispo County
Department of Planning and Building
(805) 781-5198
asingewald@co.slo.ca.us

----- Forwarded by Airlin Singewald/Planning/COSLO on 11/02/2015 12:49 PM -----

From: Jocelyn Brennan/BOS/COSLO
To: Airlin Singewald/Planning/COSLO@Wings
Date: 08/05/2015 03:04 PM
Subject: Fw: Marijuana Dispensery Location

Sincerely,
Jocelyn Brennan
Legislative Assistant to Supervisor Lynn Compton
San Luis Obispo County, District 4
805 781-4337

----- Forwarded by Jocelyn Brennan/BOS/COSLO on 08/05/2015 03:03 PM -----

From: Board of Supervisors/BOS/COSLO
To: Jocelyn Brennan/BOS/COSLO@Wings
Date: 07/31/2015 03:42 PM
Subject: Fw: Marijuana Dispensery Location
Sent by: Cytasha Campa

----- Forwarded by Cytasha Campa/BOS/COSLO on 07/31/2015 03:42 PM -----

From: Jennie Curto <mrspcurto@yahoo.com>
To: "boardofsups@co.slo.ca.us" <boardofsups@co.slo.ca.us>,
Date: 07/31/2015 03:41 PM
Subject: Marijuana Dispensery Location

Dear Board of Supervisors,

Here is my concern over the approval of the marijuana dispensery location.

Obviously the location is an appeal to the proposed tenant, as it is at the interconnection of Highway 101 and the 166.

Has a traffic study of sorts been completed? Has thought been given to increased accidents? or crime?

I do see the benefit of medical marijuana use and I am not against it's use. However, it is the location that frightens me. It is a well travelled area and

outside the boundaries of a fixed law enforcement agency. Ripe for the picking by the criminal element.

All the exits, side roads, can be confusing still for some with all the stops signs designed to lower traffic accidents. If a non-impaired driver can run through the stop sign located beneath the overpass (for example), what is expected of an impaired driver? (As with any prescribed medication those that use these services, need to keep their blood levels up in order to keep their medical needs met.)

It may be that my concern is naive, in its form of questioning. I'm curious if there is an alternate location within a city boundary for this tenant. That would provide the same profit, and program participant need.

Thank you,
Jennie Curto.



Fw: MMD
Airlin Singewald to: Catrina Christensen

11/02/2015 12:49 PM

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----- Forwarded by Airlin Singewald/Planning/COSLO on 11/02/2015 12:49 PM -----

From: Jocelyn Brennan/BOS/COSLO
To: Airlin Singewald/Planning/COSLO@Wings
Date: 08/05/2015 03:05 PM
Subject: MMD

Sincerely,
Jocelyn Brennan
Legislative Assistant to Supervisor Lynn Compton
San Luis Obispo County, District 4
805 781-4337

----- Forwarded by Jocelyn Brennan/BOS/COSLO on 08/05/2015 03:04 PM -----

From: Board of Supervisors/BOS/COSLO
To: Jocelyn Brennan/BOS/COSLO@Wings
Date: 07/31/2015 03:42 PM
Subject:
Sent by: Cytasha Campa

----- Forwarded by Cytasha Campa/BOS/COSLO on 07/31/2015 03:42 PM -----

From: Jerri Fife <pnngwin@sbcglobal.net>
To: "Boardofsups@co.slo.ca.us" <Boardofsups@co.slo.ca.us>,
Date: 07/31/2015 03:42 PM
Subject:

We completely object to a marijuana store in Nipomo. It will create problems for the community. Potheads??? Don't need stores for them in SLO County, now or ever.

"...let faith be the bridge you build to overcome evil and welcome good." Maya Angelou

*Your sister in Christ,
jerri*



Fw: Marijuana Dispensary
Airlin Singewald to: Catrina Christensen

11/02/2015 12:48 PM

Correspondence received on Item 16 for November 3, 2015.

Airlin Singewald
San Luis Obispo County
Department of Planning and Building
(805) 781-5198
asingewald@co.slo.ca.us

----- Forwarded by Airlin Singewald/Planning/COSLO on 11/02/2015 12:48 PM -----

From: Jocelyn Brennan/BOS/COSLO
To: Airlin Singewald/Planning/COSLO@Wings
Date: 08/14/2015 06:51 PM
Subject: Fw: Marijuana Dispensary

Sincerely,
Jocelyn Brennan
Legislative Assistant to Supervisor Lynn Compton
San Luis Obispo County, District 4
805 781-4337

----- Forwarded by Jocelyn Brennan/BOS/COSLO on 08/14/2015 06:50 PM -----

From: "Marlena" <marlenaforst@hotmail.com>
To: "Lynn Compton-Assistant" <jbrennan@co.slo.ca.us>
Date: 08/13/2015 07:35 PM
Subject: Marijuana Dispensary

Board of Supervisors

I am writing to object to the Marijuana Dispensary that has been approved by the Planning Commission. I am not able to attend the BOS meeting, as I am out of town that day.

This is not what Nipomo wants or needs. This company is not from here, why should they do business here.

Marijuana stores is basically a supplier for addicts. Most anyone can get a prescription's for the right price with a doctor. I have been told they are about \$100.00 for this area. I do not know this for a fact. Both San Luis Obispo Sheriff and Santa Maria PD feel it is wrong for this community, that should tell you something.

Marijuana is the stepping stone for drug use and to go onto more dangerous drugs when Marijuana no longer gives the person a high.

Marlena Forst
Retired Law Enforcement
Nipomo, Ca



Fw: Marijuana Dispensary
Airlin Singewald to: Catrina Christensen

11/02/2015 12:49 PM

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Airlin Singewald
San Luis Obispo County
Department of Planning and Building
(805) 781-5198
asingewald@co.slo.ca.us

----- Forwarded by Airlin Singewald/Planning/COSLO on 11/02/2015 12:49 PM -----

From: Lynn Compton/BOS/COSLO
To: Airlin Singewald/Planning/COSLO@Wings
Date: 08/06/2015 08:51 AM
Subject: Fw: Marijuana Dispensary
Sent by: Jocelyn Brennan

----- Forwarded by Jocelyn Brennan/BOS/COSLO on 08/06/2015 08:51 AM -----

From: Ken Greenleaf <kengreenleaf@hotmail.com>
To: <lcompton@co.slo.ca.us>
Date: 08/06/2015 08:33 AM
Subject: Marijuana Dispensary

Ms. Compton,

FYI, the following was sent to the other commissioners. I wish I was more well spoken, but I'm too old now.

I am writing to plea with you to overturn the poor decision made by the planning commission in regards to allowing a marijuana dispensary to locate in South SLO County. The dispensary would be so far south the time it took for officers to arrive in case of a problem would add more issues. Secondly, why does the dispensary have to be in an unincorporated part of the county? Why not next to your office? I am sure you have smelled the horrible odor of marijuana and/or probably even tried it yourself. I don't want to walk down the street or sit in my yard smelling the substance. Lastly, other than for medical purposes, why do people smoke it? The medical people have never been a problem. They keep it to themselves and discretely, for the most part, stay away from others. The young kids, who claim to be depressed, smoke it everywhere and have illegal "420 cards." They smoke it to get high and that is the only reason! When I drink a beer it is because I am usually hot and like the taste. Again, that is not true with marijuana. I am pleading with you to overturn the poor liberal decision by the planning commission and overturn their decision. Or, allow the dispensary to change its location to downtown San Luis Obispo where it can be centrally located and policed. Last, you must understand the only reason for Stephanie Kiel to open a dispensary is to make money. She doesn't care who buys marijuana. I went to her web site and noticed they call the dispensary a "Pot Deli." The phone number is even stated "Pot Deli." Marijuana is not a delicatessen they market it as. I don't think any of your commissioners have weighed the consequences if the dispensary is allowed (except Lynn Compton). I feel sorry for the direction this county is heading.

Respectfully submitted.



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Airlin Singewald to: Catrina Christensen

11/02/2015 12:48 PM

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San Luis Obispo County
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asingewald@co.slo.ca.us

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From: Jocelyn Brennan/BOS/COSLO
To: Airlin Singewald/Planning/COSLO@Wings
Date: 09/01/2015 09:59 AM
Subject: MMD correspondance received



doc20150901095813.pdf

Sincerely,
Jocelyn Brennan
Legislative Assistant to Supervisor Lynn Compton
San Luis Obispo County, District 4
805 781-4337

AUG 28 2015

To San Luis Obispo County Board of Supervisors
Board of Supervisors
San Luis Obispo County

We live in Nipomo above where the proposed ^{medical} marijuana dispensary is going in or so we've read in the Sun Times. We signed a petition already in protest but we understand that the Planning Commission has already approved plans to go forward. The news item in the Sun Times said that they have tried to get approval in many other cities including Santa Maria, Santa Barbara and other cities in Santa Barbara and SLO Counties.

We purchased our home last year in 2014 and had absolutely no knowledge of the marijuana storefront dispensary being proposed or we would never have purchased a home in that area. On behalf of my husband and myself and our neighbors in Nipomo who may be affected by this, I urge you to please reconsider stopping the dispensary from going ahead. As constituents of yours in San Luis Obispo County, we sincerely appreciate your attention and consideration of this request.

Carol + Dantille

Nipomo, CA 93444



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San Luis Obispo County
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(805) 781-5198
asingewald@co.slo.ca.us

----- Forwarded by Airlin Singewald/Planning/COSLO on 11/02/2015 12:48 PM -----

From: Jocelyn Brennan/BOS/COSLO
To: Airlin Singewald/Planning/COSLO@Wings
Date: 09/01/2015 09:59 AM
Subject: MMD correspondance received



doc20150901095813.pdf

Sincerely,
Jocelyn Brennan
Legislative Assistant to Supervisor Lynn Compton
San Luis Obispo County, District 4
805 781-4337

AUG 28 2015

To San Luis Obispo County Board of Supervisors
Board of Supervisors
San Luis Obispo County

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We purchased our home last year in 2014 and had absolutely no knowledge of the marijuana storefront dispensary being proposed or we would never have purchased a home in that area. On behalf of my husband and myself and our neighbors in Nipomo who may be affected by this, I urge you to please reconsider stopping the dispensary from going ahead. As constituents of yours in San Luis Obispo County, we sincerely appreciate your attention and consideration of this request.

Carol + Dantille

July 27, 2015
Supervisor Lynn Compton, 4th District Supervisor
County Government Center
San Luis Obispo, CA 93408

Dear Supervisor Compton

I am not a proponent of medical marijuana use. I am however a supporter of any business owner, that if given a path forward by the San Luis Obispo County Board of Supervisors, be able to establish and conduct their business if it follows applicable County and State laws. In 1996, California voters approved Proposition 215, the Compassionate Use Act (CUA) exempting certain patients and their primary caregivers from criminal liability under state law for the possession and cultivation of marijuana.

In 2004, Senate Bill 420 became law and enacted the Medical Marijuana Program Act (MMP). The MMP requires the California Department of Public Health to establish and maintain a program for the voluntary registration of qualified medical marijuana patients and their primary caregivers through a statewide identification card system.

On August 1, 2006 the Board of Supervisors authorized the San Luis Obispo County Public Health Department (PHD) to implement the State Medical Marijuana Identification Card (MMIC) program. The proposed fee ordinance was introduced on October 24, 2006. The Board of Supervisors adopted the fee schedule on November 14, 2006 and the program commenced on December 14, 2006.

On February 6, 2007, the Board of Supervisors adopted Ordinance Number 3114 relating to the establishment of medical marijuana dispensaries, which amended the Inland Land Use Ordinance by adding a new Section 22.30.225 to govern dispensary applications.

I believe that the SLO County Planning Commission rightly determined that the owners of Ethnobotanica submitted a Minor Use Permit Application that meets ALL of the criteria for this type of business. I believe that the appeal filed is technically without merit and is based solely on the emotional aspects and fears related to this particular issue. A denial by the Board of Supervisors for this application based on this appeal will almost surely result in what I believe would be a legally justified lawsuit against San Luis Obispo County.

LAND USE ORDINANCE STANDARDS

Section 22.30.225 – General Retail

Land Use Ordinance Section 22.30.225 (attached) establishes special use standards for medical marijuana dispensaries. The project's compliance with these standards is described below.

Location

Medical Marijuana Dispensaries shall be located outside of the CBD, a minimum of 1,000 feet from any pre-school, elementary school, high school, library, park, playground, recreation or youth center. Distance shall be measured from the building which contains the Medical Marijuana Dispensary to the property line of the enumerated use using a direct straight line measurement.

This section uses similar criteria as the California Attorney General's August 2008 guidelines Which prohibit the smoking of medical marijuana within 1,000 feet of a school, recreation center, or youth center; however, it applies to the location of dispensaries (not just smoking marijuana) and adds libraries, parks, and playgrounds to the list.

SLO County Staff have measured the 1,000 foot distance requirement using GeoView, an up-to-date software application used to obtain accurate measurements of distance. This software allows staff to apply a specific radius around a property. Using this software application, staff has determined that the building where the dispensary is proposed is not located within 1,000 feet of any pre-school, elementary school, high school, library, park, playground, recreation or youth center. The nearest sensitive use is Preisker Park located about 4,300 feet to the south in the City of Santa Maria.

The proposed project therefore complies with the location requirement of the ordinance.

Distance to Sensitive Uses

Sensitive Use Address Distance from Dispensary

Preisker Park 330 Hidden Pines Way, Santa Maria 4,300 feet to the south

Tommie Kunst Junior High School 930 Hidden Pines Way, Santa Maria 5,300 feet to the southwest

All About Kids Preschool 613 N. Elizabeth Street, Santa Maria 14,400 feet to the south

Santa Maria Public Library 421 S. McClelland Street, Santa Maria 18,000 feet to the south

Nipomo Public Library 918 W. Tefft Street, Nipomo 21,000 feet to the northwest

Boys and Girls Club 901 N. Railroad Avenue, Santa Maria 13,000 feet to the southwest

Limitation on use

The following use limitations apply to proposed medical marijuana dispensaries:

a. Hours of operation are limited to 11:00 a.m. to 6 p.m. seven days per week.

b. No person under age of 18 shall be permitted in the dispensary at any time except in the presence of his/her parent or guardian.

c. No retail sales of paraphernalia as defined in Health and Safety Code section 11364.5 are permitted at the dispensary.

d. No cultivation of medical marijuana is permitted at the dispensary or on dispensary property.

The proposed project complies with these use limitations.

Employees

All staff/employees employed by the Medical Marijuana Dispensary must be 21 years of age or older.

The applicant's proposal meets this requirement.

Security Plan

A security plan shall be submitted with the Minor Use Permit Application that includes lighting, security video cameras, alarm systems, and secure area for medical marijuana storage. The security plan shall include a requirement that there by at least 30 business days of surveillance video (that captures both inside and outside images) stored on an ongoing basis. The video system for the security cameras must be located in a locked, tamper-proof compartment.

In addition to this ordinance standard, the Attorney General's guidelines also require that, "Collectives and cooperatives should provide adequate security to ensure that patients are safe and that the surrounding homes or businesses are not negatively impacted by nuisance activity such as loitering or crime."

The applicant has provided a detailed operations plan, floor plan, and security plan (see Attachment 6), which meet the criteria of the ordinance. The security plan includes indoor/outdoor video surveillance and alarm system by Sentinel Security and an onsite guard by Bomar Security for 10 hours per day, 7 days per week. Security will assist in opening and closing of the facility, including escorting employees to their vehicles after closing. Security will also be responsible for verifying that each person entering the facility is a medical marijuana patient, caregiver, employee, or other allowed person.

The proposed project was referred to the Sheriff's Office for review and comment. In a response, dated January 20, 2014, Chief Deputy Rob Reid stated "Based on a historical need for increased measures at locations involving medical marijuana dispensaries to protect against burglary and/or robbery, we anticipate an increased workload due to calls for service and reported crimes if this project is approved." This response concludes that the Sheriff's Office has limited resources and may not be able to meet the need for increased patrol efforts that could result from the project.

The purpose of the security plan is to minimize demands on law enforcement resources.

Displayed notice

Each dispensary, inside of the dispensary itself, shall display in a manner legible and visible to its clientele:

a. Notice that persons under the age of 18 are not allowed in the dispensary except in the presence of his/her parent or guardian;

b. Notice that there is no consumption of medical marijuana in the vicinity of the dispensary.

The proposed project is conditioned to comply with this requirement.

Sheriff notification

A condition to establishment of a Medical Marijuana Dispensary shall be notification to the Sheriff's Department informing it of the name, location, and contact information for the owner/operator of the dispensary.

The proposed project is conditioned to comply with this requirement.

Section 22.18.050 – Required Number of Parking Spaces

The parking requirement for retail uses is 1 space for every 300 square feet of sales area plus 1 space per 600 square feet of storage area. Based on the site plan and space usage of the tenant space, approximately 50 percent of the 2,136 square-foot space is dedicated to sales uses with the remainder dedicated to storage or non-sales areas. Based on these use areas and the corresponding parking requirements, the project is required to provide six on-site parking spaces.

With 11 dedicated on-site parking spaces, the project meets this requirement.

Use Area Square Footage Requirement

Sales Area 1,068 1 space / 300 SF 4

Storage Area 1,068 1 space / 600 SF 2

Total Area 2,136 6

PLANNING AREA STANDARDS

Spaces Required

Section 22.98.072(C)(1) – Commercial Service (CS) Land Use Category Limitation on Use

This standard prohibits certain allowable CS uses (e.g. agricultural processing, broadcasting studios, etc.) in the South County planning area. The list of prohibited uses does not include Medical Marijuana Dispensaries or General Retail establishments.

Therefore, dispensaries are allowable on the project site per Section 22.30.030.

A handwritten signature in red ink, appearing to read "R. Malvarose", is placed on a light yellow rectangular background.

Respectfully,

Richard Malvarose
Nipomo Chamber of Commerce President and Small Business Owner



Fw: Opposition to medical marijuana dispensary in Nipomo
Airlin Singewald to: Catrina Christensen

11/02/2015 12:44 PM

Correspondence received on Item 16 for November 3, 2015.

Airlin Singewald
 San Luis Obispo County
 Department of Planning and Building
 (805) 781-5198
 asingewald@co.slo.ca.us

----- Forwarded by Airlin Singewald/Planning/COSLO on 11/02/2015 12:43 PM -----

From: Nipomo Resident <nipomoresident@gmail.com>
 To: asingewald@co.slo.ca.us
 Date: 10/30/2015 05:10 PM
 Subject: Opposition to medical marijuana dispensary in Nipomo

Dear San Luis Obispo County Board of Supervisors:

I am a resident of Nipomo. I oppose the application for a minor use permit for a medical marijuana dispensary located at 2122 Hutton Road, Nipomo, CA 93444. The minor use permit file number is DRC2014-00070. The name of the applicant in Ethnobotanica. On April 27, 2015, I submitted a 16 page letter to the San Luis Obispo County Planning Commission in opposition to a medical marijuana dispensary in Nipomo. Please take the time to read my 16 page letter and documents attached to this email.

In September, the Department of Justice released a Memorandum to the public regarding Section 538 of the Appropriations Act of 2015. The Department of Justice states they will continue to prosecute medical marijuana cases against individuals and organizations. Airlin Singewald, SLO Senior Planner, stated to the contrary on page 3 of the Staff Report to the Planning Commission. Mr. Singewald stated "However, in December 2014 U.S. Congress passed a spending bill, which included a provision limiting the Justice Department's ability to take criminal action against state licensed individuals or operations that are acting in full compliance with medical marijuana laws of their states". Mr. Singewald's statement is not correct. See attached Department of Justice Memorandum. See page 3 of attached Staff Report to Planning Commission.

In September, California State Legislature passed 3 bills for the regulation of medical marijuana: Assembly Bill 243, Assembly Bill 266, Senate Bill 643. The bills are referred to as the Medical Marijuana Regulation and Safety Act. On October 9, 2015, the California Governor signed the bills into law. The bills require both a state license and a local permit for a medical marijuana dispensary. In addition, the bills have many more requirements for a medical marijuana dispensary. The San Luis Obispo County medical marijuana dispensary ordinance should be rewritten or rescinded to comply with the new medical marijuana laws. See attached medical marijuana bills. Medical marijuana bills online at www.legislature.ca.gov

Attached is update on medical marijuana edible death report in Colorado.

Sincerely,

Resident of Nipomo

Dept of Justice Memo on Section 538.pdf Staff Report for Planning Commission.pdf
 Assembly Bill No. 243.pdf Assembly Bill No. 266.pdf Senate Bill No. 643.pdf Marijuana Edible Death Report.docx



U.S. Department of Justice

Criminal Division

Washington, D.C. 20530

February 27, 2015

MEMORANDUM

TO: All Federal Prosecutors

FROM: Patty Merkamp Stemler /s/ PMS
Chief, Appellate Section

SUBJECT: Guidance Regarding the Effect of Section 538 of the Consolidated and Further Continuing Appropriations Act of 2015 on Prosecutions and Civil Enforcement and Forfeiture Actions Under the Controlled Substances Act

THE MATERIAL IN THIS DOCUMENT CONSISTS OF ATTORNEY WORK PRODUCT AND SHOULD NOT BE DISSEMINATED OUTSIDE THE DEPARTMENT OF JUSTICE.

On December 16, 2014, President Obama signed the Consolidated and Further Continuing Appropriations Act of 2015, which funds the federal government through September 30, 2015. The legislation includes a rider stating that no funding allocated to the Department of Justice under the Act can be used to prevent certain states from implementing their laws related to medical marijuana. See Consolidated and Further Continuing Appropriations Act of 2015, Pub. L. No. 113-235, tit. V, div. B, § 538 (2014). Section 538 provides that:

None of the funds made available in this Act to the Department of Justice may be used, with respect to the States of Alabama, Alaska, Arizona, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Hawaii, Illinois, Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan,

Minnesota, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, Oregon, Rhode Island, South Carolina, Tennessee, Utah, Vermont, Washington, and Wisconsin, to prevent such States from implementing their own State laws that authorize the use, distribution, possession, or cultivation of medical marijuana.

Defendants charged with violations of the Controlled Substances Act ("CSA"), 21 U.S.C. § 801 *et seq.*, have begun filing motions challenging their prosecutions on the ground that the government's expenditure of funds in enforcing the CSA against them violates Section 538.

As explained more fully below, the Department's position is that Section 538 does not bar the use of funds to enforce the CSA's criminal prohibitions or to take civil enforcement and forfeiture actions against private individuals or entities consistent with the Department's guidance regarding marijuana enforcement. See Memorandum of Deputy Attorney General James M. Cole, *Guidance Regarding Marijuana Enforcement* (August 29, 2013) ("2013 Cole Memorandum"); Memorandum of Deputy Attorney General James M. Cole, *Guidance Regarding the Ogden Memo in Jurisdictions Seeking to Authorize Marijuana for Medical Use* (June 29, 2011) ("2011 Cole Memorandum"); Memorandum of Deputy Attorney General David Ogden, *Investigations and Prosecutions in States Authorizing the Medical Use of Marijuana* (October 19, 2009) ("2009 Ogden Memorandum").¹ Section 538 also does not provide a legal defense in enforcement or forfeiture actions against individuals or entities brought consistent with these guidance memoranda.

U.S. Attorney's Offices should, however, consult with Jody Hunt, Director, Federal Programs Branch, before proceeding with any civil litigation regarding state laws authorizing the medical use of marijuana where the State or State officials are a party, or where the status of State law is challenged. This includes litigation regarding whether State law is preempted by the CSA. Attorneys should follow the guidance in the three Deputy Attorney General memoranda before initiating or pursuing criminal charges or civil enforcement or forfeiture actions in States that permit the use, distribution, possession, or cultivation of medical

These guidance memoranda can be found at <http://dojnet.doj.gov/usao/eousa/ole/usabook/memo/mj082913.pdf> (2013 Cole Memorandum); <http://dojnet.doj.gov/usao/eousa/ole/usabook/memo/2011mj.pdf> (2011 Cole Memorandum); and <http://www.justice.gov/sites/default/files/opa/legacy/2009/10/19/medical-marijuana.pdf> (2009 Ogden Memorandum). Please note that the memoranda apply prospectively to the exercise of prosecutorial discretion, do not provide a defendant or subject of an enforcement action with a basis for reconsideration of pending prosecutions or actions, and more generally create no rights, substantive or procedural, enforceable at law by any party in any matter civil or criminal.

marijuana.

I. Section 538 Does Not Apply to Criminal Prosecutions or Civil Enforcement or Forfeiture Actions that are Consistent with Department Guidance.

A. The Controlled Substances Act

Enforcement of the federal drug laws is governed by the Controlled Substances Act, 21 U.S.C. § 801 *et seq.* “Enacted in 1970 with the main objectives of combating drug abuse and controlling the legitimate and illegitimate traffic in controlled substances, the CSA creates a comprehensive, closed regulatory regime criminalizing the unauthorized manufacture, distribution, dispensing, and possession of substances classified in any of the Act’s five schedules.” *Gonzales v. Oregon*, 546 U.S. 243, 250 (2006). The purpose of the CSA was to “consolidate various drug laws on the books into a comprehensive statute, provide meaningful regulation over legitimate sources of drugs to prevent diversion into illegal channels, and strengthen law enforcement tools against the traffic in illicit drugs.” *Gonzales v. Raich*, 545 U.S. 1, 10 (2005); *see also id.* at 12-13 (noting that “Congress was particularly concerned with the need to prevent the diversion of drugs from legitimate to illicit channels”). “To effectuate these goals, Congress devised a closed regulatory system making it unlawful to manufacture, distribute, dispense, or possess any controlled substance except in a manner authorized by the CSA.” *Id.* at 13.

In *Raich*, the Supreme Court held that the application of the CSA provisions criminalizing the manufacture, distribution, or possession of marijuana to intrastate growers and users of medical marijuana did not violate the Commerce Clause. The Court had “no difficulty concluding that Congress had a rational basis for believing that failure to regulate the intrastate manufacture and possession of marijuana would leave a gaping hole in the CSA.” 545 U.S. at 22. The Court rejected the argument that states could displace federal regulation of marijuana by approving cultivation and possession of the drug in certain circumstances; to the contrary, “[t]he Supremacy Clause unambiguously provides that if there is any conflict between federal and state law, federal law shall prevail.” *Id.* at 29. *Nor do the drug’s medical properties exempt it from the CSA’s scope.* *Id.* at 28 (“[T]he mere fact that marijuana—like virtually every other controlled substance regulated by the CSA—is used for medicinal purposes cannot possibly serve to distinguish it from the core activities regulated by the CSA.”); *see also United States v. Oakland Cannabis Buyers’ Cooperative*, 532 U.S. 483, 491 (2001) (“In the case of the Controlled Substances Act, the statute reflects a determination that marijuana has no medical benefits worthy of an exception (outside the confines of a Government-approved research project).”).

B. The 2013 Cole Memorandum

In recent years, several states have enacted laws relating to the use of marijuana for medical purposes. Although state medical marijuana laws vary, they typically eliminate state criminal penalties for using marijuana and derivative products for medical purposes and provide for access to medical marijuana through licensed dispensaries or regulated home cultivation. See <http://www.ncsl.org/research/health/state-medical-marijuana-laws.aspx>. The Department has responded to these laws by focusing its efforts on certain, forceful priorities that are particularly important to the federal government. The 2013 Cole Memorandum outlined these priorities:

- Preventing the distribution of marijuana to minors;
- Preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels;
- Preventing the diversion of marijuana from states where it is legal under state law in some form to other states;
- Preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity;
- Preventing violence and the use of firearms in the cultivation, distribution, or marijuana use;
- Preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use;
- Preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and
- Preventing marijuana possession or use on federal property.

These priorities will continue to guide the Department's enforcement of the CSA against marijuana-related conduct. The 2011 Cole Memorandum and the 2009 Ogden Memorandum specifically addressed the exercise of prosecutorial discretion in states with laws authorizing marijuana cultivation, distribution, for medical use. While the 2009 Ogden Memorandum advised that it likely was not an efficient use of federal resources to focus enforcement efforts on seriously ill individuals or on their individual caregivers, the 2011 Cole Memorandum emphasized that U.S. Attorney's Offices have discretion to prosecute larger-scale marijuana cultivation centers because "[p]ersons who are in the business of cultivating, selling or distributing marijuana, and those who

Four states—Colorado, Washington, Alaska, and Oregon—and the District of Columbia also permit recreational use of marijuana. By its terms, Section 538 does not prohibit the use of appropriated funds to prevent the implementation of those laws.

knowingly facilitate such activities, are in violation of the Controlled Substances Act, regardless of state law.” The 2013 Cole Memorandum added, however, that “both the existence of a strong and effective state regulatory system, and an operation’s compliance with such a system,” are significant factors in the exercise of prosecutorial discretion.

C. Section 538

In the Department’s view, Section 538 is best read not to prohibit federal criminal prosecutions, civil enforcement actions, or civil forfeiture actions against individuals or entities who are in violation of the CSA, provided such actions are consistent with the Department’s recent enforcement guidance. In our view, that reading best conforms with the statute’s text, and contrary floor statements in the House are insufficient to overcome the plain text.

1. Statutory Text

In construing Section 538, “[w]e begin with the statutory text.” *DePierre v. United States*, 131 S. Ct. 2225, 2231 (2011). Section 538 prohibits expenditure of the Department’s 2015 appropriations “to prevent [the listed] States from implementing their own State laws.” Several features of this text suggest that it does not bar the Department from prosecuting or pursuing civil enforcement or forfeiture actions against individuals or entities that violate the CSA. The text addresses actions directed against *States*, not individuals. It prohibits the Department from *preventing the implementation of State laws—that is, from impeding the ability of States to carry out their medical marijuana laws, not from taking actions against particular individuals or entities, even if they are acting compliant with State law. And the text does not expressly address federal law, including the CSA or federal enforcement actions; by contrast, when Congress seeks to withhold funding for the enforcement of federal law or regulations it disfavors, it typically uses much more direct language. See, e.g., Pub. L. 100-404, Title I, Aug. 19, 1988, 102 Stat. 1021.*³

We therefore think the text of section 538 is best read not to prohibit the Department from prosecuting, or pursuing civil enforcement or civil forfeiture actions against, individuals or entities who are in violation of Federal law (with one narrow exception set forth in footnote 4, *infra*). It is a closer question

Indeed, contemporaneous with its passage of Section 538, Congress considered but did not enact a statute that would have clearly barred the enforcement of the CSA against individuals who acted in compliance with State medical marijuana laws. See H.R. 1523, 113th Cong.

whether the statute would bar a wide-ranging, categorical policy of enforcement against individuals and entities that comply with State law. But this question would not be presented by prosecutions and enforcement actions that are taken consistent with the Department's recent guidance, under which actions against seriously ill individuals, their individual caregivers, or dispensaries that adhere to a strong and effective State regulatory system will generally be considered unwarranted. In the Department's view, the text of Section 538 is best read to prohibit the expenditure of the Department's 2015 appropriations on civil litigation regarding State laws authorizing the medical use of marijuana where the State or State officials are a party, or where the status of a State law is challenged, or where the claim is that a State law or regulatory regime is preempted by the CSA⁴; we note, however, that we have not had occasion to consider whether there may be constitutional limits to such a prohibition. U.S. Attorney's Offices should consult with Mr. Hunt before proceeding with such litigation, or even with litigation that comes close to this line.

In light of this reading, Section 538 would also appear to bar criminal actions against individual State or local officials who violate the CSA through activities taken to implement their State's medical marijuana laws, such as issuing licenses, accepting fees according to their State regimes, and testing marijuana.

2. *Legislative History*⁵

Section 538's legislative history is sparse. The joint explanatory statement accompanying the conference report for the appropriations bill parrots the language of the amendment itself: "Section 538 prohibits the Department of Justice from preventing certain States from implementing State laws regarding the use of medical marijuana." U.S. Congress Joint Explanatory Statement (to Accompany H.R. 83), Consolidated and Further Continuing Appropriations Act 2015, <http://docs.house.gov/billsthisweek/20141208/113-HR83sa-ES-B.pdf>; also available at 160 Cong. Rec. H9307, H9351 (daily ed. Dec. 11, 2014), <https://www.congress.gov/congressional-record/2014/12/11/house-section/article/H9307-1>. Nothing in the statement addresses the CSA or suggests that appropriated funds may not be used to enforce its criminal prohibitions or bring civil enforcement or forfeiture actions. There is no language about the provision in the reports accompanying the bill. See *Garcia v. United States*, 469 U.S. 70, 76 (1984) ("In surveying legislative history we have repeatedly stated that the authoritative source for finding the Legislature's intent lies in the Committee Reports on the bill * * * .").

Several lawmakers, including amendment sponsors, made floor statements supporting and opposing the amendment, but only in the House. There are no floor statements related to the amendment in the Senate. Some of the House floor statements did address criminal prosecutions. For example, Rep. Sam Farr (D-Calif.), a co-sponsor of the amendment, said that "if you are following State law, you are a legal resident doing your business under State law, the Feds just can't come in and bust you and bust the doctors and bust the patient." 160 Cong. Rec. at H4984 (statement of Rep. Sam Farr), <http://www.gpo.gov/fdsys/pkg/CREC-2014-05-29/pdf/CREC-2014-05-29.pdf>. Rep. Dana Titus (D-Nev.), another co-sponsor, stated: "Physicians in those States will not be prosecuted for prescribing the substance, and local businesses will not be shut down for dispensing the same." 160 Cong. Rec. at H4984 (statement of Rep. Dana Titus), <http://www.gpo.gov/fdsys/pkg/CREC-2014-05-29/pdf/CREC-2014-05-29.pdf>. And Rep. Barbara Lee (D-Calif.), also a co-sponsor, said: "It is past time for the Justice Department to stop its unwarranted persecution of medical marijuana and put its resources where they are needed." 160 Cong. Rec. at H4984 (statement of Rep. Barbara Lee), <http://www.gpo.gov/fdsys/pkg/CREC-2014-05-29/pdf/CREC-2014-05-29.pdf>. Some opponents of Section 538 observed that it could impede the Department's efforts to enforce the CSA. See, e.g., 160 Cong. Rec. H4914, H4983 (daily ed.

A fuller compilation of Section 538's legislative history is set forth in an addendum to this memorandum.

May 29, 2014) (statement of Rep. Andy Harris) (“There are two problems with medical marijuana. First, it is the camel’s nose under the tent; and second, the amendment as written would tie the DEA’s hands beyond medical marijuana.”), available at <http://www.gpo.gov/fdsys/pkg/CREC-2014-05-29/pdf/CREC-2014-05-29.pdf>; [id. \(statement of Rep. John Fleming\) \(arguing that although the amendment “wouldn’t change the law, it would just make it difficult, if not impossible, for the DEA and the Department of Justice to enforce the law”\)](#).

These floor statements are inconsistent with the text of Section 538 and with the Department’s position on the construction and scope of Section 538.⁶ We should argue that the floor statements of a handful of legislators in a single House of Congress are not sufficiently authoritative to overcome the best reading of the text. We should also argue that the isolated statements of the two House members who opposed the bill do not shed light on the meaning of the provision. See *Shell Oil Co. v. Iowa Dept. of Revenue*, 488 U.S. 19, 29 (1988) (“This Court does not usually accord much weight to the statements of a bill’s opponents. ‘[T]he fears and doubts of the opposition are no authoritative guide to the construction of legislation.’”) (quoting *Gulf Offshore Co. v. Mobil Oil Corp.*, 453 U.S. 473, 483 (1981)); *NLRB v. Fruit & Vegetable Packers & Warehousemen, Local 760*, 377 U.S. 58, 66 (1964) (“[W]e have often cautioned against the danger, when interpreting a statute, of reliance upon the views of its legislative opponents. In their zeal to defeat a bill, they understandably tend to overstate its reach. The fears and doubts of the opposition are no authoritative guide to the construction of legislation.”) (internal quotation marks omitted); *NRDC v. EPA*, 526 F.3d 591, 604-605 (9th Cir. 2008) (same).

Prior to passage of the appropriations bill, the Department provided Congress with informal talking points addressing the amendment introduced by Rep. Rohrabacher (which became Section 538). The talking points were consistent with the approach taken in this memorandum, with the exception that they warned that in states that permitted recreational marijuana, Rep. Rohrabacher’s amendment could, “in effect, limit or possibly eliminate the Department’s ability to enforce federal law in recreational marijuana cases as well.” This suggestion, which was intended to discourage passage of the rider, does not reflect our current thinking. We do not read Section 538 as placing any limitations on our ability to investigate and prosecute crimes involving recreational marijuana.

3. No Repeal of the CSA

Defendants may argue that Section 538 repeals the CSA's prohibitions on the manufacture, distribution, or possession of marijuana for medicinal purposes. It does not.

Congress did not explicitly repeal any provision of the CSA in Section 538. In *Posadas v. National City Bank*, the Supreme Court held that "the intention of the legislature to repeal must be clear and manifest." 296 U.S. 497, 503 (1936). Congress does not mention the CSA in Section 538, and lawmakers did not mention the CSA in their floor statements. See *United States v. Batchelder*, 442 U.S. 114, 120 (1979) (legislative history demonstrated no intention to alter the terms of another statute).

If it is not clear that Congress intended to repeal a statute, it may be impliedly repealed only if the two statutes are irreconcilable. *Morton v. Mancari*, 417 U.S. 535, 550 (1974) ("In the absence of some affirmative showing of an intention to repeal, the only permissible justification for a repeal by implication is when the earlier and later statutes are irreconcilable."). Legislative intent to repeal must be manifest in the "positive repugnancy between the provisions." *United States v. Borden Co.*, 308 U.S. 188, 199 (1939) (quoting *Posadas*, 296 U.S. at 504); see also *Posadas*, 296 U.S. at 503 ("repeals by implication are not favored"). Section 538 and the CSA are not irreconcilable. Whatever Section 538 means, it does not bar criminal prosecutions in non-medical marijuana states, and in the listed states, it does not bar prosecutions of individuals whose activities are not expressly authorized by state law. Moreover, Section 538 expires at the end of the fiscal year. The CSA and Section 538 are thus "fully capable of coexisting." *Batchelder*, 442 U.S. at 122.

4. Rule of Lenity

The rule of lenity does not apply in construing Section 538. Lenity applies only to statutes that create criminal liability. See *United States v. Santos*, 553 U.S. 507, 514 (2008) ("The rule of lenity requires ambiguous *criminal laws* to be interpreted in favor of the defendants subjected to them.") (emphasis added); *Skilling v. United States*, 561 U.S. 358, 410 (2010) ("ambiguity concerning the ambit of *criminal statutes* should be resolved in favor of lenity") (internal quotation marks omitted) (emphasis added). Section 538 is an appropriations provision, not a criminal statute. Even on the broadest reading, it would not make conduct in violation of the CSA lawful; rather, it would at most bar the federal government from prosecuting certain offenses. Thus the principles animating the rule of lenity are inapposite. See *United States v. Gradwell*, 243

U.S. 476, 485 (1917) (lenity is based on principle that “before a man can be punished as a criminal under the federal law his case must be plainly and unmistakably within the provisions of some statute”) (internal quotation marks omitted).

II. Prosecutors Should Not Argue That Criminal Defendants Lack Standing to Challenge a Prosecution Based on Section 538.

A party’s standing to raise a claim is a threshold jurisdictional question applicable to both civil and criminal cases. *See, e.g., Bond v. United States*, 131 S. Ct. 2355, 2366 (2011); *Whitmore v. Arkansas*, 495 U.S. 149, 155 (1990). “[T]he gist of the question of standing” is whether a litigant has “such a personal stake in the outcome of [a] controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination.” *Baker v. Carr*, 369 U.S. 186, 204 (1962). Although prosecutors should argue that Section 538 does not affect criminal prosecutions or civil enforcement or forfeiture actions, they should not argue that defendants lack standing to raise a Section 538 claim.

The question of standing involves constitutional and prudential considerations. Article III’s limitation of judicial power to cases and controversies requires that a litigant have suffered “a concrete and particularized injury” that is “fairly traceable” to the defendant’s action and that is likely to be redressed by a decision in her favor. *Massachusetts v. EPA*, 549 U.S. 497, 517 (2007); *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-561 (1992). The defendant in a criminal prosecution or a civil enforcement or forfeiture action will almost always satisfy these constitutional requirements. Once the government has initiated a prosecution or enforcement action, “Article III does not restrict the [defendant’s] ability to object to relief being sought at [his] expense” and has “no bearing” on the defendant’s “capacity to assert defenses” to his conviction or sentence. *Bond v. United States*, 131 S. Ct. 2355, 2361-2362 (2011); *cf. Spencer v. Kemna*, 523 U.S. 1, 7 (1998) (noting that a criminal conviction “always satisfies the case-or-controversy requirement”). A criminal prosecution or enforcement or forfeiture action under the CSA satisfies Article III’s injury and traceability requirements, and a decision in defendants’ favor (*i.e.*, that Section 538 precludes the government from continuing to prosecute certain CSA offenses) would afford them relief.

There are also several “prudential” standing requirements: (1) the litigant must assert his own rights and interests and not those of a third party; (2) federal courts should “refrain[] from adjudicating abstract questions of wide public significance” and “generalized grievances,” which are “most appropriately

addressed in the representative branches” of government; and (3) the litigant must “fall within the zone of interests to be protected or regulated by the statute *** in question.” *Valley Forge Christian College v. Am. United for Separation of Church and State, Inc.*, 454 U.S. 464, 474-475 (1982) (internal quotation marks omitted); see *Bond*, 131 S. Ct. at 2362 (criminal defendants must satisfy prudential standing requirements). None of the prudential limits on standing appear to apply here.

This inquiry, however, is inextricably intertwined with the merits of a defendant’s claim under Section 538. *Cf. Bond*, 131 S. Ct. at 2362 (noting that questions of prudential standing and statutory causes of action may be “closely connected” and “sometimes identical”) (quoting *Steel Co. v. Citizens for Better Env’t*, 523 U.S. 83, 96-97 & n.2 (1998)). The government would gain no advantage from framing the statutory interpretation issue as a threshold jurisdictional question rather than one that requires a determination on the merits. Federal courts are generally reluctant to deny standing to criminal defendants who seek to challenge their prosecutions as *ultra vires*. See, e.g., *Bond*, 131 S. Ct. at 2366-2367 (defendant has standing to argue that conviction violated principles of federalism under Tenth Amendment); *United States v. Munoz-Flores*, 495 U.S. 385, 394-396 (1990) (defendant has standing to raise separation-of-powers challenge to special assessment under Constitution’s Origination Clause). Courts have also recognized that individuals have standing to seek redress under statutory appropriations provisions that would likely inure to their benefit. See, e.g., *Clinton v. City of New York*, 524 U.S. 417, 430-431 (1998) (approving municipal and private-party standing to challenge President’s exercise of line-item veto to cancel appropriations provision); *cf. Train v. City of New York*, 420 U.S. 35, 43-49 (1975) (rejecting President’s authority to refuse to spend appropriated funds in context of suit brought by private parties, without questioning standing). Prosecutors may, and should, avoid litigating these questions by focusing on the merits of defendants’ challenges under Section 538.⁷

III. Prosecutors Should Argue In the Alternative That, Even Assuming Section 538 Applies to Criminal Prosecutions, a Particular Defendant Has Not Carried His Burden of Showing That the Prosecution Will Prevent the State from Implementing Its Medical Marijuana Laws.

By its terms, Section 538 does not bar federal prosecution where a defendant’s conduct is not authorized by State law, because the conduct would

Different standing and justiciability concerns may arise in civil cases, particularly if individuals who have not been indicted seek declaratory or injunctive relief from possible prosecution under the CSA in light of Section 538. U.S. Attorney’s Offices should consult with Jody Hunt, Director, Federal Programs Branch, if such issues arise.

not be consistent with the State's efforts to implement its medical marijuana laws. This should be our primary argument where applicable. Moreover, prosecutors should argue that the defendant bears the burden of showing that his conduct was authorized by State law and that his prosecution will prevent the State from implementing its medical marijuana laws.

Section 538 does not alter the elements of a CSA offense or provide for an affirmative defense that negates any particular element. Accordingly, the defendant should bear the burden of proving that he is entitled to relief under Section 538. See, e.g., *Smith v. United States*, 133 S. Ct. 714, 719 (2013) (defendant bears burden of establishing date of his withdrawal from conspiracy, because date goes to statute of limitations and does not negate element of the offense); *id.* at 720 ("A statute-of-limitations defense does not call the criminality of the defendant's conduct into question, but rather reflects a policy judgment by the legislature that the lapse of time may render criminal acts ill suited for prosecution."). Moreover, whether the defendant has satisfied his burden is a question to be addressed pretrial by the judge because it pertains to the government's authority to proceed, and is not properly a question for the jury because it does not go to guilt or innocence. Indeed, because Section 538 limits funding but does not prohibit or authorize conduct, it presents no triable issue for the jury. At most, the statute bars the government prospectively from spending appropriated funds on actions that would prevent the State from implementing its medical marijuana laws. Notably, it provides no remedy for the defendant in the criminal case if funds are spent in violation of Section 538 (although a violation of the section would constitute a violation of the Antideficiency Act, which carries administrative and sometimes criminal penalties). Accordingly, if the indictment was returned prior to December 16, 2014, the only remedy a defendant should be able to seek is a stay until the funding bar expires.⁸ on the ground that the indictment was *ultra vires* and thus void *ab initio*.

Our conclusion that the defendant bears the burden of proof rests on the plain language of the statute, which does not place the burden on the Department of Justice. Compare *Gonzales v. O Centro Espirita Beneficente Uniao Do Vegetal*, 546 U.S. 418, 424 (2006) (Religious Freedom Restoration Act explicitly places burden on government of demonstrating that prohibiting use of controlled substance in religious ceremony represents the least restrictive means of advancing a compelling government interest); 42 U.S.C. § 2000bb-1. Moreover, the defendant is in the best position to explain why his conduct is authorized by State law, and why his federal prosecution will prevent the

⁸ A lengthy stay could lead to violations of the Speedy Trial Act and the Sixth Amendment right to a speedy trial.

implementation of State law. For example, the defendant can produce proof, if any, that he has complied with State licensing requirements, and he can best explain how his cultivation or distribution of marijuana is integral to the State's implementation of its medical marijuana laws. In addition, because the defendant is attempting to thwart a lawful CSA prosecution on a ground unrelated to his guilt or innocence, as the moving party, he should bear the burden of proof. *United States v. Villareal*, 707 F.3d 942, 953 (8th Cir. 2013) (defendant bears burden on motion to dismiss for speedy trial violation); *cf. INS v. Abudu*, 485 U.S. 94 (1988) (movant bears burden on motion to reopen deportation proceeding, just as movant bears burden on new trial motion). Testimony or evidence offered by a defendant in attempting to meet this burden will not be available for use against the defendant at trial on the question of guilt or innocence. *Cf. Simmons v. United States*, 390 U.S. 377, 389-394 (1968) ("when a defendant testifies in support of a motion to suppress evidence on Fourth Amendment grounds, his testimony may not thereafter be admitted against him at trial on the issue of guilt unless he makes no objection"). Note that because Section 538 refers only to State law, it should not be sufficient that the defendant has complied with a local ordinance unless that compliance, in turn, makes him compliant with State law.

Even under its broadest reading, Section 538 should not bar the government from participating in post-conviction appeals or collateral review of a conviction and sentence that have already been memorialized in a judgment. By its terms, Section 538 bars the prospective expenditure of funds to prevent implementation of State medical marijuana laws. It does not purport to unwind past enforcement actions.

IV. The Department Cannot Avoid Section 538's Funding Prohibition by Using Funds from Another Source or Personnel from Another Department or Agency.

Assuming that Section 538 prohibits the use of the Department's 2015 appropriations to fund federal prosecutions and civil enforcement and forfeiture proceedings, the question remains whether we can avoid Section 538's effects by using funds from another source or staffing the case with attorneys from another Department or Agency. The short answer is no. There is no other funding source that can cover the salaries incurred by Department attorneys prosecuting federal offenses or civil enforcement of forfeiture actions and only Department of Justice attorneys may conduct such litigation.

Article II, Section 3 of the Constitution "imposes on the President the duty to 'take Care that the laws be faithfully executed.'" *United States v.*

Valenzuela-Bernal, 458 U.S. 858, 863 (1982). The Take Care Clause places in the Executive Branch “the exclusive authority and absolute discretion whether to prosecute a case.” *United States v. Nixon*, 418 U.S. 683, 693 (1974). See also *Batchelder*, 442 U.S. at 124 (“Whether to prosecute and what charge to file or bring before a grand jury are decisions that generally rest with the prosecutor’s discretion.”); *Bordenkircher v. Hayes*, 434 U.S. 357, 364 (1978) (same).

Congress, in turn, has directed that, “[e]xcept as otherwise authorized by law, the conduct of litigation in which the United States, an agency, or officer thereof is a party, or is interested, and securing evidence therefor, is reserved to the officers of the Department of Justice, under the direction of the Attorney General.” 28 U.S.C. § 516. Although Congress has given a few specialized agencies limited authority to litigate civil matters within their sphere,⁹ it has not done so with respect to our criminal laws. And even when non-DOJ attorneys appear as “special attorneys” “to assist in prosecuting Federal offenses,” they are there only “to assist United States attorneys”; they do not supplant them. See 28 U.S.C. § 543. See also *The Confiscation Cases*, 74 U.S. 454, 458-459 (1869) (“public prosecutions” and civil suits “for the benefit of the United States” are “subject to the direction, and within the control of, Attorney-General”). Because the special attorney would be supervised by an attorney paid by the Department of Justice’s 2015 appropriation, the use of a special attorney will not move the case outside the coverage of Section 538.

Nor can the President transfer funds appropriated to another Department or agency to the Department of Justice for use in prosecuting marijuana offenses. The Appropriations Clause, U.S. Const., Art. 1, § 9, cl. 7, provides that “[n]o money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law.” The President would violate the Appropriations Clause by moving funds in the United States Treasury without congressional authority. See *Office of Personnel Management v. Richmond*, 496 U.S. 414, 416 (1990) (“payments of funds from the Federal Treasury are limited to those authorized by statute”).

Under current policies, the Department will not use the Assets Forfeiture Fund to pay the salaries of our prosecuting attorneys. To be sure, the Assets Forfeiture Fund is available to the Attorney General “without fiscal year limitation” for specified “law enforcement purposes.” 28 U.S.C. § 524(c)(1). Those specified services do not explicitly include personnel expenses of a government employee, and, as a matter of policy, the Attorney General will not pay salary and

⁹ See, e.g., 15 U.S.C. § 78u (Securities and Exchange Commission); 15 U.S.C. § 717t-1 (Federal Energy Regulatory Commission); 29 U.S.C. § 1132 (Department of Labor); 52 U.S.C. § 30106(b)(1) (Federal Election Commission).

benefits from the fund without an affirmative waiver. Moreover, the Attorney General will not use the fund to pay “[e]xpenses that are expressly limited by statute.” See The Attorney General’s Guidelines on Seized and Forfeited Property (July 1990), https://cats.doj.gov/sites/afmlo/policies/Policies/AG_Guidelines.pdf; see also, e.g., (9-118.725, VII.B.5 (the Fund may be used to pay for training related to the asset forfeiture program); 9-118.725, VII.B.6 (the Fund may be used for certain investigative expenses); 9-118.740, VII.D (the Fund may not be used for personnel expenses or other listed expenses); 9-118.742, VII.D.2 (the Fund generally may not be used to pay claims of unsecured creditors)).

V. A Case Should Not Proceed Without Department of Justice Representation.

At least one court has asked whether it may sentence an already-convicted defendant without participation by the Department of Justice. We should respond no. The Department represents the interests of the United States at sentencing, and advocates for a just punishment that takes into account the need to protect the public and to deter future wrongdoing. See Rule 32(4)(A)(iii) (before imposing sentence, court must “provide an attorney for the government an opportunity to speak equivalent to that of the defendant’s attorney”). The Department also has a right to object to findings and conclusions in the presentence report. See *Fed. R. Crim. P. 32(i)* (court must “give to the defendant and an attorney for the government a written summary of *** any information excluded from the presentence report *** and give them a reasonable opportunity to comment on that information”). The government’s adversarial role cannot be replicated by the probation officer or a judicial law clerk. Moreover, if the government is dissatisfied with the sentence, it will not be able to vindicate its interests on appeal unless it has participated in the district court and preserved its claims.

The government also has strong participatory interests on direct appeal, or later on a collateral attack. The government has an interest in advocating for a particular legal position, and in identifying the appropriate facts from the record that best support its position. Even where the government elects to concede error and aligns itself with the defendant, it has a right to present that view to the court. The government does not lose its stake in the proceeding by conceding error. Instead, a court troubled by the lack of an adversary can appoint counsel to defend the judgment as an *amicus*; the *amicus*, however, does not displace the Executive Branch. See, e.g., *Dorsey v. United States*, 132 S. Ct. 2321 (2012) (appointing private counsel to defend the judgment as *amicus curiae* where government conceded application of Fair Sentencing Act). If the appeal

proceeds without the government, there will be no opportunity to reassess prosecutorial policies, or to ask a court to vacate a conviction and dismiss an indictment where the Department determines in retrospect that a particular prosecution should not have been brought. See *Rinaldi v. United States*, 434 U.S. 22 (1977) (court of appeals abused its discretion in denying government's motion to vacate conviction and dismiss indictment as violative of DOJ's successive-prosecution policy); Fed. R. Crim. P. 48(a) (government may dismiss an indictment "with leave of court").

Section 538 also should not be read to bar the Department from defending a conviction obtained prior to its enactment. Section 538's terms prohibit prospective interference with State medical marijuana laws: "None of the funds made available in this Act to the Department of Justice may be used * * * to prevent [the listed] States from implementing their own State laws that authorize the use, distribution, possession, or cultivation of medical marijuana." The statute does not purport to reach back and nullify past investigations and prosecutions. If, however, an indictment was returned prior to December 16, 2014, and the district court finds that prosecution of the pending charges would prevent the State from implementing its medical marijuana laws, prosecutors should report the adverse decision to the Criminal Division's Appellate Section so that the Solicitor General can determine whether to seek appellate review, or, alternatively, whether the government should move to dismiss the indictment or ask the court to stay proceedings until Section 538's funding restriction expires.

Finally, the Department is permitted to use appropriated funds to pay for attorneys to litigate the meaning and effect of Section 538, even if a court ultimately rules that the Department cannot continue to prosecute a case. The Department's litigation efforts in opposition to a Section 538 motion do not prevent implementation of a State law but relate to the meaning of a federal statute. The situation is analogous to the principle that a federal court always has jurisdiction to decide whether it has jurisdiction. See *United States v. Ruiz*, 536 U.S. 622, 628 (2002) (citing *United States v. United Mine Workers of America*, 330 U.S. 258, 291 (1947)); *Armstrong v. Armstrong*, 350 U.S. 568, 574 (1956).

ADDENDUM

Floor Debate Related to Section 538

Rep. Dana Rohrabacher offered the amendment on May 28, 2014. H.R. 4660, Amendment No. 25, <https://www.congress.gov/crec/2014/05/28/CREC-2014-05-28.pdf> (p. 74 of pdf). The amendment was co-sponsored by Democratic Reps. Sam Farr, Earl Blumenauer, Steve Cohen, Jared Polis, Dina Titus, and Barbara Lee, and Republican Reps. Don Young, Tom McClintock, Paul Broun, Steve Stockman, and Justin Amash. *Id.*

1. House Floor Statement by Amendment Co-Sponsor, Made on May 9, 2014
On May 9, 2014, Rep. Dana Rohrabacher said on the House floor:

Mr. Speaker, I rise today to discuss an issue that currently affects more than half the States in our Nation, and that is the inconsistency between Federal and State laws pertaining medical marijuana. Yes, Mr. Speaker, a majority of our Nation's States-Alabama, Alaska, Arizona, California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Kentucky, Maine, Maryland, Massachusetts, Michigan, Mississippi, Montana, Nevada, New Hampshire, New Jersey, New Mexico, Oregon, Rhode Island, Utah, Vermont, Wisconsin, and Washington, as well as the District of Columbia-all have some form of medical marijuana law on the books. Of course this means that these States allow their residents to engage in activities that are expressly prohibited by the Federal Government. To be exact, there are already 26 States that allow doctors to recommend the medical use of marijuana or its derivatives, and many more States are expected to take the step and do the same thing in the near future.

Importantly, the States listed are not dominated by conservatives or liberals. This isn't a Republican or a Democrat issue. Massachusetts, Alaska, Mississippi, and Oregon are hardly the same, politically speaking, in their legislature. Politically speaking, they are not the same. But their legislators and their residents all have recognized the same reality, and that is the potential medical benefits of marijuana and marijuana's derivatives, and they believe that these derivatives and the benefits of marijuana should not be denied to their people.

Unfortunately, however, the Federal Government continues to list marijuana and its derivatives as a schedule I substance, putting it in the same category as heroin, LSD, and other hard drugs.

I have long supported rescheduling marijuana so that it can be researched, prescribed, and used by legitimate health care professionals.

But multi-administrations, both Republican and Democrat alike, have refused to seriously talk about this topic. Instead, a heavy-handed, emotion-based policy continues.

Evidence suggesting that the Federal Government ought to allow the use of marijuana for medical purposes has never had the serious discussion that it deserves. Many desperate patients have defied the Federal Government's blanket ban on the use of marijuana as a remedy for numerous ailments.

The absurdity of this ban was brought home to me over a decade ago when my mother, depressed after undergoing surgery, lost her appetite and was requiring me to spoon-feed her. When I learned that medical marijuana might give her the appetite she needed and, yes, raise her spirits, the illegality of this herb was abundantly clear to me as I was there seeing my mother in the hospital bed, seeing how my mother had lost her appetite and seeing how her spirits were so low, knowing that perhaps marijuana, if the doctor had so ordered, would have been something that could have helped her and helped other people's mothers and children who were suffering the same situation.

The significance of changing-or at least altering-this prohibition could no longer be ignored by me when I was confronted by this over a decade ago. Since that time, the public's interest and support for medical marijuana has increased dramatically. As I mentioned, over half the States allow people with serious illnesses to use marijuana and/or its derivatives for medical purposes.

Recent polls show that the vast majority of the American people support the medical efficacy and use of marijuana for medical purposes: 77 percent according to Pew, 81 percent according to the ABC News poll, and a whopping 85 percent according to a FOX News poll last year. Just as interesting, 60 percent of the American people believe that the Federal Government should not prosecute people who are acting in accordance with State medical marijuana laws, and 72 percent think government efforts to enforce marijuana laws cost more than they are worth. Surprise, surprise, almost three-quarters of Americans believe that the cost of enforcing marijuana laws is far heavier than the benefits of having those laws enforced or having those laws on the books. All those numbers include majorities of both Republicans, Democrats, and, yes, it includes a majority of Independents, as well.

What is the driving force behind this surge of support for a change in Federal policy? It is the realization by patients, researchers, and

physicians that marijuana and its derivatives may offer enormous relief to numerous patients. For example, last year, the famous physician, Sanjay Gupta, released—who is a very prominent physician—released a documentary film in which he explored many of the benefits of medical marijuana. Like so many Americans, he is a relatively new convert to this position. I quote:

We have been terribly and systematically misled for nearly 70 years in the United States, and I apologize for my own role in that.

This is what the doctor said in his documentary.

His documentary explores a number of cases in which patients who have various environmental neurological disabilities were helped by marijuana. Anyone who watches this documentary will see the positive effect that marijuana and its derivatives can have on ailing patients. Dr. Gupta is not alone in his belief that it may prove beneficial to some patients.

The New England Journal of Medicine recently found that a majority of clinicians—a majority of the clinicians surveyed responded that they “would recommend the use of medicinal marijuana in certain situations.”

We have all heard anecdotes of the ability of marijuana to improve patients’ appetites, calm those with anxiety, and reduce the nausea for those who are extremely sick. Most recently, there has been an increased attention on the potential impacts of marijuana on patients who suffer from seizures, as well as those with PTSD.

Some particularly conservative States in our country—Utah, Alabama, Kentucky, and Mississippi, for instance—have recently passed laws allowing patients to access medical marijuana products such as oils that are rich in what they call the Cannabis oil, which is CBD, which has been very helpful with so many patients who are looking for relief for children with seizure disorders. They have found that the CBD helps these children meet this challenge in the families that are suffering across the country watching their children go through this suffering with this type of seizures and disorders.

These laws vary somewhat as to how patients are able to gain access to these products in various States, they differ, the laws differ, but they generally show that patients to be treated with this CBD-rich marijuana product, when administered by a physician and in the course of a State-approved medical study, have proved to be helpful to many people’s health. Under current law, however, CBD, because it is derived from marijuana, is considered a Schedule I drug, and therefore it is prohibited to

do the kind of research that is necessary to put that into the service for our people and to make sure that they have this available for their children and for other people who are suffering.

We can't even do the fundamental research as long as the Federal Government continues to label it the same as heroin or the same as other types of drugs, cocaine and the rest.

Well, we know from what I have said so far that there are numerous people in our country who understand that there are people who can benefit medically, and the people who understand this are not just civilians but medical professionals, as well as scientists.

Also, of particular and growing interest are the benefits that marijuana has for those who suffer from posttraumatic stress disorder, that is PTSD. This is one of the most commonly diagnosed disorders for our military veterans who are returning from overseas duty. Those suffering from PTSD often experience debilitating nightmares, depression, and anxiety; and, according to many of these patients, marijuana is the only thing that helps them alleviate these awful, awful symptoms.

Yet, because of our decades-old policy of not allowing the legitimate use-or even research into the legitimate use-of the medical benefits of marijuana, many individuals that we are talking about, many of these veterans, feel they have no choice but to break the law. Our Nation's heroes who are trying to escape the hellish nightmares of the war that we sent them off to fight are forced into the compromising position of illegal activity just to receive some relief from the pain they are suffering.

Parents who want to treat their children with nonpsychoactive extracts of the marijuana plant are forced to engage in activities that, if caught and convicted under Federal law, would make these parents who are just trying to help their children, it makes them felons-felons.

I would submit that this scenario undermines every legal and moral institution that we want every citizen-we want every citizen-of the United States to respect. It puts our people in an impossible position. It requires them to choose between providing relief for a loved one or breaking the law. In many cases, that behavior is in compliance-we are talking about offering medical marijuana-it is in compliance with State law; but these people who need it, whose family may need it, whose veteran coming home from the war may need it, whose mother is in the hospital who has lost her appetite and is depressed may need it, well, even if it is in compliance with State law, what we have got now is they are still a violation of Federal law, so we end up condemning these people to a crisis

in which their loved ones must either suffer or they must break the law. It is cruel nonsense to put our people through this.

Patients and providers currently run the risk of having a Federal SWAT team-like police force raid their homes or their place of business because of the consumption of a plant which could be growing right in their backyard. The militarization of the police force in order to prevent Grandma from using a medical herb that will ease her pain during her last days on Earth is the type of thing that ought to make every person who believes in liberty and freedom-it should make them shudder, as well as, of course, responsible conservatives who understand we should be making every dollar our government spends count and be doing something that absolutely needs to be done.

The harassment from the Drug Enforcement Agency is something that should not be tolerated in the land of the free. Businesspeople who are licensed and certified to provide doctor-recommended medicine within their own States have seen their businesses locked down, their assets seized, their customers driven away, and their financial lives ruined by very, very aggressive and energetic Federal law enforcers enforcing a law in which we are preventing something that doctors would recommend for the health of their patients that now some way distributing that material would result in the total destruction of that medical professional and his life.

Instead of continuing to finance this repressive and expensive approach, we should be willing to allow patients and small businesses to follow their doctor's advice under the watchful eye of State law enforcement and regulators rather than treating it like something that ought to be eradicated from our society. And, yes, I am sure there are plenty of people around who would love to just continue building our police forces, spending the money; but having them target people who are engaged not in rape or murder or some type of aggressive action on the population but instead have them focus on a doctor who is trying to alleviate the pain of someone who has just gone through an operation or one of our veterans who is suffering some sort of posttrauma from his being overseas, no. To say it is a total waste of money is just an understatement.

The 26 States that I have named have gotten this message. They have been making great strides toward compassion and, yes, towards freedom and, yes, towards a responsible use of limited government money in our country.

Now, after the States have done their job, we need the Federal

Government to do its part. In the near future, I, along with several of my colleagues in both parties, will introduce an amendment to the Commerce-Justice-Science appropriations bill to bring an end to this disruptive, ill-advised, and wasteful policy that we have pushed on our people and oppressed our people with for far too long. Specifically, our amendment would prohibit the Department of Justice from using any of the funds in this bill to prevent States from implementing their own State medical marijuana laws.

I think my conservative friends could benefit from hearing what some of their idols have to say about this. Milton Friedman stated that it is "disgraceful to deny marijuana for medical purposes." Dr. Friedman, whom I knew personally, a personal friend of mine, spent a great deal of time talking about this very issue. He and George Schultz, former Secretary-Dr. Friedman, of course, advised Ronald Reagan when I worked with Ronald Reagan in the White House. As you know, I was a special assistant to President Reagan as well as a Presidential speechwriter for President Reagan for 7 years. There with us was, of course, Dr. Milton Friedman; and he advised us of the nonsense of making marijuana illegal, especially for medical purposes.

Then we have William F. Buckley-another man who advised conservatives like Ronald Reagan-who I read as a young person. In the pages of National Review, which he edited, he wrote:

The stodgy inertia most politicians feel is up against a creeping reality, and that is that marijuana for medical relief is a movement which is attracting voters who are pretty assertive on the subject.

Yes, William F. Buckley was a visionary. He saw what direction the will of the American people would be having, and he foresaw today that the vast majority of the American people do not want the Federal Government wasting limited dollars destroying doctors' lives, preventing research into medical marijuana, and getting in the way of the people of the States who have voted to make this substance legal in their State for medical purposes.

Conservatives in this body-in this body, in this House-who regularly call for a decrease in the size and scope of the Federal Government ought to seriously consider voting for my amendment. Likewise, conservatives in this body who routinely talk about the need for the Federal Government to respect the 10th Amendment of the Constitution and those who believe that Washington should not interfere with the doctor-patient relationship, which we have heard so much about, these people, my conservative

colleagues, ought to seriously consider supporting my amendment, as well.

In fact, if you are on the wrong side of Milton Friedman and William F. Buckley and people like Grover Norquist and George Schultz on the medical marijuana issue, I would suggest to my colleagues that they ought to reconsider the position that they are taking, that it may not be the one that is consistent with the conservative belief in freedom, individual responsibility, and, of course, limited government.

This amendment has been introduced in the past, most recently in 2012, but the difference this time around is that the American people are now demanding the Federal Government respect the majority of the States in our country which have implemented various medical marijuana laws.

The question at this point is whether the American people's Representatives in this House will grant them the wish and accede to what their opinion is and understand that laws are made for these people and their opinions have a right to be heard. I would hope that my fellow Representatives hear the American people's cry, hear those people who are trying to take care of their elderly mother or a veteran coming home or their children who are suffering seizures and say it is a total waste, it is a travesty to use limited dollars, to have a Federal Government stopping a doctor in States that have declared it as legal, prevent that doctor from offering a treatment for these people, our loved ones, Americans throughout our country.

My hope and expectation is that truth and common sense will prevail. I have faith in the American people. And yes, I have faith in my colleagues. I believe that both the American people, given a choice in their lives, they will do the right thing for themselves and their family. I also believe they will do it without bureaucracy, without massive Federal intrusion into their lives. And I also have faith in my colleagues that they will begin to take a second look at this issue and see if what they are doing is consistent with our overall belief in American freedom and personal responsibility.

One final point I would like to make is that, as legislators who have the power of the purse, we have a responsibility to prioritize Federal tax dollars and how they are spent. Our debt has increased by trillions of dollars in just the last few years. This year's deficit is expected to add an additional \$500 billion to the debt, and the CBO estimates that the deficit will only slightly be lower next year before ballooning up again to unacceptable levels. What we are going through is already unacceptable to

most of us.

As we look for places to cut spending, why don't we begin by eliminating those expenditures which the vast majority of Americans believe to be an unjustified exercise of Federal powers. I ask my colleagues to join me in supporting a commonsense amendment that will be a step in the right direction in respecting State medical marijuana laws and will respect the individual liberties that our country believes in.

I would hope that the Federal Government also, finally, we in the Federal Government will understand prioritizing spending, so even if you have questions of how someone making a personal choice somewhere across the country as to whether to use medical marijuana to help a family member who is sick or to stop their own seizures or whatever, yes, even if you don't believe that individuals across our country or the State governments have a right to be able to make those decisions and local voters should be making those determinations, which is what our Founding Fathers wanted, even if you don't believe in that, we should, at the very least, understand that we do not have resources at the Federal level to do everything for everybody.

While showing compassion for thousands of ailing patients across our country, we can also do the right thing, that is the right thing for us to do in terms of balancing our budget and having responsible spending patterns and taxing patterns here in Washington. Here is where it crosses. Here is where the waste of taxpayer dollars and enforcing laws that they have already said they don't want at the State level, forcing this upon them, declaring that someone is not going to have the personal responsibility in his own life to make these decisions, even in States where our people have voted to make this legal in terms of decisionmaking for using medical marijuana, well, even in those States, and all of this in one formula, you still have to understand that we have to deal with a budget; and it is totally inconsistent with a responsible spending pattern to use such limited resources as we have, going into debt in order to fence in doctors and other people who are trying to use medical marijuana around the country and even prevent the research into medical marijuana to show that it might have some benefit. No, that is a travesty and a total waste of our limited resources.

I would call on my conservative colleagues and my liberal colleagues, my Democrat and Republican friends and the people across the country of the United States to look at this issue with an open mind, intelligently look at the issue, look at it with your heart and your brain, and we will come to the conclusion that medical marijuana, especially in those

States in which the people have decided to make medical use of marijuana legal, that it is a total waste of limited Federal funds for us to be focusing the use of those Federal funds on that activity at the State and local levels by people who are being given the choice by doctors as to what medicine they will use.

Let's get the Federal Government out of the areas that it shouldn't be in. That should be something conservatives really support. And so today, I would call on my colleagues to support the amendment that I will be offering, along with Congressman

Blumenauer and others here in the body, to make sure that we get back to the 10th Amendment of the Constitution and put into law that, when it comes to the medical use of marijuana, the Federal Government will not waste its money trying to thwart the will of people throughout our country and the various State legislatures throughout our country.

With that said, Mr. Speaker, I yield back the balance of my time.

160 Cong. Rec. 70, H4020, H4053–55 (daily ed. May 9, 2014) (statement of Rep. Dana Rohrabacher),

<https://www.congress.gov/crec/2014/05/09/CREC-2014-05-09.pdf>.

2. House Floor Statement by Amendment Co-Sponsor, Made on May 28, 2014

During debate over the amendment to the House version of the spending bill, Rep. Dana Rohrabacher, the amendment's co-sponsor, made the following statement:

Tomorrow, I will be offering an amendment to the CJS appropriations bill, along with my colleagues Sam Farr, Don Young, Earl Blumenauer, Tom McClintock, Steve Cohen, Paul Broun, Jared Polis, Steve Stockman, Barbara Lee, Justin Amash, and Dana Titus.

Very simply, our amendment would prohibit the Department of Justice from using funds in the bill from preventing States from implementing their State medical marijuana laws.

Importantly, this amendment gives us an opportunity to show our support and what we really believe about the 10th Amendment to the Constitution, and it gives us an opportunity to support the intentions of our Founding Fathers and Mothers. They never meant for the Federal Government to play the preeminent role in criminal justice.

It should be disturbing to any constitutionalist that the Federal Government insists on the supremacy of laws that allow for the medical use of marijuana.

So far, 28 States and the District of Columbia—that is a majority of the States of the Union—have enacted laws to allow access to medical marijuana or its chemical derivatives. They obviously believe enforcing such restrictions on the medical use of marijuana is a waste of extremely limited resources.

This amendment has solid bipartisan support, and we have the opportunity now, with this amendment, to tell the Department of Justice that they are not permitted to waste limited Federal dollars interfering with the duly- enacted laws of our States concerning medical marijuana.

I urge my colleagues, Democrats and Republicans alike, liberals and conservatives, to support my amendment. Respect State medical marijuana laws.

160 Cong. Rec. 82, H4839, H4878–879 (daily ed. May 28, 2014) (statement of Rep. Dana Rohrabacher), <https://www.congress.gov/crec/2014/05/28/CREC-2014-05-28.pdf>.

3. House Floor Statements in Support of the Amendment, Made on May 29, 2014

Several co-sponsors and supporters of the amendment made statements on the House floor on May 29, 2014, prior to the amendment’s passage in the House. 160 Cong. Rec. 82, H4914, H4982–H4985 (daily ed. May 29, 2014), <http://www.gpo.gov/fdsys/pkg/CREC-2014-05-29/pdf/CREC-2014-05-29.pdf>.

Rep. Dana Rohrabacher said:

Mr. Chairman, I rise to speak in favor of my amendment, which would prohibit the Department of Justice from using any of the funds appropriated in this bill to prevent States from implementing their own medical marijuana laws. Twenty-nine States have enacted laws that allow patients access to medical marijuana and its derivatives, such as CBD oils.

It is no surprise then that public opinion is shifting, too. A recent Pew Research Center survey found that 61 percent of Republicans and a

[whopping] 76 percent of Independents favor making medical marijuana legal and available to their patients who need it.

As I have said, 29 States have already enacted laws that will permit patients access to medical marijuana and their derivatives. By the way, 80 percent of Democrats feel the same way.

Despite this overwhelming shift in public opinion, the Federal Government continues its hard-line oppression against medical marijuana. For those of us who routinely talk about the 10^h Amendment, which we do in conservative ranks, and respect for State laws, this amendment should be a no-brainer.

Our amendment gives all of us an opportunity to show our constituents that we are truly constitutionalists and that we mean what we say when we talk about the importance of the 10th Amendment.

In addition, this also gives us the opportunity to prove that we really do believe in respecting the doctor-patient relationship.

I proudly offer this amendment that has the support of my colleagues on both sides of the aisle. I am joined by Republican cosponsors Don Young, Tom McClintock, Dr. Paul Broun, Steve Stockman, and Justin Amash, as well as Democrat cosponsors Sam Farr, Earl Blumenauer, Steve Cohen, Jared Polis, Barbara Lee, and Dana Titus.

I urge my colleagues to support our commonsense, states' rights, compassionate, fiscally responsible amendment.

160 Cong. Rec. 82, H4914, H4982–83 (daily ed. May 29, 2014) (statement of Rep. Dana Rohrabacher), <http://www.gpo.gov/fdsys/pkg/CREC-2014-05-29/pdf/CREC-2014-05-29.pdf>.

Rep. Thomas Massie said:

Mr. Chair, I am not here to talk about brownies and biscuits. I am here to talk about a serious medical issue, cannabidiol, the CBD oil that comes from the cannabis plant. It is very low in THC and is nonpsychoactive. Research has shown very promising results in children with epilepsy, autism, and other neurological disorders. CBD oil is also showing promising results in adults with Alzheimer's, Parkinson's, and PTSD.

We need to remove the roadblocks to these potential medical breakthroughs. This amendment would do that. The Federal Government should not countermand State law. In this case, the absurd result of that is that medical discoveries are being blocked.

I encourage my colleagues to support this amendment.

160 Cong. Rec. 82, H4914, H4983 (daily ed. May 29, 2014) (statement of Rep. Thomas Massie), <http://www.gpo.gov/fdsys/pkg/CREC-2014-05-29/pdf/CREC-2014-05-29.pdf>.

Rep. Dana Rohrabacher said:

Mr. Chair, I yield 1 minute to the gentleman from Georgia [Rep. Paul Broun], our doctor in the House. We do believe in the doctor-patient relationship and that the government shouldn't interfere.

160 Cong. Rec. 82, H4914, H4984 (daily ed. May 29, 2014) (statement of Rep. Dana Rohrabacher), <http://www.gpo.gov/fdsys/pkg/CREC-2014-05-29/pdf/CREC-2014-05-29.pdf>.

Rep. Paul Broun said:

Mr. Chair, I am a family physician and an addictionologist. Marijuana is addicting if it is used improperly. But used medically, and there are very valid medical reasons to utilize extracts or products from marijuana in medical procedures, it is a very valid medical use under the direction of a doctor. It is actually less dangerous than some narcotics that doctors prescribe all over this country.

Also, this is a states' rights, states' power issue, because many States across the country—in fact, my own State of Georgia is considering allowing the medical use under the direction of a physician. This is a states' rights, Tenth Amendment issue. We need to reserve the states' powers under the Constitution.

Please support this amendment.

160 Cong. Rec. 82, H4914, H4984 (daily ed. May 29, 2014) (statement of Rep. Paul Broun), <http://www.gpo.gov/fdsys/pkg/CREC-2014-05-29/pdf/CREC-2014-05-29.pdf>.

Rep. Earl Blumenauer said:

Mr. Chair, I am listening to our friends on the other side of the aisle in opposition here and the notion about camel's nose, this train has already left the station. Eighteen years ago, the State of California voters approved medical marijuana. We now have 22 States that are doing so.

My good friend from Georgia is right. I mean, there are a million Americans now with the legal right to medical marijuana as prescribed by a physician. The problem is that the Federal Government is getting in the way. The Federal Government makes it harder for doctors and researchers to be able to do what I think my friend from Louisiana wants than it is for parents to self-medicate with buying marijuana for a child with violent epilepsy.

This amendment is important to get the Federal Government out of the way. Let this process work going forward where we can have respect for states' rights and something that makes a huge difference to hundreds of thousands of people around the country now and more in the future.

160 Cong. Rec. 82, H4914, H4984 (daily ed. May 29, 2014) (statement of Rep. Earl Blumenauer), <http://www.gpo.gov/fdsys/pkg/CREC-2014-05-29/pdf/CREC-2014-05-29.pdf>.

Rep. Sam Farr said:

Mr. Chair, I rise in support of this amendment as a coauthor of it and to point out this is six Democrats and six Republicans that are authoring this. There are 33 States, three of which have just passed laws and the Governors have indicated they will sign them.

This is essentially saying, look, if you are following State law, you are a legal resident doing your business under State law, the Feds just can't come in and bust you and bust the doctors and bust the patient. It is more than half the States. So you don't have to have any opinion about the value of marijuana. This doesn't change any laws. This doesn't affect one law, just lists the States that have already legalized it only for medical purposes, only medical purposes, and says, Federal Government, in those States, in those places, you can't bust people. It seems to me a practical, reasonable amendment in this time and age.

160 Cong. Rec. 82, H4914, H4984 (daily ed. May 29, 2014) (statement of Rep. Sam Farr), <http://www.gpo.gov/fdsys/pkg/CREC-2014-05-29/pdf/CREC-2014-05-29.pdf>.

Rep. Dana Titus said:

Mr. Chair, for the District of Columbia and 22 States, including Nevada, with laws in place allowing the legal use of some form of marijuana for medical purposes, this commonsense amendment simply ensures that patients do not have to live in fear when following the laws of their States and the recommendations of their doctors. Physicians in those States will not be prosecuted for prescribing the substance, and local businesses will not be shut down for dispensing the same.

I urge you vote in favor.

160 Cong. Rec. 82, H4914, H4984 (daily ed. May 29, 2014) (statement of Rep. Dana Titus), <http://www.gpo.gov/fdsys/pkg/CREC-2014-05-29/pdf/CREC-2014-05-29.pdf>.

Rep. Barbara Lee said:

I rise in strong support of this bipartisan amendment, which I am proud to cosponsor along with my colleagues. This amendment will provide much needed clarity to patients and businesses in my home State of California and 31 other jurisdictions that provide safe and legal access to medicine. We should allow for the implementation of the will of the voters to comply with State laws rather than undermining our democracy.

In States with medical marijuana laws, patients face uncertainty regarding their treatment, and small business owners who have invested millions creating jobs and revenue have no assurances for the future. It is past time for the Justice Department to stop its unwarranted persecution of medical marijuana and put its resources where they are needed.

In States with medical marijuana laws, people with multiple sclerosis, glaucoma, cancer, HIV, and AIDS and other medical issues continue to face uncertainty when it comes to accessing the medicine that they need to provide some relief. So it is time to pass this. It is time to give these patients the relief that they need.

This is the humanitarian thing to do, it is the democratic thing to do,

and I hope this body will vote for it and pass it on a bipartisan basis. It is long overdue. Enough is enough.

160 Cong. Rec. 82, H4914, H4984 (daily ed. May 29, 2014) (statement of Rep. Barbara Lee), <http://www.gpo.gov/fdsys/pkg/CREC-2014-05-29/pdf/CREC-2014-05-29.pdf>.

Later in the floor debate, Rep. Dana Rohrabacher said:

Mr. Chairman, this is the most incredible debate we have had. Over half the States have already gone through every argument that was presented and decided against what you just heard. There are doctors at every one of those States that participated in a long debate over this and found exactly the opposite of what we have heard today.

Some people are suffering and if a doctor feels that he needs to prescribe something to alleviate that suffering, it is immoral for this government to get in the way, and that is what is happening. The State governments have recognized that a doctor has a right to treat his patient any way he sees fit, and so did our Founding Fathers.

I ask for support of my amendment, and I yield back the balance of my time.

160 Cong. Rec. 82, H4914, H4985 (daily ed. May 29, 2014) (statement of Rep. Dana Rohrabacher), <http://www.gpo.gov/fdsys/pkg/CREC-2014-05-29/pdf/CREC-2014-05-29.pdf>.

4. House Floor Statements in Opposition to the Amendment, Made on May 29, 2014

Rep. Frank Wolf, speaking in opposition to the amendment, said:

The following national medical organizations are currently opposed to medical marijuana: American Medical Association, American Cancer Society, American Glaucoma Society, Glaucoma Research Foundation, American Academy of Pediatrics, American Academy of Child and Adolescent Psychiatry, and American Psychiatric Association.

Also, recent research has demonstrated that marijuana use during teen years decreases IQ rates by an average of eight points.

160 Cong. Rec. 82, H4914, H4983 (daily ed. May 29, 2014) (statement of Rep. Frank Wolf), <http://www.gpo.gov/fdsys/pkg/CREC-2014-05-29/pdf/CREC-2014-05-29.pdf>.

Rep. Andy Harris said:

Mr. Chair, I rise to oppose the amendment. My State is named in the amendment.

Look, everyone supports compassionate, effective medical care for patients with cancer, epilepsy, chronic pain. You will probably hear anecdotal reports, maybe even during the testimony this evening, about how medical marijuana can solve some of these problems.

There are two problems with medical marijuana. First, it is the camel's nose under the tent; and second, the amendment as written would tie the DEA's hands beyond medical marijuana.

With regard to the camel's nose under the tent, let me just quote from the DEA report just published this month: Organizers behind the medical marijuana movement did not really concern themselves with marijuana as a medicine. They just saw it as a means to an end, which is the legalization of marijuana for recreational purposes. They did not deal with ensuring that the product meets the standards of modern medicine: quality, safety, and efficacy.

Because, Mr. Chairman, the term "medical marijuana" is generally used to refer—and this is from the NIH. We respect the NIH. This is the National Institute on Drug Abuse: The term "medical marijuana" is generally used to refer to the whole, unprocessed marijuana plant or its crude extracts.

Mr. Chairman, that is not what medicine is about. Medicine is about refining the components THC and CBD, actually making sure they are efficacious, giving the exact dose, not two joints a day, not a brownie here, a biscuit there. That is not modern medicine. In fact, the DEA supports those studies, looking at the safety and efficacy and dosing regimens for these, THC, CBD. They have licensed some of the drugs.

Mr. Chairman, according to the National Institute on Drug Abuse, medical and street marijuana are not different. Most marijuana sold in dispensaries as medicine, again reading from the National Institute on

Drug Abuse, is the same quality and carries the same health risks as marijuana sold on the street.

Mr. Chairman, we know there are health problems. The problem is that the way the amendment is drafted, in a State like Maryland which has medical marijuana, if we ever legalized it, the amendment would stop the DEA from going after more than medical marijuana.

160 Cong. Rec. 82, H4914, H4983 (daily ed. May 29, 2014) (statement of Rep. Andy Harris), <http://www.gpo.gov/fdsys/pkg/CREC-2014-05-29/pdf/CREC-2014-05-29.pdf>.

Later in the floor debate, Rep. Andy Harris said:

Mr. Chair, marijuana is neither safe nor legal. Let's get it straight. The Controlled Substances Act makes marijuana in the United States illegal because it is not safe.

Mr. Chairman, there is more and more evidence every day that it is not safe. The effect on the brains, developing brains of teenagers and young adults, is becoming more and more clear, as the doctor from Louisiana has talked about, the effect on affect, the effect on mood; it is not safe.

Mr. Chairman, this is not a medicine. This would be like me as a physician saying: You know, I think you need penicillin, go chew on some mold. Of course I wouldn't do that. I write: for 250 milligrams of penicillin q.6 hours times 10 days. I don't write: chew on a mold a couple of times a day.

Mr. Chairman, why don't we have therapeutic tobacco? Nicotine, one of the substances in tobacco, purified is actually useful as a drug to treat autosomal dominant nocturnal frontal lobe epilepsy. Nobody writes a prescription: smoke a couple of cigarettes and cure your epilepsy. But that is what we are being asked to do.

Mr. Chairman, worse than that, this blurs the line in those States that have gone beyond medical marijuana. For instance, in Colorado, under Amendment 64, a person can grow six plants under the new law for general use, but if it is medical marijuana you can grow as many plants as you want as long you can prove you have a medicinal use.

So how is the DEA going to enforce anything when, under this amendment, they are prohibited from going into that person's house growing as many plants as they want, because that is legal under the medical marijuana part of the law, not under the new law?

Mr. Chairman, this is not the right place for this. The Ogden memorandum from this administration clearly states that the Department of Justice does not prioritize prosecution for medical marijuana—clearly states it. They don't do it. This is a solution in search of a problem that opens many other doors to the dangers of marijuana.

60 Cong. Rec. 82, H4914, H4984 (daily ed. May 29, 2014) (statement of Rep. Andy Harris), <http://www.gpo.gov/fdsys/pkg/CREC-2014-05-29/pdf/CREC-2014-05-29.pdf>.

Rep. John Fleming said:

Mr. Chairman, let me say that in this discussion you may have heard reference to the 10th Amendment and the Commerce Clause. Let me address that. I want to get that out of the way, because I have talked tremendously over the past few days and weeks about the dangers of marijuana.

This controversy came before the U.S. Supreme Court in 2005 in *Gonzales v. Raich*. The Supreme Court reviewed the Federal Government's authority to enforce the Controlled Substances Act. In a 6–3 decision, Justice Scalia, a strong states' rights advocate, concurred with the majority ruling that the CSA does not violate the Commerce Clause or the principles of State sovereignty.

Just to read what he said:

Not only is it impossible to distinguish controlled substances manufactured and distributed intrastate from controlled substances manufactured and distributed interstate, but it hardly makes sense to speak in such terms.

Drugs like marijuana are fungible commodities, as the Court explains marijuana that is grown at home and possessed for personal use is never more than an instant from the interstate market, and this is so whether or not the possession is for medicinal use or lawful use under the laws of a particular State.

Again, if we want to make a statement principle on the Tenth Amendment, fine, but don't do it on the backs of our kids and our grandkids. This is dangerous for them. How do we know this? The health risks: brain development, schizophrenia, increased risk of stroke. A study at Northwestern University recently showed profound changes in the brain just in casual marijuana users. Heart complications, three times normal in such use. Recent studies shows, as I said, not only damage in certain structures in the brain, but the same structures that attend to motivation, which again underlines the amotivational syndrome that we have all heard about.

So again, it is settled law. The Supreme Court has already spoken on the constitutionality of this. It is settled when it comes to medicine. We hear anecdotal stories, but there is no widespread accepted use of marijuana, medicinal marijuana and so forth. There is no acceptance of this by the medical community. It is not evidence-based. Fine, if you want to do research on it, but this will take away the ability of the Department of Justice to protect our young people.

160 Cong. Rec. 82, H4914, H4983–84 (daily ed. May 29, 2014) (statement of Rep. John Fleming), <http://www.gpo.gov/fdsys/pkg/CREC-2014-05-29/pdf/CREC-2014-05-29.pdf>.

Later in the floor debate, Rep. John Fleming said:

Look, first of all, let's be clear, marijuana is an addicting substance. It is schedule I, it is against Federal law, it was passed that way into the CSA in 1970.

What this amendment would do is, it wouldn't change the law, it would just make it difficult, if not impossible, for the DEA and the Department of Justice to enforce the law.

Members on my side have been criticizing President Obama for selective enforcement of ObamaCare and for immigration and other laws like that. So now we are going to start going down the road of selective enforcement for our drug policy.

Medicinal marijuana, what is it exactly? Folks, I can tell you it is nothing more than the end run around the laws against the legalization of marijuana. There is nothing medical or medicinal about it. It is not

accepted by physicians. Oh, somebody claims it may do something for glaucoma, perhaps. Well, maybe it will, maybe it won't. But there are a lot more drugs that do a much better job than that and they are much safer.

But the most important thing I want everybody to know, Mr. Chairman, today is the fact that marijuana is highly addicting. It is the most common diagnosis for addiction in admissions to rehab centers for young people. Why in the world do we want to take away drug enforcement and leave our young people out there vulnerable? Yes, you say it can only be used by adults. Well, if it is sitting around on shelves at home the kids are going to get into it. We are already hearing about Colorado fourth-graders dealing with it. We hear about more poisonings in the emergency room.

If you look at other places that have gone down this road like Alaska, they retracted from their legalization. So I don't think we should accept at all that this is history in the making and that we are never going to go back. You look at Amsterdam, they put a lot more restrictions back in the control even in that very, very liberal nation.

So for that and many reasons I would just say tonight from a legal standpoint this amendment would not be constitutional. Our laws are currently constitutional, as found so in 2005 by the Supreme Court. And this is an extremely dangerous drug for our children and future adults and future generations.

160 Cong. Rec. 82, H4914, H4984–85 (daily ed. May 29, 2014) (statement of Rep. John Fleming), <http://www.gpo.gov/fdsys/pkg/CREC-2014-05-29/pdf/CREC-2014-05-29.pdf>.

5. House Floor Statement in Support of the Amendment, Made on June 19, 2014

On June 19, 2014, Rep. Alcee Hastings said:

Mr. Speaker, I rise today to express my support for the medical marijuana provision that came before the House of Representatives for a vote on May 30, 2014-H. Amdt. 748 to H.R. 4460-an amendment to prohibit the use of funds to prevent certain States from implementing their own State laws that authorize the use, distribution, possession, or cultivation of medical marijuana.

Had I voted on May 30, 2014, I would have voted in favor of H. Amdt. 748 to H.R. 4460, which was offered by Rep. Dana Rohrabacher to the FY

2015 Commerce, Justice, and Science (CSJ) Appropriations bill. The amendment was agreed to by recorded vote: 219-189.

Specifically, the bill is a bipartisan appropriations measure that looks to prohibit the Drug Enforcement Agency (DEA) from spending funds to arrest state-licensed medical marijuana patients and providers. Many of my colleagues and their constituencies agree that patients who are allowed to purchase and consume medical marijuana in their respective states should not be punished by the federal government.

I believe that we must modernize our federal laws to reflect the updated approaches to medical marijuana use, and allow states to determine the parameters, practices, and effects of legalization. Mr. Speaker, 22 states and the District of Columbia have legalized marijuana for medical use. In my home state of Florida, the majority of voters support the legalization of marijuana for medical use, and I stand behind them.

Mr. Speaker, I support the legalization of marijuana for medical use, and remain committed to protecting citizens nationwide that are the subject to detainment for use despite their medical needs.

160 Cong. Rec. 97, H5562, E1034 (daily ed. June 20, 2014) (statement of Rep. Alcee Hastings),
<https://www.congress.gov/crec/2014/05/09/CREC-2014-05-09.pdf>.

**COUNTY OF SAN LUIS OBISPO
DEPARTMENT OF PLANNING AND BUILDING
STAFF REPORT**

Planning Commission



Promoting the wise use of land
Helping build great communities

MEETING DATE July 9, 2015	CONTACT/PHONE Airlin M. Singewald (805) 781-5198 asingewald@co.slo.ca.us	APPLICANT Ethnobotanica	FILE NO. DRC2014-00070
EFFECTIVE DATE July 23, 2015			
SUBJECT Hearing to consider a request by ETHNOBOTANICA for a Minor Use Permit to establish a medical marijuana dispensary and construct related tenant improvements in an existing 2,636 square-foot commercial/office suite, which is part of an existing 11,675 square-foot building. The 2.72-acre parcel is in the Commercial Service land use category and is located at 2122 Hutton Road, approximately 450 feet north of the Highway 101/Highway 166 off-ramp, approximately 3 miles south of the community of Nipomo. The site is in the South County planning area.			
RECOMMENDED ACTION Approve Minor Use Permit DRC2014-00070 based on the findings listed in Exhibit A and the conditions listed in Exhibit B.			
ENVIRONMENTAL DETERMINATION A Class 3 categorical exemption was issued on June 2, 2015 (ED14-252).			
LAND USE CATEGORY Commercial Service	COMBINING DESIGNATION None	ASSESSOR PARCEL NUMBER 090-301-064	SUPERVISOR DISTRICT(S) 4
PLANNING AREA STANDARDS: Limitation on Use for Commercial Service (CS) Land Use Category Does the project meet applicable Planning Area Standards: Yes – see discussion			
LAND USE ORDINANCE STANDARDS: Medical Marijuana Dispensaries Does the project conform to the Land Use Ordinance Standards: Yes – see discussion			
EXISTING USES: Metal building with tenants including a sanitation company and security contractor			
SURROUNDING LAND USE CATEGORIES AND USES: <i>North:</i> Commercial Service / vacant <i>South:</i> Commercial Service / RV storage		<i>East:</i> Agriculture / Highway 101 <i>West:</i> Residential Suburban / residence, Nipomo Creek	
OTHER AGENCY / ADVISORY GROUP INVOLVEMENT: The project was referred to: Public Works, Environmental Health, Building Division, Sheriff, Cal Fire, Santa Barbara County, City of Santa Maria, and South County Advisory Council			
TOPOGRAPHY: Gently sloping to moderately sloping		VEGETATION: Ornamental trees and turf grass	
PROPOSED SERVICES: Water supply: On-site well Sewage Disposal: Individual septic Fire Protection: Cal Fire		ACCEPTANCE DATE: March 7, 2015	
ADDITIONAL INFORMATION MAY BE OBTAINED BY CONTACTING THE DEPARTMENT OF PLANNING & BUILDING AT: COUNTY GOVERNMENT CENTER γ SAN LUIS OBISPO γ CALIFORNIA 93408 γ (805) 781-5600 γ FAX: (805) 781-1242			

DISCUSSION

The proposed project is a request to establish a medical marijuana dispensary in an existing commercial building. According to Land Use Ordinance Section 22.30.225, minor use permit approval is required to establish a medical marijuana dispensary. Minor use permits are normally reviewed by a Planning Department Hearing Officer; however, the Planning Director may elevate minor use permits to the Planning Commission for projects that may generate substantial public controversy or involve significant land use policy decisions. The Planning Director has elevated this project to the Planning Commission based on the controversial nature of medical marijuana and concerns raised by the community, the South County Advisory Council, and the Sheriff's Department.

Background

In 1996, California voters approved Proposition 215, the Compassionate Use Act (CUA) exempting certain patients and their primary caregivers from criminal liability under state law for the possession and cultivation of marijuana. In 2004, Senate Bill 420 became law and enacted the Medical Marijuana Program Act (MMP). The MMP requires the California Department of Public Health to establish and maintain a program for the voluntary registration of qualified medical marijuana patients and their primary caregivers through a statewide identification card system.

On August 1, 2006 the Board of Supervisors authorized the San Luis Obispo County Public Health Department (PHD) to implement the State Medical Marijuana Identification Card (MMIC) program. The proposed fee ordinance was introduced on October 24, 2006. The Board of Supervisors adopted the fee schedule on November 14, 2006 and the program commenced on December 14, 2006.

On February 6, 2007, the Board of Supervisors adopted Ordinance Number 3114 relating to the establishment of medical marijuana dispensaries, which amended the Inland Land Use Ordinance by adding a new Section 22.30.225 to govern dispensary applications.

Past proposals are summarized below:

- **Connella Minor Use Permit DRC2006-00159.** This project was proposed on Ramada Drive in Templeton and requested a waiver of the ordinance requirement for 1,000 feet of separation between the dispensary and a playground. The dispensary was located between 925 and 1,004 feet from the playground depending on the measurement technique and was separated from the playground by Highway 101. It was approved by the Planning Commission and denied on appeal to the Board of Supervisors on April 8, 2008.
- **Gross/Brody Minor Use Permit DRC2009-00044.** This project was proposed on North Frontage Road in Nipomo. Although the proposed dispensary met the 1,000 foot separation requirement for the uses described in the ordinance (schools, libraries, parks, playgrounds, and recreation or youth centers), it was located within 94 feet of a private gymnastics studio that primarily served children. It was denied by the Planning Commission and the denial was upheld by the Board of Supervisors on appeal on August 24, 2010.
- **Murray Minor Use Permit DRC2010-00070.** This project was proposed on South 4th Street in Oceano and requested a waiver of the ordinance requirement for 1,000 feet of separation between the dispensary and a park (the dispensary was proposed within 922 feet of Oceano Park). It was approved by the Planning Commission and denied on appeal to the Board of Supervisors on March 12, 2012.

Updated California Case Law, and State Attorney General and Federal Government Involvement

The California Supreme Court recently confirmed that local jurisdictions may regulate medical marijuana dispensaries pursuant to their inherent police powers and land use authority. (See *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal.4th 729.) In its opinion, the Court concluded:

“We thus conclude that neither the CUA nor the MMP expressly or impliedly preempts the authority of California cities and counties, under their traditional land use and police powers, to allow, restrict, limit, or entirely exclude facilities that distribute medical marijuana, and to enforce such policies by nuisance actions.”

In 2008, the California Attorney General issued “Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use,” which are attached to this staff report as Attachment 9. Those Guidelines are intended, in part, to “help patients and primary caregivers understand how they may cultivate, transport, possess and use medical marijuana under California law.”

For its part, the federal government has continued to list marijuana as a Schedule 1 controlled substance under the Federal Controlled Substances Act, meaning that it is still a crime to manufacture, distribute, or possess marijuana pursuant to federal law. However, in December 2014 U.S. Congress passed a spending bill, which included a provision limiting the Justice Department’s ability to take criminal action against state-licensed individuals or operations that are acting in full compliance with the medical marijuana laws of their states. Specifically, the bill states, “None of the funds made available in this act to the Department of Justice may be used...to prevent...states...from implementing their own state laws that authorize the use, distribution, possession, or cultivation of medical marijuana.”

LAND USE ORDINANCE STANDARDS

Section 22.30.225 – General Retail

Land Use Ordinance Section 22.30.225 (attached) establishes special use standards for medical marijuana dispensaries. The project’s compliance with these standards is described below.

Location

Medical Marijuana Dispensaries shall be located outside of the CBD, a minimum of 1,000 feet from any pre-school, elementary school, high school, library, park, playground, recreation or youth center. Distance shall be measured from the building which contains the Medical Marijuana Dispensary to the property line of the enumerated use using a direct straight line measurement.

This section uses similar criteria as the California Attorney General’s August 2008 guidelines¹ which prohibit the smoking of medical marijuana within 1,000 feet of a school, recreation center, or youth center; however, it applies to the location of dispensaries (not just smoking marijuana) and adds libraries, parks, and playgrounds to the list.

Staff has measured the 1,000 foot distance requirement using GeoView, an up-to-date software application used to obtain accurate measurements of distance. This software allows staff to apply a specific radius around a property. Using this software application, staff has determined that the building where the dispensary is proposed is not located within 1,000 feet of any pre-school, elementary school, high school, library, park, playground, recreation or youth center. The nearest sensitive use is Preisker

¹ See Attachment 9 to this staff report, page 6; B. Enforcement Guidelines (I.) Location of Use

Park located about 4,300 feet to the south in the City of Santa Maria. The proposed project therefore complies with the location requirement of the ordinance.

Table 1: Distance to Sensitive Uses

Sensitive Use	Address	Distance from Dispensary
Preisker Park	330 Hidden Pines Way, Santa Maria	4,300 feet to the south
Tommie Kunst Junior High School	930 Hidden Pines Way, Santa Maria	5,300 feet to the southwest
All About Kids Preschool	613 N. Elizabeth Street, Santa Maria	14,400 feet to the south
Santa Maria Public Library	421 S. McClelland Street, Santa Maria	18,000 feet to the south
Nipomo Public Library	918 W. Tefft Street, Nipomo	21,000 feet to the northwest
Boys and Girls Club	901 N. Railroad Avenue, Santa Maria	13,000 feet to the southwest

Limitation on use

The following use limitations apply to proposed medical marijuana dispensaries:

- a. *Hours of operation are limited to 11:00 a.m. to 6 p.m. seven days per week.*
- b. *No person under age of 18 shall be permitted in the dispensary at any time except in the presence of his/her parent or guardian.*
- c. *No retail sales of paraphernalia as defined in Health and Safety Code section 11364.5 are permitted at the dispensary.*
- d. *No cultivation of medical marijuana is permitted at the dispensary or on dispensary property.*

The proposed project complies with these use limitations.

Employees

All staff/employees employed by the Medical Marijuana Dispensary must be 21 years of age or older.

The applicant's proposal meets this requirement.

Security Plan

A security plan shall be submitted with the Minor Use Permit Application that includes lighting, security video cameras, alarm systems, and secure area for medical marijuana storage. The security plan shall include a requirement that there be at least 30 business days of surveillance video (that captures both inside and outside images) stored on an ongoing basis. The video system for the security cameras must be located in a locked, tamper-proof compartment.

In addition to this ordinance standard, the Attorney General's guidelines also require that, "Collectives and cooperatives should provide adequate security to ensure that patients are safe and that the surrounding homes or businesses are not negatively impacted by nuisance activity such as loitering or crime."

The applicant has provided a detailed operations plan, floor plan, and security plan (see Attachment 6), which meet the criteria of the ordinance. The security plan includes indoor/outdoor video surveillance and alarm system by Sentinel Security and an onsite guard by Bomar Security for 10 hours per day, 7 days per week. Security will assist in opening and closing of the facility, including escorting employees

to their vehicles after closing. Security will also be responsible for verifying that each person entering the facility is a medical marijuana patient, caregiver, employee, or other allowed person.

The proposed project was referred to the Sheriff's Office for review and comment. In a response, dated January 20, 2014, Chief Deputy Rob Reid stated "Based on a historical need for increased measures at locations involving medical marijuana dispensaries to protect against burglary and/or robbery, we anticipate an increased workload due to calls for service and reported crimes if this project is approved." This response concludes that the Sheriff's Office has limited resources and may not be able to meet the need for increased patrol efforts that could result from the project.

The purpose of the security plan is to minimize demands on law enforcement resources.

Displayed notice

Each dispensary, inside of the dispensary itself, shall display in a manner legible and visible to its clientele:

- a. *Notice that persons under the age of 18 are not allowed in the dispensary except in the presence of his/her parent or guardian;*
- b. *Notice that there is no consumption of medical marijuana in the vicinity of the dispensary.*

The proposed project is conditioned to comply with this requirement.

Sheriff notification

A condition to establishment of a Medical Marijuana Dispensary shall be notification to the Sheriff's Department informing it of the name, location, and contact information for the owner/operator of the dispensary.

The proposed project is conditioned to comply with this requirement.

Section 22.18.050 – Required Number of Parking Spaces

The parking requirement for retail uses is 1 space for every 300 square feet of sales area plus 1 space per 600 square feet of storage area. Based on the site plan and space usage of the tenant space, approximately 50 percent of the 2,136 square-foot space is dedicated to sales uses with the remainder dedicated to storage or non-sales areas. Based on these use areas and the corresponding parking requirements, the project is required to provide six on-site parking spaces. With 11 dedicated on-site parking spaces, the project meets this requirement.

Use Area	Square Footage	Requirement	Spaces Required
Sales Area	1,068	1 space / 300 SF	4
Storage Area	1,068	1 space / 600 SF	2
Total Area	2,136		6

PLANNING AREA STANDARDS

Section 22.98.072(C)(1) – Commercial Service (CS) Land Use Category Limitation on Use

This standard prohibits certain allowable CS uses (e.g. agricultural processing, broadcasting studios, etc.) in the South County planning area. The list of prohibited uses does not include Medical Marijuana

Dispensaries or General Retail establishments. Therefore, dispensaries are allowable on the project site per Section 22.30.030.

COMMUNITY ADVISORY GROUP COMMENTS

The proposed project was reviewed by the South County Advisory Council (SCAC) on February 23, 2015. On an 8-2 vote, SCAC recommended denial of the proposed dispensary based on public safety concerns due to "...very limited availability of Sheriff's deputies deployed in the South County, and potential crime problems associated with medical marijuana dispensaries."

AGENCY REVIEW

County Sheriff	In a response, dated January 20, 2014, Chief Deputy Rob Reid stated "Based on a historical need for increased measures at locations involving medical marijuana dispensaries to protect against burglary and/or robbery, we anticipate an increased workload due to calls for service and reported crimes if this project approved." This response concludes that the Sheriff's Office has limited resources and may not be able to meet the need for increased patrol efforts that could result from the project.
Public Works	In a response, dated April 22, 2015, Glenn Marshall indicated that based on review of the project's traffic study (see Attachment 8), Public Works has no traffic concerns. Road improvement fees would be required. Most northerly driveway to be limited to egress only.
Cal Trans	Reviewed the traffic study and has no concerns regarding impacts to Highway 101 / Highway 166 interchange.

ATTACHMENTS

1. Exhibit A – Findings
2. Exhibit B – Conditions of Approval
3. CEQA Notice of Exemption
4. Referral Responses
5. Graphics – Vicinity map, land use category map, and floor plans
6. Ethnobotanica Security and Operations Plan
7. Applicable Land Use Ordinance Section – 22.30.225
8. Traffic Study (Orosz Engineering Group; April 13, 2015)
9. Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use (State of California Attorney General; August 2008)

Staff report prepared by Airlin M. Singewald, Senior Planner, and reviewed by Bill Robeson, Deputy Director – Permitting.

Assembly Bill No. 243

CHAPTER 688

An act to add Article 6 (commencing with Section 19331), Article 13 (commencing with Section 19350), and Article 17 (commencing with Section 19360) to Chapter 3.5 of Division 8 of the Business and Professions Code, to add Section 12029 to the Fish and Game Code, to add Sections 11362.769 and 11362.777 to the Health and Safety Code, and to add Section 13276 to the Water Code, relating to medical marijuana, and making an appropriation therefor.

[Approved by Governor October 9, 2015. Filed with
Secretary of State October 9, 2015.]

LEGISLATIVE COUNSEL'S DIGEST

AB 243, Wood. Medical marijuana.

Existing law, the Compassionate Use Act of 1996, an initiative measure enacted by the approval of Proposition 215 at the November 5, 1996, statewide general election, authorizes the use of marijuana for medical purposes. Existing law enacted by the Legislature requires the establishment of a program for the issuance of identification cards to qualified patients so that they may lawfully use marijuana for medical purposes, and requires the establishment of guidelines for the lawful cultivation of marijuana grown for medical use. Existing law provides for the licensure of various professions by boards or bureaus within the Department of Consumer Affairs. Existing law, the Sherman Food, Drug, and Cosmetic Law, provides for the regulation of food, drugs, devices, and cosmetics, as specified. A violation of that law is a crime.

This bill would require the Department of Food and Agriculture, the Department of Pesticide Regulation, the State Department of Public Health, the Department of Fish and Wildlife, and the State Water Resources Control Board to promulgate regulations or standards relating to medical marijuana and its cultivation, as specified. The bill would also require various state agencies to take specified actions to mitigate the impact that marijuana cultivation has on the environment. By requiring cities, counties, and their local law enforcement agencies to coordinate with state agencies to enforce laws addressing the environmental impacts of medical marijuana cultivation, and by including medical marijuana within the Sherman Act, the bill would impose a state-mandated local program.

This bill would require a state licensing authority to charge each licensee under the act a licensure and renewal fee, as applicable, and would further require the deposit of those collected fees into an account specific to that licensing authority in the Medical Marijuana Regulation and Safety Act Fund, which this bill would establish. This bill would impose certain fines

and civil penalties for specified violations of the Medical Marijuana Regulation and Safety Act, and would require moneys collected as a result of these fines and civil penalties to be deposited into the Medical Cannabis Fines and Penalties Account, which this bill would establish within the fund. Moneys in the fund and each account of the fund would be available upon appropriation of the Legislature.

This bill would authorize the Director of Finance to provide an initial operating loan from the General Fund to the Medical Marijuana Regulation and Safety Act Fund of up to \$10,000,000, and would appropriate \$10,000,000 from the Medical Marijuana Regulation and Safety Act Fund to the Department of Consumer Affairs to begin the activities of the bureau.

This bill would provide that its provisions are severable.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

This bill would become operative only if AB 266 and SB 643 of the 2015–16 Regular Session are enacted and take effect on or before January 1, 2016.

Appropriation: yes.

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

SECTION 1. Article 6 (commencing with Section 19331) is added to Chapter 3.5 of Division 8 of the Business and Professions Code, to read:

Article 6. Licensed Cultivation Sites

19331. The Legislature finds and declares all of the following:

(a) The United States Environmental Protection Agency has not established appropriate pesticide tolerances for, or permitted the registration and lawful use of, pesticides on cannabis crops intended for human consumption pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.).

(b) The use of pesticides is not adequately regulated due to the omissions in federal law, and cannabis cultivated in California for California patients can and often does contain pesticide residues.

(c) Lawful California medical cannabis growers and caregivers urge the Department of Pesticide Regulation to provide guidance, in absence of federal guidance, on whether the pesticides currently used at most cannabis

cultivation sites are actually safe for use on cannabis intended for human consumption.

19332. (a) The Department of Food and Agriculture shall promulgate regulations governing the licensing of indoor and outdoor cultivation sites.

(b) The Department of Pesticide Regulation, in consultation with the Department of Food and Agriculture, shall develop standards for the use of pesticides in cultivation, and maximum tolerances for pesticides and other foreign object residue in harvested cannabis.

(c) The State Department of Public Health shall develop standards for the production and labeling of all edible medical cannabis products.

(d) The Department of Food and Agriculture, in consultation with the Department of Fish and Wildlife and the State Water Resources Control Board, shall ensure that individual and cumulative effects of water diversion and discharge associated with cultivation do not affect the instream flows needed for fish spawning, migration, and rearing, and the flows needed to maintain natural flow variability.

(e) The Department of Food and Agriculture shall have the authority necessary for the implementation of the regulations it adopts pursuant to this chapter. The regulations shall do all of the following:

(1) Provide that weighing or measuring devices used in connection with the sale or distribution of medical cannabis are required to meet standards equivalent to Division 5 (commencing with Section 12001).

(2) Require that cannabis cultivation by licensees is conducted in accordance with state and local laws related to land conversion, grading, electricity usage, water usage, agricultural discharges, and similar matters. Nothing in this chapter, and no regulation adopted by the department, shall be construed to supersede or limit the authority of the State Water Resources Control Board, regional water quality control boards, or the Department of Fish and Wildlife to implement and enforce their statutory obligations or to adopt regulations to protect water quality, water supply, and natural resources.

(3) Establish procedures for the issuance and revocation of unique identifiers for activities associated with a cannabis cultivation license, pursuant to Article 8 (commencing with Section 19337). All cannabis shall be labeled with the unique identifier issued by the Department of Food and Agriculture.

(4) Prescribe standards, in consultation with the bureau, for the reporting of information as necessary related to unique identifiers, pursuant to Article 8 (commencing with Section 19337).

(f) The Department of Pesticide Regulation, in consultation with the State Water Resources Control Board, shall promulgate regulations that require that the application of pesticides or other pest control in connection with the indoor or outdoor cultivation of medical cannabis meets standards equivalent to Division 6 (commencing with Section 11401) of the Food and Agricultural Code and its implementing regulations.

(g) State cultivator license types issued by the Department of Food and Agriculture include:

(1) Type 1, or “specialty outdoor,” for outdoor cultivation using no artificial lighting of less than or equal to 5,000 square feet of total canopy size on one premises, or up to 50 mature plants on noncontiguous plots.

(2) Type 1A, or “specialty indoor,” for indoor cultivation using exclusively artificial lighting of less than or equal to 5,000 square feet of total canopy size on one premises.

(3) Type 1B, or “specialty mixed-light,” for cultivation using a combination of natural and supplemental artificial lighting at a maximum threshold to be determined by the licensing authority, of less than or equal to 5,000 square feet of total canopy size on one premises.

(4) Type 2, or “small outdoor,” for outdoor cultivation using no artificial lighting between 5,001 and 10,000 square feet, inclusive, of total canopy size on one premises.

(5) Type 2A, or “small indoor,” for indoor cultivation using exclusively artificial lighting between 5,001 and 10,000 square feet, inclusive, of total canopy size on one premises.

(6) Type 2B, or “small mixed-light,” for cultivation using a combination of natural and supplemental artificial lighting at a maximum threshold to be determined by the licensing authority, between 5,001 and 10,000 square feet, inclusive, of total canopy size on one premises.

(7) Type 3, or “outdoor,” for outdoor cultivation using no artificial lighting from 10,001 square feet to one acre, inclusive, of total canopy size on one premises. The Department of Food and Agriculture shall limit the number of licenses allowed of this type.

(8) Type 3A, or “indoor,” for indoor cultivation using exclusively artificial lighting between 10,001 and 22,000 square feet, inclusive, of total canopy size on one premises. The Department of Food and Agriculture shall limit the number of licenses allowed of this type.

(9) Type 3B, or “mixed-light,” for cultivation using a combination of natural and supplemental artificial lighting at a maximum threshold to be determined by the licensing authority, between 10,001 and 22,000 square feet, inclusive, of total canopy size on one premises. The Department of Food and Agriculture shall limit the number of licenses allowed of this type.

(10) Type 4, or “nursery,” for cultivation of medical cannabis solely as a nursery. Type 4 licensees may transport live plants.

19333. An employee engaged in commercial cannabis cultivation activity shall be subject to Wage Order 4-2001 of the Industrial Welfare Commission.

SEC. 2. Article 13 (commencing with Section 19350) is added to Chapter 3.5 of Division 8 of the Business and Professions Code, to read:

Article 13. Funding

19350. Each licensing authority shall establish a scale of application, licensing, and renewal fees, based upon the cost of enforcing this chapter, as follows:

(a) Each licensing authority shall charge each licensee a licensure and renewal fee, as applicable. The licensure and renewal fee shall be calculated to cover the costs of administering this chapter. The licensure fee may vary depending upon the varying costs associated with administering the various regulatory requirements of this chapter as they relate to the nature and scope of the different licensure activities, including, but not limited to, the track and trace program required pursuant to Section 19335, but shall not exceed the reasonable regulatory costs to the licensing authority.

(b) The total fees assessed pursuant to this chapter shall be set at an amount that will fairly and proportionately generate sufficient total revenue to fully cover the total costs of administering this chapter.

(c) All license fees shall be set on a scaled basis by the licensing authority, dependent on the size of the business.

(d) The licensing authority shall deposit all fees collected in a fee account specific to that licensing authority, to be established in the Medical Marijuana Regulation and Safety Act Fund. Moneys in the licensing authority fee accounts shall be used, upon appropriation of the Legislature, by the designated licensing authority for the administration of this chapter.

19351. (a) The Medical Marijuana Regulation and Safety Act Fund is hereby established within the State Treasury. Moneys in the fund shall be available upon appropriation by the Legislature. Notwithstanding Section 16305.7 of the Government Code, the fund shall include any interest and dividends earned on the moneys in the fund.

(b) (1) Funds for the establishment and support of the regulatory activities pursuant to this chapter shall be advanced as a General Fund or special fund loan, and shall be repaid by the initial proceeds from fees collected pursuant to this chapter or any rule or regulation adopted pursuant to this chapter, by January 1, 2022. Should the initial proceeds from fees not be sufficient to repay the loan, moneys from the Medical Cannabis Fines and Penalties Account shall be made available to the bureau, by appropriation of the Legislature, to repay the loan.

(2) Funds advanced pursuant to this subdivision shall be appropriated to the bureau, which shall distribute the moneys to the appropriate licensing authorities, as necessary to implement the provisions of this chapter.

(3) The Director of Finance may provide an initial operating loan from the General Fund to the Medical Marijuana Regulation and Safety Act Fund that does not exceed ten million dollars (\$10,000,000).

(c) Except as otherwise provided, all moneys collected pursuant to this chapter as a result of fines or penalties imposed under this chapter shall be deposited directly into the Medical Marijuana Fines and Penalties Account, which is hereby established within the fund, and shall be available, upon appropriation by the Legislature to the bureau, for the purposes of funding the enforcement grant program pursuant to subdivision (d).

(d) (1) The bureau shall establish a grant program to allocate moneys from the Medical Cannabis Fines and Penalties Account to state and local entities for the following purposes:

(A) To assist with medical cannabis regulation and the enforcement of this chapter and other state and local laws applicable to cannabis activities.

(B) For allocation to state and local agencies and law enforcement to remedy the environmental impacts of cannabis cultivation.

(2) The costs of the grant program under this subdivision shall, upon appropriation by the Legislature, be paid for with moneys in the Medical Cannabis Fines and Penalties Account.

(3) The grant program established by this subdivision shall only be implemented after the loan specified in this section is repaid.

19352. The sum of ten million dollars (\$10,000,000) is hereby appropriated from the Medical Marijuana Regulation and Safety Act Fund to the Department of Consumer Affairs to begin the activities of the Bureau of Medical Marijuana Regulation. Funds appropriated pursuant to this section shall not include moneys received from fines or penalties.

SEC. 3. Article 17 (commencing with Section 19360) is added to Chapter 3.5 of Division 8 of the Business and Professions Code, to read:

Article 17. Penalties and Violations

19360. (a) A person engaging in cannabis activity without a license and associated unique identifiers required by this chapter shall be subject to civil penalties of up to twice the amount of the license fee for each violation, and the department, state or local authority, or court may order the destruction of medical cannabis associated with that violation. Each day of operation shall constitute a separate violation of this section. All civil penalties imposed and collected pursuant to this section shall be deposited into the Marijuana Production and Environment Mitigation Fund established pursuant to Section 31013 of the Revenue and Taxation Code.

(b) If an action for civil penalties is brought against a licensee pursuant to this chapter by the Attorney General, the penalty collected shall be deposited into the General Fund. If the action is brought by a district attorney or county counsel, the penalty collected shall be paid to the treasurer of the county in which the judgment was entered. If the action is brought by a city attorney or city prosecutor, the penalty collected shall be paid to the treasurer of the city or city and county in which the judgment was entered. If the action is brought by a city attorney and is adjudicated in a superior court located in the unincorporated area or another city in the same county, the penalty shall be paid one-half to the treasurer of the city in which the complaining attorney has jurisdiction and one-half to the treasurer of the county in which the judgment is entered.

(c) Notwithstanding subdivision (a), criminal penalties shall continue to apply to an unlicensed person or entity engaging in cannabis activity in violation of this chapter, including, but not limited to, those individuals covered under Section 11362.7 of the Health and Safety Code.

SEC. 4. Section 12029 is added to the Fish and Game Code, to read:

12029. (a) The Legislature finds and declares all of the following:

(1) The environmental impacts associated with marijuana cultivation have increased, and unlawful water diversions for marijuana irrigation have a detrimental effect on fish and wildlife and their habitat, which are held in trust by the state for the benefit of the people of the state.

(2) The remediation of existing marijuana cultivation sites is often complex and the permitting of these sites requires greater department staff time and personnel expenditures. The potential for marijuana cultivation sites to significantly impact the state's fish and wildlife resources requires immediate action on the part of the department's lake and streambed alteration permitting staff.

(b) In order to address unlawful water diversions and other violations of the Fish and Game Code associated with marijuana cultivation, the department shall establish the watershed enforcement program to facilitate the investigation, enforcement, and prosecution of these offenses.

(c) The department, in coordination with the State Water Resources Control Board, shall establish a permanent multiagency task force to address the environmental impacts of marijuana cultivation. The multiagency task force, to the extent feasible and subject to available Resources, shall expand its enforcement efforts on a statewide level to ensure the reduction of adverse impacts of marijuana cultivation on fish and wildlife and their habitats throughout the state.

(d) In order to facilitate the remediation and permitting of marijuana cultivation sites, the department shall adopt regulations to enhance the fees on any entity subject to Section 1602 for marijuana cultivation sites that require remediation. The fee schedule established pursuant to this subdivision shall not exceed the fee limits in Section 1609.

SEC. 5. Section 11362.769 is added to the Health and Safety Code, to read:

11362.769. Indoor and outdoor medical marijuana cultivation shall be conducted in accordance with state and local laws related to land conversion, grading, electricity usage, water usage, water quality, woodland and riparian habitat protection, agricultural discharges, and similar matters. State agencies, including, but not limited to, the State Board of Forestry and Fire Protection, the Department of Fish and Wildlife, the State Water Resources Control Board, the California regional water quality control boards, and traditional state law enforcement agencies shall address environmental impacts of medical marijuana cultivation and shall coordinate, when appropriate, with cities and counties and their law enforcement agencies in enforcement efforts.

SEC. 6. Section 11362.777 is added to the Health and Safety Code, to read:

11362.777. (a) The Department of Food and Agriculture shall establish a Medical Cannabis Cultivation Program to be administered by the secretary, except as specified in subdivision (c), shall administer this section as it pertains to the cultivation of medical marijuana. For purposes of this section and Chapter 3.5 (commencing with Section 19300) of the Business and Professions Code, medical cannabis is an agricultural product.

(b) (1) A person or entity shall not cultivate medical marijuana without first obtaining both of the following:

(A) A license, permit, or other entitlement, specifically permitting cultivation pursuant to these provisions, from the city, county, or city and county in which the cultivation will occur.

(B) A state license issued by the department pursuant to this section.

(2) A person or entity shall not submit an application for a state license issued by the department pursuant to this section unless that person or entity has received a license, permit, or other entitlement, specifically permitting cultivation pursuant to these provisions, from the city, county, or city and county in which the cultivation will occur.

(3) A person or entity shall not submit an application for a state license issued by the department pursuant to this section if the proposed cultivation of marijuana will violate the provisions of any local ordinance or regulation, or if medical marijuana is prohibited by the city, county, or city and county in which the cultivation is proposed to occur, either expressly or otherwise under principles of permissive zoning.

(c) (1) Except as otherwise specified in this subdivision, and without limiting any other local regulation, a city, county, or city and county, through its current or future land use regulations or ordinance, may issue or deny a permit to cultivate medical marijuana pursuant to this section. A city, county, or city and county may inspect the intended cultivation site for suitability prior to issuing a permit. After the city, county, or city and county has approved a permit, the applicant shall apply for a state medical marijuana cultivation license from the department. A locally issued cultivation permit shall only become active upon licensing by the department and receiving final local approval. A person shall not cultivate medical marijuana prior to obtaining both a permit from the city, county, or city and county and a state medical marijuana cultivation license from the department.

(2) A city, county, or city and county that issues or denies conditional licenses to cultivate medical marijuana pursuant to this section shall notify the department in a manner prescribed by the secretary.

(3) A city, county, or city and county's locally issued conditional permit requirements must be at least as stringent as the department's state licensing requirements.

(4) If a city, county, or city and county does not have land use regulations or ordinances regulating or prohibiting the cultivation of marijuana, either expressly or otherwise under principles of permissive zoning, or chooses not to administer a conditional permit program pursuant to this section, then commencing March 1, 2016, the division shall be the sole licensing authority for medical marijuana cultivation applicants in that city, county, or city and county.

(d) (1) The secretary may prescribe, adopt, and enforce regulations relating to the implementation, administration, and enforcement of this part, including, but not limited to, applicant requirements, collections, reporting, refunds, and appeals.

(2) The secretary may prescribe, adopt, and enforce any emergency regulations as necessary to implement this part. Any emergency regulation prescribed, adopted, or enforced pursuant to this section shall be adopted in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and, for purposes of that chapter, including Section 11349.6 of the Government Code, the adoption of the regulation is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health and safety, and general welfare.

(3) The secretary may enter into a cooperative agreement with a county agricultural commissioner to carry out the provisions of this chapter, including, but not limited to, administration, investigations, inspections, licensing and assistance pertaining to the cultivation of medical marijuana. Compensation under the cooperative agreement shall be paid from assessments and fees collected and deposited pursuant to this chapter and shall provide reimbursement to the county agricultural commissioner for associated costs.

(e) (1) The department, in consultation with, but not limited to, the Bureau of Medical Marijuana Regulation, the State Water Resources Control Board, and the Department of Fish and Wildlife, shall implement a unique identification program for medical marijuana. In implementing the program, the department shall consider issues, including, but not limited to, water use and environmental impacts. In implementing the program, the department shall ensure that:

(A) Individual and cumulative effects of water diversion and discharge associated with cultivation do not affect the instream flows needed for fish spawning, migration, and rearing, and the flows needed to maintain natural flow variability.

(B) Cultivation will not negatively impact springs, riparian wetlands, and aquatic habitats.

(2) The department shall establish a program for the identification of permitted medical marijuana plants at a cultivation site during the cultivation period. The unique identifier shall be attached at the base of each plant. A unique identifier, such as, but not limited to, a zip tie, shall be issued for each medical marijuana plant.

(A) Unique identifiers will only be issued to those persons appropriately licensed by this section.

(B) Information associated with the assigned unique identifier and licensee shall be included in the trace and track program specified in Section 19335 of the Business and Professions Code.

(C) The department may charge a fee to cover the reasonable costs of issuing the unique identifier and monitoring, tracking, and inspecting each medical marijuana plant.

(D) The department may promulgate regulations to implement this section.

(3) The department shall take adequate steps to establish protections against fraudulent unique identifiers and limit illegal diversion of unique identifiers to unlicensed persons.

(f) (1) A city, county, or city and county that issues or denies licenses to cultivate medical marijuana pursuant to this section shall notify the department in a manner prescribed by the secretary.

(2) Unique identifiers and associated identifying information administered by a city or county shall adhere to the requirements set by the department and be the equivalent to those administered by the department.

(g) This section does not apply to a qualified patient cultivating marijuana pursuant to Section 11362.5 if the area he or she uses to cultivate marijuana does not exceed 100 square feet and he or she cultivates marijuana for his or her personal medical use and does not sell, distribute, donate, or provide marijuana to any other person or entity. This section does not apply to a primary caregiver cultivating marijuana pursuant to Section 11362.5 if the area he or she uses to cultivate marijuana does not exceed 500 square feet and he or she cultivates marijuana exclusively for the personal medical use of no more than five specified qualified patients for whom he or she is the primary caregiver within the meaning of Section 11362.7 and does not receive remuneration for these activities, except for compensation provided in full compliance with subdivision (c) of Section 11362.765. For purposes of this section, the area used to cultivate marijuana shall be measured by the aggregate area of vegetative growth of live marijuana plants on the premises. Exemption from the requirements of this section does not limit or prevent a city, county, or city and county from regulating or banning the cultivation, storage, manufacture, transport, provision, or other activity by the exempt person, or impair the enforcement of that regulation or ban.

SEC. 7. Section 13276 is added to the Water Code, to read:

13276. (a) The multiagency task force, the Department of Fish and Wildlife and State Water Resources Control Board pilot project to address the Environmental Impacts of Cannabis Cultivation, assigned to respond to the damages caused by marijuana cultivation on public and private lands in California, shall continue its enforcement efforts on a permanent basis and expand them to a statewide level to ensure the reduction of adverse impacts of marijuana cultivation on water quality and on fish and wildlife throughout the state.

(b) Each regional board shall, and the State Water Resources Control Board may, address discharges of waste resulting from medical marijuana cultivation and associated activities, including by adopting a general permit, establishing waste discharge requirements, or taking action pursuant to Section 13269. In addressing these discharges, each regional board shall include conditions to address items that include, but are not limited to, all of the following:

(1) Site development and maintenance, erosion control, and drainage features.

(2) Stream crossing installation and maintenance.

(3) Riparian and wetland protection and management.

- (4) Soil disposal.
- (5) Water storage and use.
- (6) Irrigation runoff.
- (7) Fertilizers and soil.
- (8) Pesticides and herbicides.
- (9) Petroleum products and other chemicals.
- (10) Cultivation-related waste.
- (11) Refuse and human waste.
- (12) Cleanup, restoration, and mitigation.

SEC. 8. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 9. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

SEC. 10. This measure shall become operative only if both Assembly Bill 266 and Senate Bill 643 of the 2015–16 Regular Session are enacted and become operative.

O

Assembly Bill No. 266

CHAPTER 689

An act to amend Sections 27 and 101 of, to add Section 205.1 to, and to add Chapter 3.5 (commencing with Section 19300) to Division 8 of, the Business and Professions Code, to amend Section 9147.7 of the Government Code, to amend Section 11362.775 of the Health and Safety Code, to add Section 147.5 to the Labor Code, and to add Section 31020 to the Revenue and Taxation Code, relating to medical marijuana.

[Approved by Governor October 9, 2015. Filed with
Secretary of State October 9, 2015.]

LEGISLATIVE COUNSEL'S DIGEST

AB 266, Bonta. Medical marijuana.

(1) Existing law, the Compassionate Use Act of 1996, an initiative measure enacted by the approval of Proposition 215 at the November 5, 1996, statewide general election, authorizes the use of marijuana for medical purposes. Existing law enacted by the Legislature requires the establishment of a program for the issuance of identification cards to qualified patients so that they may lawfully use marijuana for medical purposes, and requires the establishment of guidelines for the lawful cultivation of marijuana grown for medical use. Existing law provides for the licensure of various professions by boards or bureaus within the Department of Consumer Affairs. Existing law, the Sherman Food, Drug, and Cosmetic Law, provides for the regulation of food, drugs, devices, and cosmetics, as specified. A violation of that law is a crime.

This bill, among other things, would enact the Medical Marijuana Regulation and Safety Act for the licensure and regulation of medical marijuana and would establish within the Department of Consumer Affairs the Bureau of Medical Marijuana Regulation, under the supervision and control of the Director of Consumer Affairs. The bill would require the director to administer and enforce the provisions of the act.

This bill would also require the Board of Equalization, in consultation with the Department of Food and Agriculture, to adopt a system for reporting the movement of commercial cannabis and cannabis products.

This bill would impose certain fines and civil penalties for specified violations of the act, and would require moneys collected as a result of these fines and civil penalties to be deposited into the Medical Cannabis Fines and Penalties Account.

(2) Under existing law, certain persons with identification cards, who associate within the state in order collectively or cooperatively to cultivate marijuana for medical purposes, are not solely on the basis of that fact subject to specified state criminal sanctions.

This bill would repeal these provisions upon the issuance of licenses by licensing authorities pursuant to the Medical Marijuana Regulation and Safety Act, as specified, and would instead provide that actions of licensees with the relevant local permits, in accordance with the act and applicable local ordinances, are not offenses subject to arrest, prosecution, or other sanction under state law.

(3) This bill would provide that its provisions are severable.

(4) Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

(6) The bill would provide that it shall become operative only if SB 643 and AB 243 of the 2015–16 Regular Session are also enacted and become operative.

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

SECTION 1. Section 27 of the Business and Professions Code is amended to read:

27. (a) Each entity specified in subdivisions (c), (d), and (e) shall provide on the Internet information regarding the status of every license issued by that entity in accordance with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code). The public information to be provided on the Internet shall include information on suspensions and revocations of licenses issued by the entity and other related enforcement action, including accusations filed pursuant to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code) taken by the entity relative to persons, businesses, or facilities subject to licensure or regulation by the entity. The information may not include personal information, including home telephone number, date of birth, or social security number. Each entity shall disclose a licensee's address of record. However, each entity shall allow a licensee to provide a post office box number or other alternate address, instead of his or her home address, as the address of record. This section shall not preclude an entity from also requiring a licensee, who has provided a post office box number or other alternative mailing address as his or her address of record, to provide a

physical business address or residence address only for the entity's internal administrative use and not for disclosure as the licensee's address of record or disclosure on the Internet.

(b) In providing information on the Internet, each entity specified in subdivisions (c) and (d) shall comply with the Department of Consumer Affairs' guidelines for access to public records.

(c) Each of the following entities within the Department of Consumer Affairs shall comply with the requirements of this section:

(1) The Board for Professional Engineers, Land Surveyors, and Geologists shall disclose information on its registrants and licensees.

(2) The Bureau of Automotive Repair shall disclose information on its licensees, including auto repair dealers, smog stations, lamp and brake stations, smog check technicians, and smog inspection certification stations.

(3) The Bureau of Electronic and Appliance Repair, Home Furnishings, and Thermal Insulation shall disclose information on its licensees and registrants, including major appliance repair dealers, combination dealers (electronic and appliance), electronic repair dealers, service contract sellers, and service contract administrators.

(4) The Cemetery and Funeral Bureau shall disclose information on its licensees, including cemetery brokers, cemetery salespersons, cemetery managers, crematory managers, cemetery authorities, crematories, cremated remains disposers, embalmers, funeral establishments, and funeral directors.

(5) The Professional Fiduciaries Bureau shall disclose information on its licensees.

(6) The Contractors' State License Board shall disclose information on its licensees and registrants in accordance with Chapter 9 (commencing with Section 7000) of Division 3. In addition to information related to licenses as specified in subdivision (a), the board shall also disclose information provided to the board by the Labor Commissioner pursuant to Section 98.9 of the Labor Code.

(7) The Bureau for Private Postsecondary Education shall disclose information on private postsecondary institutions under its jurisdiction, including disclosure of notices to comply issued pursuant to Section 94935 of the Education Code.

(8) The California Board of Accountancy shall disclose information on its licensees and registrants.

(9) The California Architects Board shall disclose information on its licensees, including architects and landscape architects.

(10) The State Athletic Commission shall disclose information on its licensees and registrants.

(11) The State Board of Barbering and Cosmetology shall disclose information on its licensees.

(12) The State Board of Guide Dogs for the Blind shall disclose information on its licensees and registrants.

(13) The Acupuncture Board shall disclose information on its licensees.

(14) The Board of Behavioral Sciences shall disclose information on its licensees, including licensed marriage and family therapists, licensed clinical

social workers, licensed educational psychologists, and licensed professional clinical counselors.

(15) The Dental Board of California shall disclose information on its licensees.

(16) The State Board of Optometry shall disclose information regarding certificates of registration to practice optometry, statements of licensure, optometric corporation registrations, branch office licenses, and fictitious name permits of its licensees.

(17) The Board of Psychology shall disclose information on its licensees, including psychologists, psychological assistants, and registered psychologists.

(d) The State Board of Chiropractic Examiners shall disclose information on its licensees.

(e) The Structural Pest Control Board shall disclose information on its licensees, including applicators, field representatives, and operators in the areas of fumigation, general pest and wood destroying pests and organisms, and wood roof cleaning and treatment.

(f) The Bureau of Medical Marijuana Regulation shall disclose information on its licensees.

(g) "Internet" for the purposes of this section has the meaning set forth in paragraph (6) of subdivision (f) of Section 17538.

SEC. 2. Section 101 of the Business and Professions Code is amended to read:

101. The department is comprised of the following:

- (a) The Dental Board of California.
- (b) The Medical Board of California.
- (c) The State Board of Optometry.
- (d) The California State Board of Pharmacy.
- (e) The Veterinary Medical Board.
- (f) The California Board of Accountancy.
- (g) The California Architects Board.
- (h) The Bureau of Barbering and Cosmetology.
- (i) The Board for Professional Engineers and Land Surveyors.
- (j) The Contractors' State License Board.
- (k) The Bureau for Private Postsecondary Education.
- (l) The Bureau of Electronic and Appliance Repair, Home Furnishings, and Thermal Insulation.
- (m) The Board of Registered Nursing.
- (n) The Board of Behavioral Sciences.
- (o) The State Athletic Commission.
- (p) The Cemetery and Funeral Bureau.
- (q) The State Board of Guide Dogs for the Blind.
- (r) The Bureau of Security and Investigative Services.
- (s) The Court Reporters Board of California.
- (t) The Board of Vocational Nursing and Psychiatric Technicians.
- (u) The Landscape Architects Technical Committee.
- (v) The Division of Investigation.

- (w) The Bureau of Automotive Repair.
- (x) The Respiratory Care Board of California.
- (y) The Acupuncture Board.
- (z) The Board of Psychology.
- (aa) The California Board of Podiatric Medicine.
- (ab) The Physical Therapy Board of California.
- (ac) The Arbitration Review Program.
- (ad) The Physician Assistant Committee.
- (ae) The Speech-Language Pathology and Audiology Board.
- (af) The California Board of Occupational Therapy.
- (ag) The Osteopathic Medical Board of California.
- (ah) The Naturopathic Medicine Committee.
- (ai) The Dental Hygiene Committee of California.
- (aj) The Professional Fiduciaries Bureau.
- (ak) The State Board of Chiropractic Examiners.
- (al) The Bureau of Real Estate.
- (am) The Bureau of Real Estate Appraisers.
- (an) The Structural Pest Control Board.
- (ao) The Bureau of Medical Marijuana Regulation.
- (ap) Any other boards, offices, or officers subject to its jurisdiction by law.

SEC. 3. Section 205.1 is added to the Business and Professions Code, to read:

205.1. Notwithstanding subdivision (a) of Section 205, the Medical Marijuana Regulation and Safety Act Fund is a special fund within the Professions and Vocations Fund, and is subject to subdivision (b) of Section 205.

SEC. 4. Chapter 3.5 (commencing with Section 19300) is added to Division 8 of the Business and Professions Code, to read:

CHAPTER 3.5. MEDICAL MARIJUANA REGULATION AND SAFETY ACT

Article 1. Definitions

19300. This act shall be known and may be cited as the Medical Marijuana Regulation and Safety Act.

19300.5. For purposes of this chapter, the following definitions shall apply:

(a) "Accrediting body" means a nonprofit organization that requires conformance to ISO/IEC 17025 requirements and is a signatory to the International Laboratory Accreditation Cooperation Mutual Recognition Arrangement for Testing.

(b) "Applicant," for purposes of Article 4 (commencing with Section 19319), means the following:

(1) Owner or owners of a proposed facility, including all persons or entities having ownership interest other than a security interest, lien, or encumbrance on property that will be used by the facility.

(2) If the owner is an entity, “owner” includes within the entity each person participating in the direction, control, or management of, or having a financial interest in, the proposed facility.

(3) If the applicant is a publicly traded company, “owner” means the chief executive officer or any person or entity with an aggregate ownership interest of 5 percent or more.

(c) “Batch” means a specific quantity of medical cannabis or medical cannabis products that is intended to have uniform character and quality, within specified limits, and is produced according to a single manufacturing order during the same cycle of manufacture.

(d) “Bureau” means the Bureau of Medical Marijuana Regulation within the Department of Consumer Affairs.

(e) “Cannabinoid” or “phytocannabinoid” means a chemical compound that is unique to and derived from cannabis.

(f) “Cannabis” means all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. “Cannabis” also means the separated resin, whether crude or purified, obtained from marijuana. “Cannabis” also means marijuana as defined by Section 11018 of the Health and Safety Code as enacted by Chapter 1407 of the Statutes of 1972. “Cannabis” 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 which is incapable of germination. For the purpose of this chapter, “cannabis” does not mean “industrial hemp” as defined by Section 81000 of the Food and Agricultural Code or Section 11018.5 of the Health and Safety Code.

(g) “Cannabis concentrate” means manufactured cannabis that has undergone a process to concentrate the cannabinoid active ingredient, thereby increasing the product’s potency. An edible medical cannabis product is not considered food, as defined by Section 109935 of the Health and Safety Code, or a drug, as defined by Section 109925 of the Health and Safety Code.

(h) “Caregiver” or “primary caregiver” has the same meaning as that term is defined in Section 11362.7 of the Health and Safety Code.

(i) “Certificate of accreditation” means a certificate issued by an accrediting body to a licensed testing laboratory, entity, or site to be registered in the state.

(j) “Chief” means Chief of the Bureau of Medical Marijuana Regulation within the Department of Consumer Affairs.

(k) “Commercial cannabis activity” includes cultivation, possession, manufacture, processing, storing, laboratory testing, labeling, transporting, distribution, or sale of medical cannabis or a medical cannabis product, except as set forth in Section 19319, related to qualifying patients and primary caregivers.

(l) “Cultivation” means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.

(m) “Delivery” means the commercial transfer of medical cannabis or medical cannabis products from a dispensary, up to an amount determined by the bureau to a primary caregiver or qualified patient as defined in Section 11362.7 of the Health and Safety Code, or a testing laboratory. “Delivery” also includes the use by a dispensary of any technology platform owned and controlled by the dispensary, or independently licensed under this chapter, that enables qualified patients or primary caregivers to arrange for or facilitate the commercial transfer by a licensed dispensary of medical cannabis or medical cannabis products.

(n) “Dispensary” means a facility where medical cannabis, medical cannabis products, or devices for the use of medical cannabis or medical cannabis products are offered, either individually or in any combination, for retail sale, including an establishment that delivers, pursuant to express authorization by local ordinance, medical cannabis and medical cannabis products as part of a retail sale.

(o) “Dispensing” means any activity involving the retail sale of medical cannabis or medical cannabis products from a dispensary.

(p) “Distribution” means the procurement, sale, and transport of medical cannabis and medical cannabis products between entities licensed pursuant to this chapter.

(q) “Distributor” means a person licensed under this chapter to engage in the business of purchasing medical cannabis from a licensed cultivator, or medical cannabis products from a licensed manufacturer, for sale to a licensed dispensary.

(r) “Dried flower” means all dead medical cannabis that has been harvested, dried, cured, or otherwise processed, excluding leaves and stems.

(s) “Edible cannabis product” means manufactured cannabis that is intended to be used, in whole or in part, for human consumption, including, but not limited to, chewing gum. An edible medical cannabis product is not considered food as defined by Section 109935 of the Health and Safety Code or a drug as defined by Section 109925 of the Health and Safety Code.

(t) “Fund” means the Medical Marijuana Regulation and Safety Act Fund established pursuant to Section 19351.

(u) “Identification program” means the universal identification certificate program for commercial medical cannabis activity authorized by this chapter.

(v) “Labor peace agreement” means an agreement between a licensee and a bona fide labor organization that, at a minimum, protects the state’s proprietary interests by prohibiting labor organizations and members from engaging in picketing, work stoppages, boycotts, and any other economic interference with the applicant’s business. This agreement means that the

applicant has agreed not to disrupt efforts by the bona fide labor organization to communicate with, and attempt to organize and represent, the applicant's employees. The agreement shall provide a bona fide labor organization access at reasonable times to areas in which the applicant's employees work, for the purpose of meeting with employees to discuss their right to representation, employment rights under state law, and terms and conditions of employment. This type of agreement shall not mandate a particular method of election or certification of the bona fide labor organization.

(w) "Licensing authority" means the state agency responsible for the issuance, renewal, or reinstatement of the license, or the state agency authorized to take disciplinary action against the license.

(x) "Cultivation site" means a facility where medical cannabis is planted, grown, harvested, dried, cured, graded, or trimmed, or that does all or any combination of those activities, that holds a valid state license pursuant to this chapter, and that holds a valid local license or permit.

(y) "Manufacturer" means a person that conducts the production, preparation, propagation, or compounding of manufactured medical cannabis, as described in subdivision (ae), or medical cannabis products either directly or indirectly or by extraction methods, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis at a fixed location that packages or repackages medical cannabis or medical cannabis products or labels or relabels its container, that holds a valid state license pursuant to this chapter, and that holds a valid local license or permit.

(z) "Testing laboratory" means a facility, entity, or site in the state that offers or performs tests of medical cannabis or medical cannabis products and that is both of the following:

(1) Accredited by an accrediting body that is independent from all other persons involved in the medical cannabis industry in the state.

(2) Registered with the State Department of Public Health.

(aa) "Transporter" means a person issued a state license by the bureau to transport medical cannabis or medical cannabis products in an amount above a threshold determined by the bureau between facilities that have been issued a state license pursuant to this chapter.

(ab) "Licensee" means a person issued a state license under this chapter to engage in commercial cannabis activity.

(ac) "Live plants" means living medical cannabis flowers and plants, including seeds, immature plants, and vegetative stage plants.

(ad) "Lot" means a batch, or a specifically identified portion of a batch, having uniform character and quality within specified limits. In the case of medical cannabis or a medical cannabis product produced by a continuous process, "lot" means a specifically identified amount produced in a unit of time or a quantity in a manner that ensures its having uniform character and quality within specified limits.

(ae) "Manufactured cannabis" means raw cannabis that has undergone a process whereby the raw agricultural product has been transformed into a concentrate, an edible product, or a topical product.

(af) “Manufacturing site” means a location that produces, prepares, propagates, or compounds manufactured medical cannabis or medical cannabis products, directly or indirectly, by extraction methods, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and is owned and operated by a licensee for these activities.

(ag) “Medical cannabis,” “medical cannabis product,” or “cannabis product” means a product containing cannabis, including, but not limited to, concentrates and extractions, intended to be sold for use by medical cannabis patients in California pursuant to the Compassionate Use Act of 1996 (Proposition 215), found at Section 11362.5 of the Health and Safety Code. For the purposes of this chapter, “medical cannabis” does not include “industrial hemp” as defined by Section 81000 of the Food and Agricultural Code or Section 11018.5 of the Health and Safety Code.

(ah) “Nursery” means a licensee that produces only clones, immature plants, seeds, and other agricultural products used specifically for the planting, propagation, and cultivation of medical cannabis.

(ai) “Permit,” “local license,” or “local permit” means an official document granted by a local jurisdiction that specifically authorizes a person to conduct commercial cannabis activity in the local jurisdiction.

(aj) “Person” means an individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit and includes the plural as well as the singular number.

(ak) “State license,” “license,” or “registration” means a state license issued pursuant to this chapter.

(al) “Topical cannabis” means a product intended for external use. A topical cannabis product is not considered a drug as defined by Section 109925 of the Health and Safety Code.

(am) “Transport” means the transfer of medical cannabis or medical cannabis products from the permitted business location of one licensee to the permitted business location of another licensee, for the purposes of conducting commercial cannabis activity authorized pursuant to this chapter.

19300.7. License classifications pursuant to this chapter are as follows:

- (a) Type 1 = Cultivation; Specialty outdoor; Small.
- (b) Type 1A = Cultivation; Specialty indoor; Small.
- (c) Type 1B = Cultivation; Specialty mixed-light; Small.
- (d) Type 2 = Cultivation; Outdoor; Small.
- (e) Type 2A = Cultivation; Indoor; Small.
- (f) Type 2B = Cultivation; Mixed-light; Small.
- (g) Type 3 = Cultivation; Outdoor; Medium.
- (h) Type 3A = Cultivation; Indoor; Medium.
- (i) Type 3B = Cultivation; Mixed-light; Medium.
- (j) Type 4 = Cultivation; Nursery.
- (k) Type 6 = Manufacturer 1.
- (l) Type 7 = Manufacturer 2.
- (m) Type 8 = Testing.

- (n) Type 10 = Dispensary; General.
- (o) Type 10A = Dispensary; No more than three retail sites.
- (p) Type 11 = Distribution.
- (q) Type 12 = Transporter.

Article 2. Administration

19302. There is in the Department of Consumer Affairs the Bureau of Medical Marijuana Regulation, under the supervision and control of the director. The director shall administer and enforce the provisions of this chapter.

19303. Protection of the public shall be the highest priority for the bureau in exercising its licensing, regulatory, and disciplinary functions under this chapter. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

19304. The bureau shall make and prescribe reasonable rules as may be necessary or proper to carry out the purposes and intent of this chapter and to enable it to exercise the powers and duties conferred upon it by this chapter, not inconsistent with any statute of this state, including particularly this chapter and Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. For the performance of its duties, the bureau has the power conferred by Sections 11180 to 11191, inclusive, of the Government Code.

19305. Notice of any action of the licensing authority required by this chapter to be given may be signed and given by the director or an authorized employee of the department and may be made personally or in the manner prescribed by Section 1013 of the Code of Civil Procedure.

19306. (a) The bureau may convene an advisory committee to advise the bureau and licensing authorities on the development of standards and regulations pursuant to this chapter, including best practices and guidelines to ensure qualified patients have adequate access to medical cannabis and medical cannabis products. The advisory committee members shall be determined by the chief.

(b) The advisory committee members may include, but not be limited to, representatives of the medical marijuana industry, representatives of medical marijuana cultivators, appropriate local and state agencies, appropriate local and state law enforcement, physicians, environmental and public health experts, and medical marijuana patient advocates.

19307. A licensing authority may make or cause to be made such investigation as it deems necessary to carry out its duties under this chapter.

19308. For any hearing held pursuant to this chapter, the director, or a licensing authority, may delegate the power to hear and decide to an administrative law judge. Any hearing before an administrative law judge shall be pursuant to the procedures, rules, and limitations prescribed in

Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

19309. In any hearing before a licensing authority pursuant to this chapter, the licensing authority may pay any person appearing as a witness at the hearing at the request of the licensing authority pursuant to a subpoena, his or her actual, necessary, and reasonable travel, food, and lodging expenses, not to exceed the amount authorized for state employees.

19310. The department may on its own motion at any time before a penalty assessment is placed into effect and without any further proceedings, review the penalty, but such review shall be limited to its reduction.

Article 3. Enforcement

19311. Grounds for disciplinary action include:

(a) Failure to comply with the provisions of this chapter or any rule or regulation adopted pursuant to this chapter.

(b) Conduct that constitutes grounds for denial of licensure pursuant to Chapter 3 (commencing with Section 490) of Division 1.5.

(c) Any other grounds contained in regulations adopted by a licensing authority pursuant to this chapter.

(d) Failure to comply with any state law, except as provided for in this chapter or other California law.

19312. Each licensing authority may suspend or revoke licenses, after proper notice and hearing to the licensee, if the licensee is found to have committed any of the acts or omissions constituting grounds for disciplinary action. The disciplinary proceedings under this chapter shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the director of each licensing authority shall have all the powers granted therein.

19313. Each licensing authority may take disciplinary action against a licensee for any violation of this chapter when the violation was committed by the licensee's agent or employee while acting on behalf of the licensee or engaged in commercial cannabis activity.

19313.5. Upon suspension or revocation of a license, the licensing authority shall inform the bureau. The bureau shall then inform all other licensing authorities and the Department of Food and Agriculture.

19314. All accusations against licensees shall be filed by the licensing authority within five years after the performance of the act or omission alleged as the ground for disciplinary action; provided, however, that the foregoing provision shall not constitute a defense to an accusation alleging fraud or misrepresentation as a ground for disciplinary action. The cause for disciplinary action in such case shall not be deemed to have accrued until discovery, by the licensing authority, of the facts constituting the fraud or misrepresentation, and, in such case, the accusation shall be filed within five years after such discovery.

19315. (a) Nothing in this chapter shall be interpreted to supersede or limit existing local authority for law enforcement activity, enforcement of local zoning requirements or local ordinances, or enforcement of local permit or licensing requirements.

(b) Nothing in this chapter shall be interpreted to require the Department of Consumer Affairs to undertake local law enforcement responsibilities, enforce local zoning requirements, or enforce local licensing requirements.

(c) Nothing in this chapter shall be interpreted to supersede or limit state agencies from exercising their existing enforcement authority under the Fish and Game Code, the Water Code, the Food and Agricultural Code, or the Health and Safety Code.

19316. (a) Pursuant to Section 7 of Article XI of the California Constitution, a city, county, or city and county may adopt ordinances that establish additional standards, requirements, and regulations for local licenses and permits for commercial cannabis activity. Any standards, requirements, and regulations regarding health and safety, testing, security, and worker protections established by the state shall be the minimum standards for all licensees statewide.

(b) For facilities issued a state license that are located within the incorporated area of a city, the city shall have full power and authority to enforce this chapter and the regulations promulgated by the bureau or any licensing authority, if delegated by the state. Notwithstanding Sections 101375, 101400, and 101405 of the Health and Safety Code or any contract entered into pursuant thereto, or any other law, the city shall further assume complete responsibility for any regulatory function relating to those licensees within the city limits that would otherwise be performed by the county or any county officer or employee, including a county health officer, without liability, cost, or expense to the county.

(c) Nothing in this chapter, or any regulations promulgated thereunder, shall be deemed to limit the authority or remedies of a city, county, or city and county under any provision of law, including, but not limited to, Section 7 of Article XI of the California Constitution.

19317. (a) The actions of a licensee, its employees, and its agents that are (1) permitted pursuant to both a state license and a license or permit issued by the local jurisdiction following the requirements of the applicable local ordinances, and (2) conducted in accordance with the requirements of this chapter and regulations adopted pursuant to this chapter, are not unlawful under state law and shall not be an offense subject to arrest, prosecution, or other sanction under state law, or be subject to a civil fine or be a basis for seizure or forfeiture of assets under state law.

(b) The actions of a person who, in good faith, allows his or her property to be used by a licensee, its employees, and its agents, as permitted pursuant to both a state license and a local license or permit following the requirements of the applicable local ordinances, are not unlawful under state law and shall not be an offense subject to arrest, prosecution, or other sanction under state law, or be subject to a civil fine or be a basis for seizure or forfeiture of assets under state law.

19318. (a) A person engaging in commercial cannabis activity without a license required by this chapter shall be subject to civil penalties of up to twice the amount of the license fee for each violation, and the court may order the destruction of medical cannabis associated with that violation in accordance with Section 11479 of the Health and Safety Code. Each day of operation shall constitute a separate violation of this section. All civil penalties imposed and collected pursuant to this section by a licensing authority shall be deposited into the Medical Cannabis Fines and Penalties Account established pursuant to Section 19351.

(b) If an action for civil penalties is brought against a licensee pursuant to this chapter by the Attorney General on behalf of the people, the penalty collected shall be deposited into the Medical Cannabis Fines and Penalties Account established pursuant to Section 19351. If the action is brought by a district attorney or county counsel, the penalty collected shall be paid to the treasurer of the county in which the judgment was entered. If the action is brought by a city attorney or city prosecutor, the penalty collected shall be paid to the treasurer of the city or city and county in which the judgment was entered. If the action is brought by a city attorney and is adjudicated in a superior court located in the unincorporated area or another city in the same county, the penalty shall be paid one-half to the treasurer of the city in which the complaining attorney has jurisdiction and one-half to the treasurer of the county in which the judgment is entered.

(c) Notwithstanding subdivision (a), criminal penalties shall continue to apply to an unlicensed person engaging in commercial cannabis activity in violation of this chapter, including, but not limited to, those individuals covered under Section 11362.7 of the Health and Safety Code.

Article 4. Licensing

19320. (a) Licensing authorities administering this chapter may issue state licenses only to qualified applicants engaging in commercial cannabis activity pursuant to this chapter. Upon the date of implementation of regulations by the licensing authority, no person shall engage in commercial cannabis activity without possessing both a state license and a local permit, license, or other authorization. A licensee shall not commence activity under the authority of a state license until the applicant has obtained, in addition to the state license, a license or permit from the local jurisdiction in which he or she proposes to operate, following the requirements of the applicable local ordinance.

(b) Revocation of a local license, permit, or other authorization shall terminate the ability of a medical cannabis business to operate within that local jurisdiction until the local jurisdiction reinstates or reissues the local license, permit, or other required authorization. Local authorities shall notify the bureau upon revocation of a local license. The bureau shall inform relevant licensing authorities.

(c) Revocation of a state license shall terminate the ability of a medical cannabis licensee to operate within California until the licensing authority reinstates or reissues the state license. Each licensee shall obtain a separate license for each location where it engages in commercial medical cannabis activity. However, transporters only need to obtain licenses for each physical location where the licensee conducts business while not in transport, or any equipment that is not currently transporting medical cannabis or medical cannabis products, permanently resides.

(d) In addition to the provisions of this chapter, local jurisdictions retain the power to assess fees and taxes, as applicable, on facilities that are licensed pursuant to this chapter and the business activities of those licensees.

(e) Nothing in this chapter shall be construed to supersede or limit state agencies, including the State Water Resources Control Board and Department of Fish and Wildlife, from establishing fees to support their medical cannabis regulatory programs.

19321. (a) The Department of Consumer Affairs, the Department of Food and Agriculture, and the State Department of Public Health shall promulgate regulations for implementation of their respective responsibilities in the administration of this chapter.

(b) A license issued pursuant to this section shall be valid for 12 months from the date of issuance. The license shall be renewed annually. Each licensing authority shall establish procedures for the renewal of a license.

(c) Notwithstanding subdivision (a) of Section 19320, a facility or entity that is operating in compliance with local zoning ordinances and other state and local requirements on or before January 1, 2018, may continue its operations until its application for licensure is approved or denied pursuant to this chapter. In issuing licenses, the licensing authority shall prioritize any facility or entity that can demonstrate to the authority's satisfaction that it was in operation and in good standing with the local jurisdiction by January 1, 2016.

(d) Issuance of a state license or a determination of compliance with local law by the licensing authority shall in no way limit the ability of the City of Los Angeles to prosecute any person or entity for a violation of, or otherwise enforce, Proposition D, approved by the voters of the City of Los Angeles on the May 21, 2013, ballot for the city, or the city's zoning laws. Nor may issuance of a license or determination of compliance with local law by the licensing authority be deemed to establish, or be relied upon, in determining satisfaction with the immunity requirements of Proposition D or local zoning law, in court or in any other context or forum.

Article 5. Medical Marijuana Regulation

19326. (a) A person other than a licensed transporter shall not transport medical cannabis or medical cannabis products from one licensee to another licensee, unless otherwise specified in this chapter.

(b) All licensees holding cultivation or manufacturing licenses shall send all medical cannabis and medical cannabis products cultivated or manufactured to a distributor, as defined in Section 19300.5, for quality assurance and inspection by the Type 11 licensee and for a batch testing by a Type 8 licensee prior to distribution to a dispensary. Those licensees holding a Type 10A license in addition to a cultivation license or a manufacturing license shall send all medical cannabis and medical cannabis products to a Type 11 licensee for presale inspection and for a batch testing by a Type 8 licensee prior to dispensing any product. The licensing authority shall fine a licensee who violates this subdivision in an amount determined by the licensing authority to be reasonable.

(c) (1) Upon receipt of medical cannabis or medical cannabis products by a holder of a cultivation or manufacturing license, the Type 11 licensee shall first inspect the product to ensure the identity and quantity of the product and then ensure a random sample of the medical cannabis or medical cannabis product is tested by a Type 8 licensee prior to distributing the batch of medical cannabis or medical cannabis products.

(2) Upon issuance of a certificate of analysis by the Type 8 licensee that the product is fit for manufacturing or retail, all medical cannabis and medical cannabis products shall undergo a quality assurance review by the Type 11 licensee prior to distribution to ensure the quantity and content of the medical cannabis or medical cannabis product, and for tracking and taxation purposes by the state. Licensed cultivators and manufacturers shall package or seal all medical cannabis and medical cannabis products in tamper-evident packaging and use a unique identifier, as prescribed by the Department of Food and Agriculture, for the purpose of identifying and tracking medical cannabis or medical cannabis products. Medical cannabis and medical cannabis products shall be labeled as required by Section 19347. All packaging and sealing shall be completed prior to medical cannabis or medical cannabis products being transported or delivered to a licensee, qualified patient, or caregiver.

(3) This section does not limit the ability of licensed cultivators, manufacturers, and dispensaries to directly enter into contracts with one another indicating the price and quantity of medical cannabis or medical cannabis products to be distributed. However, a Type 11 licensee responsible for executing the contract is authorized to collect a fee for the services rendered, including, but not limited to, costs incurred by a Type 8 licensee, as well as applicable state or local taxes and fees.

(d) Medical cannabis and medical cannabis products shall be tested by a registered testing laboratory, prior to retail sale or dispensing, as follows:

(1) Medical cannabis from dried flower shall, at a minimum, be tested for concentration, pesticides, mold, and other contaminants.

(2) Medical cannabis extracts shall, at a minimum, be tested for concentration and purity of the product.

(3) This chapter shall not prohibit a licensee from performing on-site testing for the purposes of quality assurance of the product in conjunction

with reasonable business operations. On-site testing by the licensee shall not be certified by the State Department of Public Health.

(e) All commercial cannabis activity shall be conducted between licensees, when these are available.

19327. (a) A licensee shall keep accurate records of commercial cannabis activity.

(b) All records related to commercial cannabis activity as defined by the licensing authorities shall be maintained for a minimum of seven years.

(c) The bureau may examine the books and records of a licensee and inspect the premises of a licensee as the licensing authority or a state or local agency deems necessary to perform its duties under this chapter. All inspections shall be conducted during standard business hours of the licensed facility or at any other reasonable time.

(d) Licensees shall keep records identified by the licensing authorities on the premises of the location licensed. The licensing authorities may make any examination of the records of any licensee. Licensees shall also provide and deliver copies of documents to the licensing agency upon request.

(e) A licensee or its agent, or employee, that refuses, impedes, obstructs, or interferes with an inspection of the premises or records of the licensee pursuant to this section has engaged in a violation of this chapter.

(f) If a licensee or an employee of a licensee fails to maintain or provide the records required pursuant to this section, the licensee shall be subject to a citation and fine of thirty thousand dollars (\$30,000) per individual violation.

19328. (a) A licensee may only hold a state license in up to two separate license categories, as follows:

(1) Type 1, 1A, 1B, 2, 2A, or 2B licensees may also hold either a Type 6 or 7 state license.

(2) Type 6 or 7 licensees, or a combination thereof, may also hold either a Type 1, 1A, 1B, 2, 2A, or 2B state license.

(3) Type 6 or 7 licensees, or a combination thereof, may also hold a Type 10A state license.

(4) Type 10A licensees may also hold either a Type 6 or 7 state license, or a combination thereof.

(5) Type 1, 1A, 1B, 2, 2A, or 2B licensees, or a combination thereof, may also hold a Type 10A state license.

(6) Type 10A licensees may apply for Type 1, 1A, 1B, 2, 2A, or 2B state license, or a combination thereof.

(7) Type 11 licensees shall apply for a Type 12 state license, but shall not apply for any other type of state license.

(8) Type 12 licensees may apply for a Type 11 state license.

(9) A Type 10A licensee may apply for a Type 6 or 7 state license and hold a 1, 1A, 1B, 2, 2A, 2B, 3, 3A, 3B, 4 or combination thereof if, under the 1, 1A, 1B, 2, 2A, 2B, 3, 3A, 3B, 4 or combination of licenses thereof, no more than four acres of total canopy size of cultivation by the licensee is occurring throughout the state during the period that the respective licenses

are valid. All cultivation pursuant to this section shall comply with local ordinances. This paragraph shall become inoperative on January 1, 2026.

(b) Except as provided in subdivision (a), a person or entity that holds a state license is prohibited from licensure for any other activity authorized under this chapter, and is prohibited from holding an ownership interest in real property, personal property, or other assets associated with or used in any other license category.

(c) (1) In a jurisdiction that adopted a local ordinance, prior to July 1, 2015, allowing or requiring qualified businesses to cultivate, manufacture, and dispense medical cannabis or medical cannabis products, with all commercial cannabis activity being conducted by a single qualified business, upon licensure that business shall not be subject to subdivision (a) if it meets all of the following conditions:

(A) The business was cultivating, manufacturing, and dispensing medical cannabis or medical cannabis products on July 1, 2015, and has continuously done so since that date.

(B) The business has been in full compliance with all applicable local ordinances at all times prior to licensure.

(C) The business is registered with the State Board of Equalization.

(2) A business licensed pursuant to paragraph (1) is not required to conduct all cultivation or manufacturing within the bounds of a local jurisdiction, but all cultivation and manufacturing shall have commenced prior to July 1, 2015, and have been in full compliance with applicable local ordinances.

(d) This section shall remain in effect only until January 1, 2026, and as of that date is repealed.

19329. A licensee shall not also be licensed as a retailer of alcoholic beverages pursuant to Division 9 (commencing with Section 23000).

19330. This chapter and 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 shall not interfere with an employer's rights and obligations to maintain a drug and alcohol free workplace or require an employer to permit or accommodate the use, consumption, possession, transfer, display, transportation, sale, or growth of cannabis in the workplace or affect the ability of employers to have policies prohibiting the use of cannabis by employees and prospective employees, or prevent employers from complying with state or federal law.

Article 7. Licensed Distributors, Dispensaries, and Transporters

19334. (a) State licenses to be issued by the Department of Consumer Affairs are as follows:

(1) "Dispensary," as defined in this chapter. This license shall allow for delivery pursuant to Section 19340.

(2) "Distributor," for the distribution of medical cannabis and medical cannabis products from manufacturer to dispensary. A Type 11 licensee

shall hold a Type 12, or transporter, license and register each location where product is stored for the purposes of distribution. A Type 11 licensee shall not hold a license in a cultivation, manufacturing, dispensing, or testing license category and shall not own, or have an ownership interest in, a facility licensed in those categories other than a security interest, lien, or encumbrance on property that is used by a licensee. A Type 11 licensee shall be bonded and insured at a minimum level established by the licensing authority.

(3) “Transport,” for transporters of medical cannabis or medical cannabis products between licensees. A Type 12 licensee shall be bonded and insured at a minimum level established by the licensing authority.

(4) “Special dispensary status” for dispensers who have no more than three licensed dispensary facilities. This license shall allow for delivery where expressly authorized by local ordinance.

(b) The bureau shall establish minimum security requirements for the commercial transportation and delivery of medical cannabis and products.

(c) A licensed dispensary shall implement sufficient security measures to both deter and prevent unauthorized entrance into areas containing medical cannabis or medical cannabis products and theft of medical cannabis or medical cannabis products at the dispensary. These security measures shall include, but not be limited to, all of the following:

(1) Preventing individuals from remaining on the premises of the dispensary if they are not engaging in activity expressly related to the operations of the dispensary.

(2) Establishing limited access areas accessible only to authorized dispensary personnel.

(3) Storing all finished medical cannabis and medical cannabis products in a secured and locked room, safe, or vault, and in a manner as to prevent diversion, theft, and loss, except for limited amounts of cannabis used for display purposes, samples, or immediate sale.

(d) A dispensary shall notify the licensing authority and the appropriate law enforcement authorities within 24 hours after discovering any of the following:

(1) Significant discrepancies identified during inventory. The level of significance shall be determined by the bureau.

(2) Diversion, theft, loss, or any criminal activity involving the dispensary or any agent or employee of the dispensary.

(3) The loss or unauthorized alteration of records related to cannabis, registered qualifying patients, primary caregivers, or dispensary employees or agents.

(4) Any other breach of security.

Article 9. Delivery

19340. (a) Deliveries, as defined in this chapter, can only be made by a dispensary and in a city, county, or city and county that does not explicitly prohibit it by local ordinance.

(b) Upon approval of the licensing authority, a licensed dispensary that delivers medical cannabis or medical cannabis products shall comply with both of the following:

(1) The city, county, or city and county in which the licensed dispensary is located, and in which each delivery is made, do not explicitly by ordinance prohibit delivery, as defined in Section 19300.5.

(2) All employees of a dispensary delivering medical cannabis or medical cannabis products shall carry a copy of the dispensary's current license authorizing those services with them during deliveries and the employee's government-issued identification, and shall present that license and identification upon request to state and local law enforcement, employees of regulatory authorities, and other state and local agencies enforcing this chapter.

(c) A county shall have the authority to impose a tax, pursuant to Article 11 (commencing with Section 19348), on each delivery transaction completed by a licensee.

(d) During delivery, the licensee shall maintain a physical copy of the delivery request and shall make it available upon request of the licensing authority and law enforcement officers. The delivery request documentation shall comply with state and federal law regarding the protection of confidential medical information.

(e) The qualified patient or primary caregiver requesting the delivery shall maintain a copy of the delivery request and shall make it available, upon request, to the licensing authority and law enforcement officers.

(f) A local jurisdiction shall not prevent carriage of medical cannabis or medical cannabis products on public roads by a licensee acting in compliance with this chapter.

Article 10. Licensed Manufacturers and Licensed Laboratories

19341. The State Department of Public Health shall promulgate regulations governing the licensing of cannabis manufacturers and testing laboratories. Licenses to be issued are as follows:

(a) "Manufacturing level 1," for manufacturing sites that produce medical cannabis products using nonvolatile solvents.

(b) "Manufacturing level 2," for manufacturing sites that produce medical cannabis products using volatile solvents. The State Department of Public Health shall limit the number of licenses of this type.

(c) "Testing," for testing of medical cannabis and medical cannabis products. Testing licensees shall have their facilities licensed according to regulations set forth by the division. A testing licensee shall not hold a

license in another license category of this chapter and shall not own or have ownership interest in a facility licensed pursuant to this chapter.

19342. (a) For the purposes of testing medical cannabis or medical cannabis products, licensees shall use a licensed testing laboratory that has adopted a standard operating procedure using methods consistent with general requirements for the competence of testing and calibration activities, including sampling, using standard methods established by the International Organization for Standardization, specifically ISO/IEC 17020 and ISO/IEC 17025 to test medical cannabis and medical cannabis products that are approved by an accrediting body that is a signatory to the International Laboratory Accreditation Cooperation Mutual Recognition Arrangement.

(b) An agent of a licensed testing laboratory shall obtain samples according to a statistically valid sampling method for each lot.

(c) A licensed testing laboratory shall analyze samples according to either of the following:

(1) The most current version of the cannabis inflorescence monograph published by the American Herbal Pharmacopoeia.

(2) Scientifically valid methodology that is demonstrably equal or superior to paragraph (1), in the opinion of the accrediting body.

(d) If a test result falls outside the specifications authorized by law or regulation, the licensed testing laboratory shall follow a standard operating procedure to confirm or refute the original result.

(e) A licensed testing laboratory shall destroy the remains of the sample of medical cannabis or medical cannabis product upon completion of the analysis.

19343. A licensed testing laboratory shall not handle, test, or analyze medical cannabis or medical cannabis products unless the licensed testing laboratory meets all of the following:

(a) Is registered by the State Department of Public Health.

(b) Is independent from all other persons and entities involved in the medical cannabis industry.

(c) Follows the methodologies, ranges, and parameters that are contained in the scope of the accreditation for testing medical cannabis or medical cannabis products. The testing lab shall also comply with any other requirements specified by the State Department of Public Health.

(d) Notifies the State Department of Public Health within one business day after the receipt of notice of any kind that its accreditation has been denied, suspended, or revoked.

(e) Has established standard operating procedures that provide for adequate chain of custody controls for samples transferred to the licensed testing laboratory for testing.

19344. (a) A licensed testing laboratory shall issue a certificate of analysis for each lot, with supporting data, to report both of the following:

(1) Whether the chemical profile of the lot conforms to the specifications of the lot for compounds, including, but not limited to, all of the following:

(A) Tetrahydrocannabinol (THC).

(B) Tetrahydrocannabinolic Acid (THCA).

- (C) Cannabidiol (CBD).
- (D) Cannabidiolic Acid (CBDA).
- (E) The terpenes described in the most current version of the cannabis inflorescence monograph published by the American Herbal Pharmacopoeia.
- (F) Cannabigerol (CBG).
- (G) Cannabinol (CBN).
- (H) Any other compounds required by the State Department of Public Health.

(2) That the presence of contaminants does not exceed the levels that are the lesser of either the most current version of the American Herbal Pharmacopoeia monograph or the State Department of Public Health. For purposes of this paragraph, contaminants includes, but is not limited to, all of the following:

- (A) Residual solvent or processing chemicals.
- (B) Foreign material, including, but not limited to, hair, insects, or similar or related adulterant.
- (C) Microbiological impurity, including total aerobic microbial count, total yeast mold count, *P. aeruginosa*, *aspergillus* spp., *s. aureus*, aflatoxin B1, B2, G1, or G2, or ochratoxin A.
- (D) Whether the batch is within specification for odor and appearance.

(b) Residual levels of volatile organic compounds shall be below the lesser of either the specifications set by the United States Pharmacopeia (U.S.P. Chapter 467) or those set by the State Department of Public Health.

19345. (a) Except as provided in this chapter, a licensed testing laboratory shall not acquire or receive medical cannabis or medical cannabis products except from a licensed facility in accordance with this chapter, and shall not distribute, sell, deliver, transfer, transport, or dispense medical cannabis or medical cannabis products, from which the medical cannabis or medical cannabis products were acquired or received. All transfer or transportation shall be performed pursuant to a specified chain of custody protocol.

(b) A licensed testing laboratory may receive and test samples of medical cannabis or medical cannabis products from a qualified patient or primary caregiver only if he or she presents his or her valid recommendation for cannabis for medical purposes from a physician. A licensed testing laboratory shall not certify samples from a qualified patient or caregiver for resale or transfer to another party or licensee. All tests performed by a licensed testing laboratory for a qualified patient or caregiver shall be recorded with the name of the qualified patient or caregiver and the amount of medical cannabis or medical cannabis product received.

(c) The State Department of Public Health shall develop procedures to ensure that testing of cannabis occurs prior to delivery to dispensaries or any other business, specify how often licensees shall test cannabis and that the cost of testing shall be borne by the licensed cultivators, and require destruction of harvested batches whose testing samples indicate noncompliance with health and safety standards promulgated by the State Department of Public Health, unless remedial measures can bring the

cannabis into compliance with quality assurance standards as promulgated by the State Department of Public Health.

(d) The State Department of Public Health shall establish a licensing fee, and laboratories shall pay a fee to be licensed. Licensing fees shall not exceed the reasonable regulatory cost of the licensing activities.

19347. (a) Prior to delivery or sale at a dispensary, medical cannabis products shall be labeled and in a tamper-evident package. Labels and packages of medical cannabis products shall meet the following requirements:

(1) Medical cannabis packages and labels shall not be made to be attractive to children.

(2) All medical cannabis product labels shall include the following information, prominently displayed and in a clear and legible font:

(A) Manufacture date and source.

(B) The statement “SCHEDULE I CONTROLLED SUBSTANCE.”

(C) The statement “KEEP OUT OF REACH OF CHILDREN AND ANIMALS” in bold print.

(D) The statement “FOR MEDICAL USE ONLY.”

(E) The statement “THE INTOXICATING EFFECTS OF THIS PRODUCT MAY BE DELAYED BY UP TO TWO HOURS.”

(F) The statement “THIS PRODUCT MAY IMPAIR THE ABILITY TO DRIVE OR OPERATE MACHINERY. PLEASE USE EXTREME CAUTION.”

(G) For packages containing only dried flower, the net weight of medical cannabis in the package.

(H) A warning if nuts or other known allergens are used.

(I) List of pharmacologically active ingredients, including, but not limited to, tetrahydrocannabinol (THC), cannabidiol (CBD), and other cannabinoid content, the THC and other cannabinoid amount in milligrams per serving, servings per package, and the THC and other cannabinoid amount in milligrams for the package total.

(J) Clear indication, in bold type, that the product contains medical cannabis.

(K) Identification of the source and date of cultivation and manufacture.

(L) Any other requirement set by the bureau.

(M) Information associated with the unique identifier issued by the Department of Food and Agriculture pursuant to Section 11362.777 of the Health and Safety Code.

(b) Only generic food names may be used to describe edible medical cannabis products.

Article 14. Reporting

19353. Beginning on March 1, 2023, and on or before March 1 of each following year, each licensing authority shall prepare and submit to the Legislature an annual report on the authority’s activities and post the report

on the authority's Internet Web site. The report shall include, but not be limited to, the following information for the previous fiscal year:

(a) The amount of funds allocated and spent by the licensing authority for medical cannabis licensing, enforcement, and administration.

(b) The number of state licenses issued, renewed, denied, suspended, and revoked, by state license category.

(c) The average time for processing state license applications, by state license category.

(d) The number and type of enforcement activities conducted by the licensing authorities and by local law enforcement agencies in conjunction with the licensing authorities or the bureau.

(e) The number, type, and amount of penalties, fines, and other disciplinary actions taken by the licensing authorities.

19354. The bureau shall contract with the California Marijuana Research Program, known as the Center for Medicinal Cannabis Research, authorized pursuant to Section 11362.9 of the Health and Safety Code, to develop a study that identifies the impact that cannabis has on motor skills.

Article 15. Privacy

19355. (a) Information identifying the names of patients, their medical conditions, or the names of their primary caregivers received and contained in records kept by the office or licensing authorities for the purposes of administering this chapter are confidential and shall not be disclosed pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), except as necessary for authorized employees of the State of California or any city, county, or city and county to perform official duties pursuant to this chapter, or a local ordinance.

(b) Information identifying the names of patients, their medical conditions, or the names of their primary caregivers received and contained in records kept by the bureau for the purposes of administering this chapter shall be maintained in accordance with Chapter 1 (commencing with Section 123100) of Part 1 of Division 106 of the Health and Safety Code, Part 2.6 (commencing with Section 56) of Division 1 of the Civil Code, and other state and federal laws relating to confidential patient information.

(c) Nothing in this section precludes the following:

(1) Employees of the bureau or any licensing authorities notifying state or local agencies about information submitted to the agency that the employee suspects is falsified or fraudulent.

(2) Notifications from the bureau or any licensing authorities to state or local agencies about apparent violations of this chapter or applicable local ordinance.

(3) Verification of requests by state or local agencies to confirm licenses and certificates issued by the regulatory authorities or other state agency.

(4) Provision of information requested pursuant to a court order or subpoena issued by a court or an administrative agency or local governing body authorized by law to issue subpoenas.

(d) Information shall not be disclosed by any state or local agency beyond what is necessary to achieve the goals of a specific investigation, notification, or the parameters of a specific court order or subpoena.

SEC. 5. Section 9147.7 of the Government Code is amended to read:

9147.7. (a) For the purpose of this section, “eligible agency” means any agency, authority, board, bureau, commission, conservancy, council, department, division, or office of state government, however denominated, excluding an agency that is constitutionally created or an agency related to postsecondary education, for which a date for repeal has been established by statute on or after January 1, 2011.

(b) The Joint Sunset Review Committee is hereby created to identify and eliminate waste, duplication, and inefficiency in government agencies. The purpose of the committee is to conduct a comprehensive analysis over 15 years, and on a periodic basis thereafter, of every eligible agency to determine if the agency is still necessary and cost effective.

(c) Each eligible agency scheduled for repeal shall submit to the committee, on or before December 1 prior to the year it is set to be repealed, a complete agency report covering the entire period since last reviewed, including, but not limited to, the following:

(1) The purpose and necessity of the agency.

(2) A description of the agency budget, priorities, and job descriptions of employees of the agency.

(3) Any programs and projects under the direction of the agency.

(4) Measures of the success or failures of the agency and justifications for the metrics used to evaluate successes and failures.

(5) Any recommendations of the agency for changes or reorganization in order to better fulfill its purpose.

(d) The committee shall take public testimony and evaluate the eligible agency prior to the date the agency is scheduled to be repealed. An eligible agency shall be eliminated unless the Legislature enacts a law to extend, consolidate, or reorganize the eligible agency. No eligible agency shall be extended in perpetuity unless specifically exempted from the provisions of this section. The committee may recommend that the Legislature extend the statutory sunset date for no more than one year to allow the committee more time to evaluate the eligible agency.

(e) The committee shall be comprised of 10 members of the Legislature. The Senate Committee on Rules shall appoint five members of the Senate to the committee, not more than three of whom shall be members of the same political party. The Speaker of the Assembly shall appoint five members of the Assembly to the committee, not more than three of whom shall be members of the same political party. Members shall be appointed within 15 days after the commencement of the regular session. Each member of the committee who is appointed by the Senate Committee on Rules or the Speaker of the Assembly shall serve during that committee member’s

term of office or until that committee member no longer is a Member of the Senate or the Assembly, whichever is applicable. A vacancy on the committee shall be filled in the same manner as the original appointment. Three Assembly Members and three Senators who are members of the committee shall constitute a quorum for the conduct of committee business. Members of the committee shall receive no compensation for their work with the committee.

(f) The committee shall meet not later than 30 days after the first day of the regular session to choose a chairperson and to establish the schedule for eligible agency review provided for in the statutes governing the eligible agencies. The chairperson of the committee shall alternate every two years between a Member of the Senate and a Member of the Assembly, and the vice chairperson of the committee shall be a member of the opposite house as the chairperson.

(g) This section shall not be construed to change the existing jurisdiction of the budget or policy committees of the Legislature.

(h) This section shall not apply to the Bureau of Medical Marijuana Regulation.

SEC. 6. Section 11362.775 of the Health and Safety Code is amended to read:

11362.775. (a) Subject to subdivision (b), 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 cannabis for medical purposes, shall not solely on the basis of that fact be subject to state criminal sanctions under Section 11357, 11358, 11359, 11360, 11366, 11366.5, or 11570.

(b) This section shall remain in effect only until one year after the Bureau of Medical Marijuana Regulation posts a notice on its Internet Web site that the licensing authorities have commenced issuing licenses pursuant to the Medical Marijuana Regulation and Safety Act (Chapter 3.5 (commencing with Section 19300) of Division 8 of the Business and Professions Code), and is repealed upon issuance of licenses.

SEC. 7. Section 147.5 is added to the Labor Code, to read:

147.5. (a) By January 1, 2017, the Division of Occupational Safety and Health shall convene an advisory committee to evaluate whether there is a need to develop industry-specific regulations related to the activities of facilities issued a license pursuant to Chapter 3.5 (commencing with Section 19300) of Division 8 of the Business and Professions Code.

(b) By July 1, 2017, the advisory committee shall present to the board its findings and recommendations for consideration by the board. By July 1, 2017, the board shall render a decision regarding the adoption of industry-specific regulations pursuant to this section.

SEC. 8. Section 31020 is added to the Revenue and Taxation Code, to read:

31020. The board, in consultation with the Department of Food and Agriculture, shall adopt a system for reporting the movement of commercial

cannabis and cannabis products throughout the distribution chain. The system shall not be duplicative of the electronic database administered by the Department of Food and Agriculture specified in Section 19335 of the Business and Professions Code. The system shall also employ secure packaging and be capable of providing information to the board. This system shall capture, at a minimum, all of the following:

- (a) The amount of tax due by the designated entity.
- (b) The name, address, and license number of the designated entity that remitted the tax.
- (c) The name, address, and license number of the succeeding entity receiving the product.
- (d) The transaction date.
- (e) Any other information deemed necessary by the board for the taxation and regulation of marijuana and marijuana products.

SEC. 9. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 10. The Legislature finds and declares that Section 4 of this act, which adds Section 19355 to the Business and Professions Code, thereby imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

The limitation imposed under this act is necessary for purposes of compliance with the federal Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. Sec. 1320d et seq.), the Confidentiality of Medical Information Act (Part 2.6 (commencing with Section 56) of Division 1 of the Civil Code), and the Insurance Information and Privacy Protection Act (Article 6.6 (commencing with Section 791) of Part 2 of Division 1 of the Insurance Code).

SEC. 11. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

SEC. 12. This act shall become operative only if Senate Bill 643 and Assembly Bill 243 of the 2015–16 Regular Session are also enacted and become operative.

O

Senate Bill No. 643

CHAPTER 719

An act to amend Sections 144, 2220.05, 2241.5, and 2242.1 of, to add Sections 19302.1, 19319, 19320, 19322, 19323, 19324, and 19325 to, to add Article 25 (commencing with Section 2525) to Chapter 5 of Division 2 of, and to add Article 6 (commencing with Section 19331), Article 7.5 (commencing with Section 19335), Article 8 (commencing with Section 19337), and Article 11 (commencing with Section 19348) to Chapter 3.5 of Division 8 of, the Business and Professions Code, relating to medical marijuana.

[Approved by Governor October 9, 2015. Filed with
Secretary of State October 9, 2015.]

LEGISLATIVE COUNSEL'S DIGEST

SB 643, McGuire. Medical marijuana.

(1) Existing law, the Compassionate Use Act of 1996, an initiative measure enacted by the approval of Proposition 215 at the November 6, 1996, statewide general election, authorizes the use of marijuana for medical purposes. Existing law enacted by the Legislature requires the establishment of a program for the issuance of identification cards to qualified patients so that they may lawfully use marijuana for medical purposes, and requires the establishment of guidelines for the lawful cultivation of marijuana grown for medical use. Existing law provides for the licensure of various professions by the Department of Consumer Affairs. Existing law, the Sherman Food, Drug, and Cosmetic Law, provides for the regulation of food, drugs, devices, and cosmetics, as specified. A violation of that law is a crime.

This bill would, among other things, set forth standards for a physician and surgeon prescribing medical cannabis and require the Medical Board of California to prioritize its investigative and prosecutorial resources to identify and discipline physicians and surgeons that have repeatedly recommended excessive cannabis to patients for medical purposes or repeatedly recommended cannabis to patients for medical purposes without a good faith examination, as specified. The bill would require the Bureau of Medical Marijuana to require an applicant to furnish a full set of fingerprints for the purposes of conducting criminal history record checks. The bill would prohibit a physician and surgeon who recommends cannabis to a patient for a medical purpose from accepting, soliciting, or offering any form of remuneration from a facility licensed under the Medical Marijuana Regulation and Safety Act. The bill would make a violation of this prohibition a misdemeanor, and by creating a new crime, this bill would impose a state-mandated local program.

This bill would require the Governor, under the Medical Marijuana Regulation and Safety Act, to appoint, subject to confirmation by the Senate, a chief of the Bureau of Medical Marijuana Regulation. The act would require the Department of Consumer Affairs to have the sole authority to create, issue, renew, discipline, suspend, or revoke licenses for the transportation and storage, unrelated to manufacturing, of medical marijuana, and would authorize the department to collect fees for its regulatory activities and impose specified duties on this department in this regard. The act would require the Department of Food and Agriculture to administer the provisions of the act related to, and associated with, the cultivation, and transportation of, medical cannabis and would impose specified duties on this department in this regard. The act would require the State Department of Public Health to administer the provisions of the act related to, and associated with, the manufacturing and testing of medical cannabis and would impose specified duties on this department in this regard.

This bill would authorize counties to impose a tax upon specified cannabis-related activity.

This bill would require an applicant for a state license pursuant to the act to provide a statement signed by the applicant under penalty of perjury, thereby changing the scope of a crime and imposing a state-mandated local program.

This bill would set forth standards for the licensed cultivation of medical cannabis, including, but not limited to, establishing duties relating to the environmental impact of cannabis and cannabis products. The bill would also establish state cultivator license types, as specified.

(2) This bill would provide that its provisions are severable.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

(4) Existing constitutional provisions require that a statute that limits the right of access to the meeting of public bodies or the writings of public bodies or the writings of public officials and agencies be adopted with finding demonstrating the interest protected by the limitation and the need for protecting that interest. The bill would make legislative findings to that effect.

(5) The bill would become operative only if AB 266 and AB 243 of the 2015–16 Regular Session are enacted and take effect on or before January 1, 2016.

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

SECTION 1. Section 144 of the Business and Professions Code is amended to read:

144. (a) Notwithstanding any other provision of law, an agency designated in subdivision (b) shall require an applicant to furnish to the agency a full set of fingerprints for purposes of conducting criminal history record checks. Any agency designated in subdivision (b) may obtain and receive, at its discretion, criminal history information from the Department of Justice and the United States Federal Bureau of Investigation.

(b) Subdivision (a) applies to the following:

- (1) California Board of Accountancy.
- (2) State Athletic Commission.
- (3) Board of Behavioral Sciences.
- (4) Court Reporters Board of California.
- (5) State Board of Guide Dogs for the Blind.
- (6) California State Board of Pharmacy.
- (7) Board of Registered Nursing.
- (8) Veterinary Medical Board.
- (9) Board of Vocational Nursing and Psychiatric Technicians.
- (10) Respiratory Care Board of California.
- (11) Physical Therapy Board of California.
- (12) Physician Assistant Committee of the Medical Board of California.
- (13) Speech-Language Pathology and Audiology and Hearing Aid Dispenser Board.
- (14) Medical Board of California.
- (15) State Board of Optometry.
- (16) Acupuncture Board.
- (17) Cemetery and Funeral Bureau.
- (18) Bureau of Security and Investigative Services.
- (19) Division of Investigation.
- (20) Board of Psychology.
- (21) California Board of Occupational Therapy.
- (22) Structural Pest Control Board.
- (23) Contractors' State License Board.
- (24) Naturopathic Medicine Committee.
- (25) Professional Fiduciaries Bureau.
- (26) Board for Professional Engineers, Land Surveyors, and Geologists.
- (27) Bureau of Medical Marijuana Regulation.

(c) For purposes of paragraph (26) of subdivision (b), the term "applicant" shall be limited to an initial applicant who has never been registered or licensed by the board or to an applicant for a new licensure or registration category.

SEC. 2. Section 2220.05 of the Business and Professions Code is amended to read:

2220.05. (a) In order to ensure that its resources are maximized for the protection of the public, the Medical Board of California shall prioritize its

investigative and prosecutorial resources to ensure that physicians and surgeons representing the greatest threat of harm are identified and disciplined expeditiously. Cases involving any of the following allegations shall be handled on a priority basis, as follows, with the highest priority being given to cases in the first paragraph:

(1) Gross negligence, incompetence, or repeated negligent acts that involve death or serious bodily injury to one or more patients, such that the physician and surgeon represents a danger to the public.

(2) Drug or alcohol abuse by a physician and surgeon involving death or serious bodily injury to a patient.

(3) Repeated acts of clearly excessive prescribing, furnishing, or administering of controlled substances, or repeated acts of prescribing, dispensing, or furnishing of controlled substances without a good faith prior examination of the patient and medical reason therefor. However, in no event shall a physician and surgeon prescribing, furnishing, or administering controlled substances for intractable pain consistent with lawful prescribing, including, but not limited to, Sections 725, 2241.5, and 2241.6 of this code and Sections 11159.2 and 124961 of the Health and Safety Code, be prosecuted for excessive prescribing and prompt review of the applicability of these provisions shall be made in any complaint that may implicate these provisions.

(4) Repeated acts of clearly excessive recommending of cannabis to patients for medical purposes, or repeated acts of recommending cannabis to patients for medical purposes without a good faith prior examination of the patient and a medical reason for the recommendation.

(5) Sexual misconduct with one or more patients during a course of treatment or an examination.

(6) Practicing medicine while under the influence of drugs or alcohol.

(b) The board may by regulation prioritize cases involving an allegation of conduct that is not described in subdivision (a). Those cases prioritized by regulation shall not be assigned a priority equal to or higher than the priorities established in subdivision (a).

(c) The Medical Board of California shall indicate in its annual report mandated by Section 2312 the number of temporary restraining orders, interim suspension orders, and disciplinary actions that are taken in each priority category specified in subdivisions (a) and (b).

SEC. 3. Section 2241.5 of the Business and Professions Code is amended to read:

2241.5. (a) A physician and surgeon may prescribe for, or dispense or administer to, a person under his or her treatment for a medical condition dangerous drugs or prescription controlled substances for the treatment of pain or a condition causing pain, including, but not limited to, intractable pain.

(b) No physician and surgeon shall be subject to disciplinary action for prescribing, dispensing, or administering dangerous drugs or prescription controlled substances in accordance with this section.

(c) This section shall not affect the power of the board to take any action described in Section 2227 against a physician and surgeon who does any of the following:

(1) Violates subdivision (b), (c), or (d) of Section 2234 regarding gross negligence, repeated negligent acts, or incompetence.

(2) Violates Section 2241 regarding treatment of an addict.

(3) Violates Section 2242 or 2525.3 regarding performing an appropriate prior examination and the existence of a medical indication for prescribing, dispensing, or furnishing dangerous drugs or recommending medical cannabis.

(4) Violates Section 2242.1 regarding prescribing on the Internet.

(5) Fails to keep complete and accurate records of purchases and disposals of substances listed in the California Uniform Controlled Substances Act (Division 10 (commencing with Section 11000) of the Health and Safety Code) or controlled substances scheduled in the federal Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. Sec. 801 et seq.), or pursuant to the federal Comprehensive Drug Abuse Prevention and Control Act of 1970. A physician and surgeon shall keep records of his or her purchases and disposals of these controlled substances or dangerous drugs, including the date of purchase, the date and records of the sale or disposal of the drugs by the physician and surgeon, the name and address of the person receiving the drugs, and the reason for the disposal or the dispensing of the drugs to the person, and shall otherwise comply with all state recordkeeping requirements for controlled substances.

(6) Writes false or fictitious prescriptions for controlled substances listed in the California Uniform Controlled Substances Act or scheduled in the federal Comprehensive Drug Abuse Prevention and Control Act of 1970.

(7) Prescribes, administers, or dispenses in violation of this chapter, or in violation of Chapter 4 (commencing with Section 11150) or Chapter 5 (commencing with Section 11210) of Division 10 of the Health and Safety Code.

(d) A physician and surgeon shall exercise reasonable care in determining whether a particular patient or condition, or the complexity of a patient's treatment, including, but not limited to, a current or recent pattern of drug abuse, requires consultation with, or referral to, a more qualified specialist.

(e) Nothing in this section shall prohibit the governing body of a hospital from taking disciplinary actions against a physician and surgeon pursuant to Sections 809.05, 809.4, and 809.5.

SEC. 4. Section 2242.1 of the Business and Professions Code is amended to read:

2242.1. (a) No person or entity may prescribe, dispense, or furnish, or cause to be prescribed, dispensed, or furnished, dangerous drugs or dangerous devices, as defined in Section 4022, on the Internet for delivery to any person in this state, without an appropriate prior examination and medical indication, except as authorized by Section 2242.

(b) Notwithstanding any other provision of law, a violation of this section may subject the person or entity that has committed the violation to either

a fine of up to twenty-five thousand dollars (\$25,000) per occurrence pursuant to a citation issued by the board or a civil penalty of twenty-five thousand dollars (\$25,000) per occurrence.

(c) The Attorney General may bring an action to enforce this section and to collect the fines or civil penalties authorized by subdivision (b).

(d) For notifications made on and after January 1, 2002, the Franchise Tax Board, upon notification by the Attorney General or the board of a final judgment in an action brought under this section, shall subtract the amount of the fine or awarded civil penalties from any tax refunds or lottery winnings due to the person who is a defendant in the action using the offset authority under Section 12419.5 of the Government Code, as delegated by the Controller, and the processes as established by the Franchise Tax Board for this purpose. That amount shall be forwarded to the board for deposit in the Contingent Fund of the Medical Board of California.

(e) If the person or entity that is the subject of an action brought pursuant to this section is not a resident of this state, a violation of this section shall, if applicable, be reported to the person's or entity's appropriate professional licensing authority.

(f) Nothing in this section shall prohibit the board from commencing a disciplinary action against a physician and surgeon pursuant to Section 2242 or 2525.3.

SEC. 5. Article 25 (commencing with Section 2525) is added to Chapter 5 of Division 2 of the Business and Professions Code, to read:

Article 25. Recommending Medical Cannabis

2525. (a) It is unlawful for a physician and surgeon who recommends cannabis to a patient for a medical purpose to accept, solicit, or offer any form of remuneration from or to a facility issued a state license pursuant to Chapter 3.5 (commencing with Section 19300) of Division 8, if the physician and surgeon or his or her immediate family have a financial interest in that facility.

(b) For the purposes of this section, "financial interest" shall have the same meaning as in Section 650.01.

(c) A violation of this section shall be a misdemeanor punishable by up to one year in county jail and a fine of up to five thousand dollars (\$5,000) or by civil penalties of up to five thousand dollars (\$5,000) and shall constitute unprofessional conduct.

2525.1. The Medical Board of California shall consult with the California Marijuana Research Program, known as the Center for Medicinal Cannabis Research, authorized pursuant to Section 11362.9 of the Health and Safety Code, on developing and adopting medical guidelines for the appropriate administration and use of medical cannabis.

2525.2. An individual who possesses a license in good standing to practice medicine or osteopathy issued by the Medical Board of California or the Osteopathic Medical Board of California shall not recommend medical

cannabis to a patient, unless that person is the patient's attending physician, as defined by subdivision (a) of Section 11362.7 of the Health and Safety Code.

2525.3. Recommending medical cannabis to a patient for a medical purpose without an appropriate prior examination and a medical indication constitutes unprofessional conduct.

2525.4. It is unprofessional conduct for any attending physician recommending medical cannabis to be employed by, or enter into any other agreement with, any person or entity dispensing medical cannabis.

2525.5. (a) A person shall not distribute any form of advertising for physician recommendations for medical cannabis in California unless the advertisement bears the following notice to consumers:

NOTICE TO CONSUMERS: The Compassionate Use Act of 1996 ensures that seriously ill Californians have the right to obtain and use cannabis for medical purposes where 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 medical cannabis. Recommendations must come from an attending physician as defined in Section 11362.7 of the Health and Safety Code. Cannabis is a Schedule I drug according to the federal Controlled Substances Act. Activity related to cannabis use is subject to federal prosecution, regardless of the protections provided by state law.

(b) Advertising for attending physician recommendations for medical cannabis shall meet all of the requirements in Section 651. Price advertising shall not be fraudulent, deceitful, or misleading, including statements or advertisements of bait, discounts, premiums, gifts, or statements of a similar nature.

SEC. 6. Section 19302.1 is added to the Business and Professions Code, to read:

19302.1. (a) The Governor shall appoint a chief of the bureau, subject to confirmation by the Senate, at a salary to be fixed and determined by the director with the approval of the Director of Finance. The chief shall serve under the direction and supervision of the director and at the pleasure of the Governor.

(b) Every power granted to or duty imposed upon the director under this chapter may be exercised or performed in the name of the director by a deputy or assistant director or by the chief, subject to conditions and limitations that the director may prescribe. In addition to every power granted or duty imposed with this chapter, the director shall have all other powers and duties generally applicable in relation to bureaus that are part of the Department of Consumer Affairs.

(c) The director may employ and appoint all employees necessary to properly administer the work of the bureau, in accordance with civil service laws and regulations.

(d) The Department of Consumer Affairs shall have the sole authority to create, issue, renew, discipline, suspend, or revoke licenses for the

transportation, storage unrelated to manufacturing activities, distribution, and sale of medical marijuana within the state and to collect fees in connection with activities the bureau regulates. The bureau may create licenses in addition to those identified in this chapter that the bureau deems necessary to effectuate its duties under this chapter.

(e) The Department of Food and Agriculture shall administer the provisions of this chapter related to and associated with the cultivation of medical cannabis. The Department of Food and Agriculture shall have the authority to create, issue, and suspend or revoke cultivation licenses for violations of this chapter. The State Department of Public Health shall administer the provisions of this chapter related to and associated with the manufacturing and testing of medical cannabis.

SEC. 7. Section 19319 is added to the Business and Professions Code, to read:

19319. (a) A qualified patient, as defined in Section 11362.7 of the Health and Safety Code, who cultivates, possesses, stores, manufactures, or transports cannabis exclusively for his or her personal medical use but who does not provide, donate, sell, or distribute cannabis to any other person is not thereby engaged in commercial cannabis activity and is therefore exempt from the licensure requirements of this chapter.

(b) A primary caregiver who cultivates, possesses, stores, manufactures, transports, donates, or provides cannabis exclusively for the personal medical purposes of no more than five specified qualified patients for whom he or she is the primary caregiver within the meaning of Section 11362.7 of the Health and Safety Code, but who does not receive remuneration for these activities except for compensation in full compliance with subdivision (c) of Section 11362.765 of the Health and Safety Code, is exempt from the licensure requirements of this chapter.

SEC. 8. Section 19320 is added to the Business and Professions Code, to read:

19320. (a) Licensing authorities administering this chapter may issue state licenses only to qualified applicants engaging in commercial cannabis activity pursuant to this chapter. Upon the date of implementation of regulations by the licensing authority, no person shall engage in commercial cannabis activity without possessing both a state license and a local permit, license, or other authorization. A licensee shall not commence activity under the authority of a state license until the applicant has obtained, in addition to the state license, a license or permit from the local jurisdiction in which he or she proposes to operate, following the requirements of the applicable local ordinance.

(b) Revocation of a local license, permit, or other authorization shall terminate the ability of a medical cannabis business to operate within that local jurisdiction until the local jurisdiction reinstates or reissues the local license, permit, or other required authorization. Local authorities shall notify the bureau upon revocation of a local license. The bureau shall inform relevant licensing authorities.

(c) Revocation of a state license shall terminate the ability of a medical cannabis licensee to operate within California until the licensing authority reinstates or reissues the state license. Each licensee shall obtain a separate license for each location where it engages in commercial medical cannabis activity. However, transporters only need to obtain licenses for each physical location where the licensee conducts business while not in transport, or any equipment that is not currently transporting medical cannabis or medical cannabis products, permanently resides.

(d) In addition to the provisions of this chapter, local jurisdictions retain the power to assess fees and taxes, as applicable, on facilities that are licensed pursuant to this chapter and the business activities of those licensees.

(e) Nothing in this chapter shall be construed to supersede or limit state agencies, including the State Water Resources Control Board and Department of Fish and Wildlife, from establishing fees to support their medical cannabis regulatory programs.

SEC. 9. Section 19322 is added to the Business and Professions Code, to read:

19322. (a) A person or entity shall not submit an application for a state license issued by the department pursuant to this chapter unless that person or entity has received a license, permit, or authorization by a local jurisdiction. An applicant for any type of state license issued pursuant to this chapter shall do all of the following:

(1) Electronically submit to the Department of Justice fingerprint images and related information required by the Department of Justice for the purpose of obtaining information as to the existence and content of a record of state or federal convictions and arrests, and information as to the existence and content of a record of state or federal convictions and arrests for which the Department of Justice establishes that the person is free on bail or on his or her own recognizance, pending trial or appeal.

(A) The Department of Justice shall provide a response to the licensing authority pursuant to paragraph (1) of subdivision (p) of Section 11105 of the Penal Code.

(B) The licensing authority shall request from the Department of Justice subsequent notification service, as provided pursuant to Section 11105.2 of the Penal Code, for applicants.

(C) The Department of Justice shall charge the applicant a fee sufficient to cover the reasonable cost of processing the requests described in this paragraph.

(2) Provide documentation issued by the local jurisdiction in which the proposed business is operating certifying that the applicant is or will be in compliance with all local ordinances and regulations.

(3) Provide evidence of the legal right to occupy and use the proposed location. For an applicant seeking a cultivator, distributor, manufacturing, or dispensary license, provide a statement from the owner of real property or their agent where the cultivation, distribution, manufacturing, or dispensing commercial medical cannabis activities will occur, as proof to demonstrate the landowner has acknowledged and consented to permit

cultivation, distribution, manufacturing, or dispensary activities to be conducted on the property by the tenant applicant.

(4) If the application is for a cultivator or a dispensary, provide evidence that the proposed location is located beyond at least a 600-foot radius from a school, as required by Section 11362.768 of the Health and Safety Code.

(5) Provide a statement, signed by the applicant under penalty of perjury, that the information provided is complete, true, and accurate.

(6) (A) For an applicant with 20 or more employees, provide a statement that the applicant will enter into, or demonstrate that it has already entered into, and abide by the terms of a labor peace agreement.

(B) For the purposes of this paragraph, “employee” does not include a supervisor.

(C) For purposes of this paragraph, “supervisor” means an individual having authority, in the interest of the licensee, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them or to adjust their grievances, or effectively to recommend such action, if, in connection with the foregoing, the exercise of that authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

(7) Provide the applicant’s seller’s permit number issued pursuant to Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code or indicate that the applicant is currently applying for a seller’s permit.

(8) Provide any other information required by the licensing authority.

(9) For an applicant seeking a cultivation license, provide a statement declaring the applicant is an “agricultural employer,” as defined in the Alatorre-Zenovich-Dunlap-Berman Agricultural Labor Relations Act of 1975 (Part 3.5 (commencing with Section 1140) of Division 2 of the Labor Code), to the extent not prohibited by law.

(10) For an applicant seeking licensure as a testing laboratory, register with the State Department of Public Health and provide any information required by the State Department of Public Health.

(11) Pay all applicable fees required for licensure by the licensing authority.

(b) For applicants seeking licensure to cultivate, distribute, or manufacture medical cannabis, the application shall also include a detailed description of the applicant’s operating procedures for all of the following, as required by the licensing authority:

- (1) Cultivation.
- (2) Extraction and infusion methods.
- (3) The transportation process.
- (4) Inventory procedures.
- (5) Quality control procedures.

SEC. 10. Section 19323 is added to the Business and Professions Code, to read:

19323. (a) The licensing authority shall deny an application if either the applicant or the premises for which a state license is applied do not qualify for licensure under this chapter.

(b) The licensing authority may deny the application for licensure or renewal of a state license if any of the following conditions apply:

(1) Failure to comply with the provisions of this chapter or any rule or regulation adopted pursuant to this chapter, including but not limited to, any requirement imposed to protect natural resources, instream flow, and water quality pursuant to subdivision (a) of Section 19332.

(2) Conduct that constitutes grounds for denial of licensure pursuant to Chapter 2 (commencing with Section 480) of Division 1.5.

(3) A local agency has notified the licensing authority that a licensee or applicant within its jurisdiction is in violation of state rules and regulation relating to commercial cannabis activities, and the licensing authority, through an investigation, has determined that the violation is grounds for termination or revocation of the license. The licensing authority shall have the authority to collect reasonable costs, as determined by the licensing authority, for investigation from the licensee or applicant.

(4) The applicant has failed to provide information required by the licensing authority.

(5) The applicant or licensee has been convicted of an offense that is substantially related to the qualifications, functions, or duties of the business or profession for which the application is made, except that if the licensing authority determines that the applicant or licensee is otherwise suitable to be issued a license and granting the license would not compromise public safety, the licensing authority shall conduct a thorough review of the nature of the crime, conviction, circumstances, and evidence of rehabilitation of the applicant, and shall evaluate the suitability of the applicant or licensee to be issued a license based on the evidence found through the review. In determining which offenses are substantially related to the qualifications, functions, or duties of the business or profession for which the application is made, the licensing authority shall include, but not be limited to, the following:

(A) A felony conviction for the illegal possession for sale, sale, manufacture, transportation, or cultivation of a controlled substance.

(B) A violent felony conviction, as specified in subdivision (c) of Section 667.5 of the Penal Code.

(C) A serious felony conviction, as specified in subdivision (c) of Section 1192.7 of the Penal Code.

(D) A felony conviction involving fraud, deceit, or embezzlement.

(6) The applicant, or any of its officers, directors, or owners, is a licensed physician making patient recommendations for medical cannabis pursuant to Section 11362.7 of the Health and Safety Code.

(7) The applicant or any of its officers, directors, or owners has been subject to fines or penalties for cultivation or production of a controlled substance on public or private lands pursuant to Section 12025 or 12025.1 of the Fish and Game Code.

(8) The applicant, or any of its officers, directors, or owners, has been sanctioned by a licensing authority or a city, county, or city and county for unlicensed commercial medical cannabis activities or has had a license revoked under this chapter in the three years immediately preceding the date the application is filed with the licensing authority.

(9) Failure to obtain and maintain a valid seller's permit required pursuant to Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code.

SEC. 11. Section 19324 is added to the Business and Professions Code, to read:

19324. Upon the denial of any application for a license, the licensing authority shall notify the applicant in writing. Within 30 days of service of the notice, the applicant may file a written petition for a license with the licensing authority. Upon receipt of a timely filed petition, the licensing authority shall set the petition for hearing. The hearing shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the director of each licensing authority shall have all the powers granted therein.

SEC. 12. Section 19325 is added to the Business and Professions Code, to read:

19325. An applicant shall not be denied a state license if the denial is based solely on any of the following:

(a) A conviction or act that is substantially related to the qualifications, functions, or duties of the business or profession for which the application is made for which the applicant or licensee has obtained a certificate of rehabilitation pursuant to Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code.

(b) A conviction that was subsequently dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code.

SEC. 13. Article 6 (commencing with Section 19331) is added to Chapter 3.5 of Division 8 of the Business and Professions Code, to read:

Article 6. Licensed Cultivation Sites

19331. The Legislature finds and declares all of the following:

(a) The United States Environmental Protection Agency has not established appropriate pesticide tolerances for, or permitted the registration and lawful use of, pesticides on cannabis crops intended for human consumption pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.).

(b) The use of pesticides is not adequately regulated due to the omissions in federal law, and cannabis cultivated in California for California patients can and often does contain pesticide residues.

(c) Lawful California medical cannabis growers and caregivers urge the Department of Pesticide Regulation to provide guidance, in absence of federal guidance, on whether the pesticides currently used at most cannabis

cultivation sites are actually safe for use on cannabis intended for human consumption.

19332. (a) The Department of Food and Agriculture shall promulgate regulations governing the licensing of indoor and outdoor cultivation sites.

(b) The Department of Pesticide Regulation, in consultation with the Department of Food and Agriculture, shall develop standards for the use of pesticides in cultivation, and maximum tolerances for pesticides and other foreign object residue in harvested cannabis.

(c) The State Department of Public Health shall develop standards for the production and labeling of all edible medical cannabis products.

(d) The Department of Food and Agriculture, in consultation with the Department of Fish and Wildlife and the State Water Resources Control Board, shall ensure that individual and cumulative effects of water diversion and discharge associated with cultivation do not affect the instream flows needed for fish spawning, migration, and rearing, and the flows needed to maintain natural flow variability.

(e) The Department of Food and Agriculture shall have the authority necessary for the implementation of the regulations it adopts pursuant to this chapter. The regulations shall do all of the following:

(1) Provide that weighing or measuring devices used in connection with the sale or distribution of medical cannabis are required to meet standards equivalent to Division 5 (commencing with Section 12001).

(2) Require that cannabis cultivation by licensees is conducted in accordance with state and local laws related to land conversion, grading, electricity usage, water usage, agricultural discharges, and similar matters. Nothing in this chapter, and no regulation adopted by the department, shall be construed to supersede or limit the authority of the State Water Resources Control Board, regional water quality control boards, or the Department of Fish and Wildlife to implement and enforce their statutory obligations or to adopt regulations to protect water quality, water supply, and natural resources.

(3) Establish procedures for the issuance and revocation of unique identifiers for activities associated with a cannabis cultivation license, pursuant to Article 8 (commencing with Section 19337). All cannabis shall be labeled with the unique identifier issued by the Department of Food and Agriculture.

(4) Prescribe standards, in consultation with the bureau, for the reporting of information as necessary related to unique identifiers, pursuant to Article 8 (commencing with Section 19337).

(f) The Department of Pesticide Regulation, in consultation with the State Water Resources Control Board, shall promulgate regulations that require that the application of pesticides or other pest control in connection with the indoor or outdoor cultivation of medical cannabis meets standards equivalent to Division 6 (commencing with Section 11401) of the Food and Agricultural Code and its implementing regulations.

(g) State cultivator license types issued by the Department of Food and Agriculture include:

(1) Type 1, or “specialty outdoor,” for outdoor cultivation using no artificial lighting of less than or equal to 5,000 square feet of total canopy size on one premises, or up to 50 mature plants on noncontiguous plots.

(2) Type 1A, or “specialty indoor,” for indoor cultivation using exclusively artificial lighting of less than or equal to 5,000 square feet of total canopy size on one premises.

(3) Type 1B, or “specialty mixed-light,” for cultivation using a combination of natural and supplemental artificial lighting at a maximum threshold to be determined by the licensing authority, of less than or equal to 5,000 square feet of total canopy size on one premises.

(4) Type 2, or “small outdoor,” for outdoor cultivation using no artificial lighting between 5,001 and 10,000 square feet, inclusive, of total canopy size on one premises.

(5) Type 2A, or “small indoor,” for indoor cultivation using exclusively artificial lighting between 5,001 and 10,000 square feet, inclusive, of total canopy size on one premises.

(6) Type 2B, or “small mixed-light,” for cultivation using a combination of natural and supplemental artificial lighting at a maximum threshold to be determined by the licensing authority, between 5,001 and 10,000 square feet, inclusive, of total canopy size on one premises.

(7) Type 3, or “outdoor,” for outdoor cultivation using no artificial lighting from 10,001 square feet to one acre, inclusive, of total canopy size on one premises. The Department of Food and Agriculture shall limit the number of licenses allowed of this type.

(8) Type 3A, or “indoor,” for indoor cultivation using exclusively artificial lighting between 10,001 and 22,000 square feet, inclusive, of total canopy size on one premises. The Department of Food and Agriculture shall limit the number of licenses allowed of this type.

(9) Type 3B, or “mixed-light,” for cultivation using a combination of natural and supplemental artificial lighting at a maximum threshold to be determined by the licensing authority, between 10,001 and 22,000 square feet, inclusive, of total canopy size on one premises. The Department of Food and Agriculture shall limit the number of licenses allowed of this type.

(10) Type 4, or “nursery,” for cultivation of medical cannabis solely as a nursery. Type 4 licensees may transport live plants.

19332.5. (a) Not later than January 1, 2020, the Department of Food and Agriculture in conjunction with the bureau, shall make available a certified organic designation and organic certification program for medical marijuana, if permitted under federal law and the National Organic Program (Section 6517 of the federal Organic Foods Production Act of 1990 (7 U.S.C. Sec. 6501 et seq.)), and Article 7 (commencing with Section 110810) of Chapter 5 of Part 5 of Division 104 of the Health and Safety Code.

(b) The bureau may establish appellations of origin for marijuana grown in California.

(c) It is unlawful for medical marijuana to be marketed, labeled, or sold as grown in a California county when the medical marijuana was not grown in that county.

(d) It is unlawful to use the name of a California county in the labeling, marketing, or packaging of medical marijuana products unless the product was grown in that county.

19333. An employee engaged in commercial cannabis cultivation activity shall be subject to Wage Order 4-2001 of the Industrial Welfare Commission.

SEC. 14. Article 7.5 (commencing with Section 19335) is added to Chapter 3.5 of Division 8 of the Business and Professions Code, to read:

Article 7.5. Unique Identifier and Track and Trace Program

19335. (a) The Department of Food and Agriculture, in consultation with the bureau, shall establish a track and trace program for reporting the movement of medical marijuana items throughout the distribution chain that utilizes a unique identifier pursuant to Section 11362.777 of the Health and Safety Code and secure packaging and is capable of providing information that captures, at a minimum, all of the following:

(1) The licensee receiving the product.

(2) The transaction date.

(3) The cultivator from which the product originates, including the associated unique identifier, pursuant to Section 11362.777 of the Health and Safety Code.

(b) (1) The Department of Food and Agriculture shall create an electronic database containing the electronic shipping manifests which shall include, but not be limited to, the following information:

(A) The quantity, or weight, and variety of products shipped.

(B) The estimated times of departure and arrival.

(C) The quantity, or weight, and variety of products received.

(D) The actual time of departure and arrival.

(E) A categorization of the product.

(F) The license number and the unique identifier pursuant to Section 11362.777 of the Health and Safety Code issued by the licensing authority for all licensees involved in the shipping process, including cultivators, transporters, distributors, and dispensaries.

(2) (A) The database shall be designed to flag irregularities for all licensing authorities in this chapter to investigate. All licensing authorities pursuant to this chapter may access the database and share information related to licensees under this chapter, including social security and individual taxpayer identifications notwithstanding Section 30.

(B) The Department of Food and Agriculture shall immediately inform the bureau upon the finding of an irregularity or suspicious finding related to a licensee, applicant, or commercial cannabis activity for investigatory purposes.

(3) Licensing authorities and state and local agencies may, at any time, inspect shipments and request documentation for current inventory.

(4) The bureau shall have 24-hour access to the electronic database administered by the Department of Food and Agriculture.

(5) The Department of Food and Agriculture shall be authorized to enter into memoranda of understandings with licensing authorities for data sharing purposes, as deemed necessary by the Department of Food and Agriculture.

(6) Information received and contained in records kept by the Department of Food and Agriculture or licensing authorities for the purposes of administering this section are confidential and shall not be disclosed pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), except as necessary for authorized employees of the State of California or any city, county, or city and county to perform official duties pursuant to this chapter or a local ordinance.

(7) Upon the request of a state or local law enforcement agency, licensing authorities shall allow access to or provide information contained within the database to assist law enforcement in their duties and responsibilities pursuant to this chapter.

19336. (a) Chapter 4 (commencing with Section 55121) of Part 30 of Division 2 of the Revenue and Taxation Code shall apply with respect to the bureau's collection of the fees, civil fines, and penalties imposed pursuant to this chapter.

(b) Chapter 8 (commencing with Section 55381) of Part 30 of Division 2 of the Revenue and Taxation Code shall apply with respect to the disclosure of information under this chapter.

SEC. 15. Article 8 (commencing with Section 19337) is added to Chapter 3.5 of Division 8 of the Business and Professions Code, to read:

Article 8. Licensed Transporters

19337. (a) A licensee authorized to transport medical cannabis and medical cannabis products between licenses shall do so only as set forth in this chapter.

(b) Prior to transporting medical cannabis or medical cannabis products, a licensed transporter of medical cannabis or medical cannabis products shall do both of the following:

(1) Complete an electronic shipping manifest as prescribed by the licensing authority. The shipping manifest must include the unique identifier, pursuant to Section 11362.777 of the Health and Safety Code, issued by the Department of Food and Agriculture for the original cannabis product.

(2) Securely transmit the manifest to the bureau and the licensee that will receive the medical cannabis product. The bureau shall inform the Department of Food and Agriculture of information pertaining to commercial cannabis activity for the purpose of the track and trace program identified in Section 19335.

(c) During transportation, the licensed transporter shall maintain a physical copy of the shipping manifest and make it available upon request to agents of the Department of Consumer Affairs and law enforcement officers.

(d) The licensee receiving the shipment shall maintain each electronic shipping manifest and shall make it available upon request to the Department of Consumer Affairs and any law enforcement officers.

(e) Upon receipt of the transported shipment, the licensee receiving the shipment shall submit to the licensing agency a record verifying receipt of the shipment and the details of the shipment.

(f) Transporting, or arranging for or facilitating the transport of, medical cannabis or medical cannabis products in violation of this chapter is grounds for disciplinary action against the licensee.

19338. (a) This chapter shall not be construed to authorize or permit a licensee to transport or cause to be transported cannabis or cannabis products outside the state, unless authorized by federal law.

(b) A local jurisdiction shall not prevent transportation of medical cannabis or medical cannabis products on public roads by a licensee transporting medical cannabis or medical cannabis products in compliance with this chapter.

SEC. 16. Article 11 (commencing with Section 19348) is added to Chapter 3.5 of Division 8 of the Business and Professions Code, to read:

Article 11. Taxation

19348. (a) (1) A county may impose a tax on the privilege of cultivating, dispensing, producing, processing, preparing, storing, providing, donating, selling, or distributing medical cannabis or medical cannabis products by a licensee operating pursuant to this chapter.

(2) The board of supervisors shall specify in the ordinance proposing the tax the activities subject to the tax, the applicable rate or rates, the method of apportionment, if necessary, and the manner of collection of the tax. The tax may be imposed for general governmental purposes or for purposes specified in the ordinance by the board of supervisors.

(3) In addition to any other method of collection authorized by law, the board of supervisors may provide for the collection of the tax imposed pursuant to this section in the same manner, and subject to the same penalties and priority of lien, as other charges and taxes fixed and collected by the county. A tax imposed pursuant to this section is a tax and not a fee or special assessment. The board of supervisors shall specify whether the tax applies throughout the entire county or within the unincorporated area of the county.

(4) The tax authorized by this section may be imposed upon any or all of the activities set forth in paragraph (1), as specified in the ordinance, regardless of whether the activity is undertaken individually, collectively, or cooperatively, and regardless of whether the activity is for compensation or gratuitous, as determined by the board of supervisors.

(b) A tax imposed pursuant to this section shall be subject to applicable voter approval requirements imposed by law.

(c) This section is declaratory of existing law and does not limit or prohibit the levy or collection of any other fee, charge, or tax, or a license or service fee or charge upon, or related to, the activities set forth in subdivision (a) as otherwise provided by law. This section shall not be construed as a limitation upon the taxing authority of a county as provided by law.

(d) This section shall not be construed to authorize a county to impose a sales or use tax in addition to the sales and use tax imposed under an ordinance conforming to the provisions of Sections 7202 and 7203 of the Revenue and Taxation Code.

SEC. 17. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 18. The Legislature finds and declares that Section 14 of this act, which adds Section 19335 to the Business and Professions Code, thereby imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

The limitation imposed under this act is necessary for purposes of compliance with the federal Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. Sec. 1320d et seq.), the Confidentiality of Medical Information Act (Part 2.6 (commencing with Section 56) of Division 1 of the Civil Code), and the Insurance Information and Privacy Protection Act (Article 6.6 (commencing with Section 791) of Part 2 of Division 1 of the Insurance Code).

SEC. 19. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

SEC. 20. This act shall become operative only if Assembly Bill 266 and Assembly Bill 243 of the 2015–16 Session are enacted and take effect on or before January 1, 2016.

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Death Following Ingestion of an Edible Marijuana Product — Colorado, March 2014

Jessica B. Hancock-Allen, MSN; Lisa Barker; Michael VanDyke, PhD; Dawn B. Holmes, MD
Morbidity and Mortality Weekly Report. 2015;64(28):771-772.

In March 2014, the Colorado Department of Public Health and Environment (CDPHE) learned of the death of a man aged 19 years after consuming an edible marijuana product. CDPHE reviewed autopsy and police reports to assess factors associated with his death and to guide prevention efforts. The decedent's friend, aged 23 years, had purchased marijuana cookies and provided one to the decedent. A police report indicated that initially the decedent ate only a single piece of his cookie, as directed by the sales clerk. Approximately 30–60 minutes later, not feeling any effects, he consumed the remainder of the cookie. During the next 2 hours, he reportedly exhibited erratic speech and hostile behaviors. Approximately 3.5 hours after initial ingestion, and 2.5 hours after consuming the remainder of the cookie, he jumped off a fourth floor balcony and died from trauma. The autopsy, performed 29 hours after time of death, found marijuana intoxication as a chief contributing factor. Quantitative toxicologic analyses for drugs of abuse, synthetic cannabinoid, and cathinones ("bath salts") were performed on chest cavity blood by gas chromatography and mass spectrometry. The only confirmed findings were cannabinoids (7.2 ng/mL delta-9 tetrahydrocannabinol [THC] and 49 ng/mL delta-9 carboxy-THC, an inactive marijuana metabolite). The legal whole blood limit of delta-9 THC for driving a vehicle in Colorado is 5.0 ng/mL. This was the first reported death in Colorado linked to marijuana consumption without evidence of polysubstance use since the state approved recreational use of marijuana in 2012.

According to the police report, the decedent had been marijuana-naïve, with no known history of alcohol abuse, illicit drug use, or mental illness. In addition to listing inactive ingredients, the cookie label described the psychoactive ingredients as "65 mg THC/6.5 servings (THC, tetrahydrocannabinol, the principal psychoactive agent in cannabis)." The label also noted, "This marijuana product has not been tested for contaminants or potency." According to the police report, the sales clerk had instructed the buyer and decedent to divide each cookie into sixths, each piece containing approximately 10 mg of THC, the serving size, and to ingest one serving at a time. The police report did not indicate whether the sales clerk provided specific instructions for how long to wait between ingesting each serving.

This case illustrates a potential danger associated with recreational edible marijuana use. Some studies have suggested an association between cannabis and psychological disturbances.^[1] Second to alcohol, marijuana is the most commonly used recreational drug in the United States, with an estimated 19.8 million past-month users during 2013.^[2] In 2012, Colorado and Washington became the first states to permit recreational use of marijuana under their state laws.^[3] The first state-licensed recreational

marijuana stores in Colorado opened in January 2014. An estimated 45% of Colorado's marijuana sales involve edible marijuana, including THC-infused food, drink, and pills.^[4,5] Colorado's marijuana surveillance system collects adverse outcomes data from hospitalizations, emergency department visits, and poison center calls.

Systemic THC levels and psychoactive effects after ingestion are highly variable because of differences in bioavailability, rate of gastrointestinal absorption, and metabolic first-pass effect whereby an orally administered drug is partially metabolized (principally in the liver) before reaching systemic distribution.^[6,7] Because absorption is slower, the onset of effects is delayed (with mean peak plasma concentration at 1–2 hours after ingestion, in contrast with 5–10 minutes to peak plasma concentrations if smoked), and duration of intoxication is longer when THC is ingested compared with when it is smoked.^[7] Whereas a single-serving recreational edible marijuana dose in Colorado was set at 10 mg of THC, multiple-dose recreational edible products, often containing 100 mg of THC, were available during March 2014.^[4] The marijuana store where the implicated cookies had been purchased voluntarily gave all 67 remaining cookies of the same brand to the Denver Police Department. Testing confirmed that the THC levels in the items were within required limits. Because of the delayed effects of THC-infused edibles, multiple servings might be consumed in close succession before experiencing the "high" from the initial serving, as reportedly occurred in this case. Consuming a large dose of THC can result in a higher THC concentration, greater intoxication, and an increased risk for adverse psychological effects.

Recreational marijuana is now permitted for persons aged ≥ 21 years under state law in four states (Alaska, Colorado, Oregon, and Washington) and the District of Columbia; marijuana-attributed morbidity and mortality surveillance can help guide efforts to prevent overconsumption in these jurisdictions. Regulation of recreational marijuana edibles in Colorado continues to evolve. On the basis of initial surveillance data in Colorado and numerous cases of accidental overconsumption, on February 1, 2015, Colorado instituted new packaging and labeling rules, requiring that recreational edible marijuana products contain no more than 10 mg of THC, or have clear demarcation of each 10-mg serving.^[8] In addition, before distribution, cannabinoid potency testing is now performed on batches of recreational edible marijuana products by state-certified laboratories. Other states permitting recreational marijuana use could potentially reduce adverse health effects by considering similar THC limits in marijuana edible products, and by enforcing clear labeling standards that require information on multidose products. Although the decedent in this case was advised against eating multiple servings at one time, he reportedly consumed all five of the remaining servings of the THC-infused cookie within 30–60 minutes after the first serving, suggesting a need for improved public health messaging to reduce the risk for overconsumption of THC.

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8. Marijuana Enforcement Division, Colorado Department of Revenue. Retail marijuana product manufacturing, packaging, and labeling compliance guidance. Available at https://www.colorado.gov/pacific/sites/default/files/14-10_IndustryBulletin-Attachments.pdf.



Fw: Please vote Yes : Nipomo Ethnobotanica
Airlin Singewald to: Catrina Christensen

11/02/2015 12:50 PM

Correspondence received on Item 16 for November 3, 2015.

Airlin Singewald
San Luis Obispo County
Department of Planning and Building
(805) 781-5198
asingewald@co.slo.ca.us

----- Forwarded by Airlin Singewald/Planning/COSLO on 11/02/2015 12:50 PM -----

From: Lynn Compton/BOS/COSLO
To: Airlin Singewald/Planning/COSLO@Wings
Date: 07/31/2015 08:54 AM
Subject: Fw: Please vote Yes: Nipomo Ethnobotanica
Sent by: Jocelyn Brennan

----- Forwarded by Jocelyn Brennan/BOS/COSLO on 07/31/2015 08:54 AM -----

From: Pete Seerden <peteseerden@gmail.com>
To: "lcompton@co.slo.ca.us" <lcompton@co.slo.ca.us>, "fmecham@co.slo.ca.us" <fmecham@co.slo.ca.us>, "darnold@co.slo.ca.us" <darnold@co.slo.ca.us>
Date: 07/31/2015 05:48 AM
Subject: Please vote Yes: Nipomo Ethnobotanica

Hello and Greetings;

I would like to present two strong reasons why I hope the three of you will vote yes in October to allow Ethnobotanica's cannabis store in Nipomo to open.

First, my landlord and I share the same property and I won't allow strangers to deliver cannabis to me at my home out of respect to his wife and family, which requires me to drive two 1/2 hours north to Santa Cruz each month in order to buy the stuff. I use it faithfully to relieve arthritic pain.

Second, and most notably, is that Ethnobotanica offers discounts to patients who carry MediCal and Medicare cards, which I honestly feel is the Only manner cannabis shops should be allowed to operate.

I am thankful for cannabis stores for relieving me from having to purchase the stuff on the streets. Please give these particular people a try. I'm in full support of your shutting the place down if it becomes a problem.

Thank you.

Sincerely, Pete Seerden



Fw: Contact Us (response #42)
Airlin Singewald to: Catrina Christensen

11/02/2015 12:48 PM

Correspondence received on Item 16 for November 3, 2015.

Airlin Singewald
San Luis Obispo County
Department of Planning and Building
(805) 781-5198
asingewald@co.slo.ca.us

----- Forwarded by Airlin Singewald/Planning/COSLO on 11/02/2015 12:48 PM -----

From: Jocelyn Brennan/BOS/COSLO
To: Airlin Singewald/Planning/COSLO@Wings
Date: 10/20/2015 03:40 PM
Subject: Fw: Contact Us (response #42)

Sincerely,
Jocelyn Brennan
Legislative Assistant to Supervisor Lynn Compton
San Luis Obispo County, District 4
805 781-4337

----- Forwarded by Jocelyn Brennan/BOS/COSLO on 10/20/2015 03:40 PM -----

From: "Internet Webmaster" <webmaster@co.slo.ca.us>
To: "jbrennan@co.slo.ca.us" <jbrennan@co.slo.ca.us>
Date: 10/18/2015 06:51 AM
Subject: Contact Us (response #42)

Contact Us (response #42)

Survey Information

Site:County of SLO
Page Title:Contact Us
URL:http://www.slocounty.ca.gov/bos/District-4/Contact_Us.htm
Submission Time/Date:10/18/2015 6:50:22 AM

Survey Response

Your Name:
Robert Segal

Your Phone (e.g. (999) 999-9999):

Your Email:
rsegal3400@aol.com

Comments / Questions (8192 characters max):

Medical Marijuana.

Please vote to pass the measure to put a dispensary in Nipomo. I am a veteran of both Vietnam and Iraq. I have numerous medical conditions, some which are terminal. I can have the meds delivered to my house but prefer to shop in a

brick and mortar store if possible. I welcome to opportunity to express my feelings and concerns in public if possible.
Thank you

Robert Segal



Fw: Contact Us (response #42)
Airlin Singewald to: Catrina Christensen

11/02/2015 12:48 PM

Correspondence received on Item 16 for November 3, 2015.

Airlin Singewald
San Luis Obispo County
Department of Planning and Building
(805) 781-5198
asingewald@co.slo.ca.us

----- Forwarded by Airlin Singewald/Planning/COSLO on 11/02/2015 12:48 PM -----

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To: Airlin Singewald/Planning/COSLO@Wings
Date: 10/20/2015 03:40 PM
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Legislative Assistant to Supervisor Lynn Compton
San Luis Obispo County, District 4
805 781-4337

----- Forwarded by Jocelyn Brennan/BOS/COSLO on 10/20/2015 03:40 PM -----

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To: "jbrennan@co.slo.ca.us" <jbrennan@co.slo.ca.us>
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Robert Segal

Your Phone (e.g. (999) 999-9999):

Your Email:
rsegal3400@aol.com

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brick and mortar store if possible. I welcome to opportunity to express my feelings and concerns in public if possible.
Thank you

Robert Segal



Fw: Opposition to medical marijuana dispensary in Nipomo
Jennifer Caffee to: cr_board_clerk Clerk Recorder

10/31/2015 03:53 PM

Jennifer Caffee
 Legislative Assistant
 5th District Supervisor Debbie Arnold
 San Luis Obispo County
 (805) 781-4339/FAX (805) 781-1350

----- Forwarded by Jennifer Caffee/BOS/COSLO on 10/31/2015 03:52 PM -----

From: Nipomo Resident <nipomoresident@gmail.com>
 To: fmecham@co.slo.ca.us, vshelby@co.slo.ca.us, bgibson@co.slo.ca.us, cmckee@co.slo.ca.us, ahill@co.slo.ca.us, hmiller@co.slo.ca.us, lcompton@co.slo.ca.us, jbrennan@co.slo.ca.us, darnold@co.slo.ca.us, Jen Caffee <jcaffee@co.slo.ca.us>
 Date: 10/30/2015 05:03 PM
 Subject: Opposition to medical marijuana dispensary in Nipomo

Dear San Luis Obispo County Board of Supervisors:

I am a resident of Nipomo. I oppose the application for a minor use permit for a medical marijuana dispensary located at 2122 Hutton Road, Nipomo, CA 93444. The minor use permit file number is DRC2014-00070. The name of the applicant is Ethnobotanica. On April 27, 2015, I submitted a 16 page letter to the San Luis Obispo County Planning Commission in opposition to a medical marijuana dispensary in Nipomo. Please take the time to read my 16 page letter and documents attached to this email.

In September, the Department of Justice released a Memorandum to the public regarding Section 538 of the Appropriations Act of 2015. The Department of Justice states they will continue to prosecute medical marijuana cases against individuals and organizations. Airlin Singewald, SLO Senior Planner, stated to the contrary on page 3 of the Staff Report to the Planning Commission. Mr. Singewald stated "However, in December 2014 U.S. Congress passed a spending bill, which included a provision limiting the Justice Department's ability to take criminal action against state licensed individuals or operations that are acting in full compliance with medical marijuana laws of their states". Mr. Singewald's statement is not correct. See attached Department of Justice Memorandum. See page 3 of attached Staff Report to Planning Commission.

In September, California State Legislature passed 3 bills for the regulation of medical marijuana: Assembly Bill 243, Assembly Bill 266, Senate Bill 643. The bills are referred to as the Medical Marijuana Regulation and Safety Act. On October 9, 2015, the California Governor signed the bills into law. The bills require both a state license and a local permit for a medical marijuana dispensary. In addition, the bills have many more requirements for a medical marijuana dispensary. The San Luis Obispo County medical marijuana dispensary ordinance should be rewritten or rescinded to comply with the new medical marijuana laws. See attached medical marijuana bills. Medical marijuana bills online at www.legislature.ca.gov

Attached is update on medical marijuana edible death report in Colorado.

Sincerely,

Resident of Nipomo Dept of Justice Memo on Section 538.pdf Staff Report for Planning Commission.pdf
 Assembly Bill No. 243.pdf Assembly Bill No. 266.pdf Senate Bill No. 643.pdf Marijuana Edible Death Report.docx



U.S. Department of Justice

Criminal Division

Washington, D.C. 20530

February 27, 2015

MEMORANDUM

TO: All Federal Prosecutors

FROM: Patty Merkamp Stemler /s/ PMS
Chief, Appellate Section

SUBJECT: Guidance Regarding the Effect of Section 538 of the Consolidated and Further Continuing Appropriations Act of 2015 on Prosecutions and Civil Enforcement and Forfeiture Actions Under the Controlled Substances Act

THE MATERIAL IN THIS DOCUMENT CONSISTS OF ATTORNEY WORK PRODUCT AND SHOULD NOT BE DISSEMINATED OUTSIDE THE DEPARTMENT OF JUSTICE.

On December 16, 2014, President Obama signed the Consolidated and Further Continuing Appropriations Act of 2015, which funds the federal government through September 30, 2015. The legislation includes a rider stating that no funding allocated to the Department of Justice under the Act can be used to prevent certain states from implementing their laws related to medical marijuana. See Consolidated and Further Continuing Appropriations Act of 2015, Pub. L. No. 113-235, tit. V, div. B, § 538 (2014). Section 538 provides that:

None of the funds made available in this Act to the Department of Justice may be used, with respect to the States of Alabama, Alaska, Arizona, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Hawaii, Illinois, Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan,

Minnesota, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, Oregon, Rhode Island, South Carolina, Tennessee, Utah, Vermont, Washington, and Wisconsin, to prevent such States from implementing their own State laws that authorize the use, distribution, possession, or cultivation of medical marijuana.

Defendants charged with violations of the Controlled Substances Act ("CSA"), 21 U.S.C. § 801 *et seq.*, have begun filing motions challenging their prosecutions on the ground that the government's expenditure of funds in enforcing the CSA against them violates Section 538.

As explained more fully below, the Department's position is that Section 538 does not bar the use of funds to enforce the CSA's criminal prohibitions or to take civil enforcement and forfeiture actions against private individuals or entities consistent with the Department's guidance regarding marijuana enforcement. See Memorandum of Deputy Attorney General James M. Cole, *Guidance Regarding Marijuana Enforcement* (August 29, 2013) ("2013 Cole Memorandum"); Memorandum of Deputy Attorney General James M. Cole, *Guidance Regarding the Ogden Memo in Jurisdictions Seeking to Authorize Marijuana for Medical Use* (June 29, 2011) ("2011 Cole Memorandum"); Memorandum of Deputy Attorney General David Ogden, *Investigations and Prosecutions in States Authorizing the Medical Use of Marijuana* (October 19, 2009) ("2009 Ogden Memorandum").¹ Section 538 also does not provide a legal defense in enforcement or forfeiture actions against individuals or entities brought consistent with these guidance memoranda.

U.S. Attorney's Offices should, however, consult with Jody Hunt, Director, Federal Programs Branch, before proceeding with any civil litigation regarding state laws authorizing the medical use of marijuana where the State or State officials are a party, or where the status of State law is challenged. This includes litigation regarding whether State law is preempted by the CSA. Attorneys should follow the guidance in the three Deputy Attorney General memoranda before initiating or pursuing criminal charges or civil enforcement or forfeiture actions in States that permit the use, distribution, possession, or cultivation of medical

These guidance memoranda can be found at <http://dojnet.doj.gov/usao/eousa/ole/usabook/memo/mj082913.pdf> (2013 Cole Memorandum); <http://dojnet.doj.gov/usao/eousa/ole/usabook/memo/2011mj.pdf> (2011 Cole Memorandum); and <http://www.justice.gov/sites/default/files/opa/legacy/2009/10/19/medical-marijuana.pdf> (2009 Ogden Memorandum). Please note that the memoranda apply prospectively to the exercise of prosecutorial discretion, do not provide a defendant or subject of an enforcement action with a basis for reconsideration of pending prosecutions or actions, and more generally create no rights, substantive or procedural, enforceable at law by any party in any matter civil or criminal.

marijuana.

I. Section 538 Does Not Apply to Criminal Prosecutions or Civil Enforcement or Forfeiture Actions that are Consistent with Department Guidance.

A. The Controlled Substances Act

Enforcement of the federal drug laws is governed by the Controlled Substances Act, 21 U.S.C. § 801 *et seq.* “Enacted in 1970 with the main objectives of combating drug abuse and controlling the legitimate and illegitimate traffic in controlled substances, the CSA creates a comprehensive, closed regulatory regime criminalizing the unauthorized manufacture, distribution, dispensing, and possession of substances classified in any of the Act’s five schedules.” *Gonzales v. Oregon*, 546 U.S. 243, 250 (2006). The purpose of the CSA was to “consolidate various drug laws on the books into a comprehensive statute, provide meaningful regulation over legitimate sources of drugs to prevent diversion into illegal channels, and strengthen law enforcement tools against the traffic in illicit drugs.” *Gonzales v. Raich*, 545 U.S. 1, 10 (2005); *see also id.* at 12-13 (noting that “Congress was particularly concerned with the need to prevent the diversion of drugs from legitimate to illicit channels”). “To effectuate these goals, Congress devised a closed regulatory system making it unlawful to manufacture, distribute, dispense, or possess any controlled substance except in a manner authorized by the CSA.” *Id.* at 13.

In *Raich*, the Supreme Court held that the application of the CSA provisions criminalizing the manufacture, distribution, or possession of marijuana to intrastate growers and users of medical marijuana did not violate the Commerce Clause. The Court had “no difficulty concluding that Congress had a rational basis for believing that failure to regulate the intrastate manufacture and possession of marijuana would leave a gaping hole in the CSA.” 545 U.S. at 22. The Court rejected the argument that states could displace federal regulation of marijuana by approving cultivation and possession of the drug in certain circumstances; to the contrary, “[t]he Supremacy Clause unambiguously provides that if there is any conflict between federal and state law, federal law shall prevail.” *Id.* at 29. *Nor do the drug’s medical properties exempt it from the CSA’s scope.* *Id.* at 28 (“[T]he mere fact that marijuana—like virtually every other controlled substance regulated by the CSA—is used for medicinal purposes cannot possibly serve to distinguish it from the core activities regulated by the CSA.”); *see also United States v. Oakland Cannabis Buyers’ Cooperative*, 532 U.S. 483, 491 (2001) (“In the case of the Controlled Substances Act, the statute reflects a determination that marijuana has no medical benefits worthy of an exception (outside the confines of a Government-approved research project).”).

B. The 2013 Cole Memorandum

In recent years, several states have enacted laws relating to the use of marijuana for medical purposes. Although state medical marijuana laws vary, they typically eliminate state criminal penalties for using marijuana and derivative products for medical purposes and provide for access to medical marijuana through licensed dispensaries or regulated home cultivation. See <http://www.ncsl.org/research/health/state-medical-marijuana-laws.aspx>. The Department has responded to these laws by focusing its efforts on certain, forceful priorities that are particularly important to the federal government. The 2013 Cole Memorandum outlined these priorities:

- Preventing the distribution of marijuana to minors;
- Preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels;
- Preventing the diversion of marijuana from states where it is legal under state law in some form to other states;
- Preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity;
- Preventing violence and the use of firearms in the cultivation, distribution, or marijuana use;
- Preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use;
- Preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and
- Preventing marijuana possession or use on federal property.

These priorities will continue to guide the Department's enforcement of the CSA against marijuana-related conduct. The 2011 Cole Memorandum and the 2009 Ogden Memorandum specifically addressed the exercise of prosecutorial discretion in states with laws authorizing marijuana cultivation, distribution, for medical use. While the 2009 Ogden Memorandum advised that it likely was not an efficient use of federal resources to focus enforcement efforts on seriously ill individuals or on their individual caregivers, the 2011 Cole Memorandum emphasized that U.S. Attorney's Offices have discretion to prosecute larger-scale marijuana cultivation centers because "[p]ersons who are in the business of cultivating, selling or distributing marijuana, and those who

Four states—Colorado, Washington, Alaska, and Oregon—and the District of Columbia also permit recreational use of marijuana. By its terms, Section 538 does not prohibit the use of appropriated funds to prevent the implementation of those laws.

knowingly facilitate such activities, are in violation of the Controlled Substances Act, regardless of state law.” The 2013 Cole Memorandum added, however, that “both the existence of a strong and effective state regulatory system, and an operation’s compliance with such a system,” are significant factors in the exercise of prosecutorial discretion.

C. Section 538

In the Department’s view, Section 538 is best read not to prohibit federal criminal prosecutions, civil enforcement actions, or civil forfeiture actions against individuals or entities who are in violation of the CSA, provided such actions are consistent with the Department’s recent enforcement guidance. In our view, that reading best conforms with the statute’s text, and contrary floor statements in the House are insufficient to overcome the plain text.

1. Statutory Text

In construing Section 538, “[w]e begin with the statutory text.” *DePierre v. United States*, 131 S. Ct. 2225, 2231 (2011). Section 538 prohibits expenditure of the Department’s 2015 appropriations “to prevent [the listed] States from implementing their own State laws.” Several features of this text suggest that it does not bar the Department from prosecuting or pursuing civil enforcement or forfeiture actions against individuals or entities that violate the CSA. The text addresses actions directed against *States*, not individuals. It prohibits the Department from *preventing the implementation of State laws—that is, from impeding the ability of States to carry out their medical marijuana laws, not from taking actions against particular individuals or entities, even if they are acting compliant with State law. And the text does not expressly address federal law, including the CSA or federal enforcement actions; by contrast, when Congress seeks to withhold funding for the enforcement of federal law or regulations it disfavors, it typically uses much more direct language. See, e.g., Pub. L. 100-404, Title I, Aug. 19, 1988, 102 Stat. 1021.*³

We therefore think the text of section 538 is best read not to prohibit the Department from prosecuting, or pursuing civil enforcement or civil forfeiture actions against, individuals or entities who are in violation of Federal law (with one narrow exception set forth in footnote 4, *infra*). It is a closer question

Indeed, contemporaneous with its passage of Section 538, Congress considered but did not enact a statute that would have clearly barred the enforcement of the CSA against individuals who acted in compliance with State medical marijuana laws. See H.R. 1523, 113th Cong.

whether the statute would bar a wide-ranging, categorical policy of enforcement against individuals and entities that comply with State law. But this question would not be presented by prosecutions and enforcement actions that are taken consistent with the Department's recent guidance, under which actions against seriously ill individuals, their individual caregivers, or dispensaries that adhere to a strong and effective State regulatory system will generally be considered unwarranted. In the Department's view, the text of Section 538 is best read to prohibit the expenditure of the Department's 2015 appropriations on civil litigation regarding State laws authorizing the medical use of marijuana where the State or State officials are a party, or where the status of a State law is challenged, or where the claim is that a State law or regulatory regime is preempted by the CSA⁴; we note, however, that we have not had occasion to consider whether there may be constitutional limits to such a prohibition. U.S. Attorney's Offices should consult with Mr. Hunt before proceeding with such litigation, or even with litigation that comes close to this line.

In light of this reading, Section 538 would also appear to bar criminal actions against individual State or local officials who violate the CSA through activities taken to implement their State's medical marijuana laws, such as issuing licenses, accepting fees according to their State regimes, and testing marijuana.

2. *Legislative History*⁵

Section 538's legislative history is sparse. The joint explanatory statement accompanying the conference report for the appropriations bill parrots the language of the amendment itself: "Section 538 prohibits the Department of Justice from preventing certain States from implementing State laws regarding the use of medical marijuana." U.S. Congress Joint Explanatory Statement (to Accompany H.R. 83), Consolidated and Further Continuing Appropriations Act 2015, <http://docs.house.gov/billsthisweek/20141208/113-HR83sa-ES-B.pdf>; also available at 160 Cong. Rec. H9307, H9351 (daily ed. Dec. 11, 2014), <https://www.congress.gov/congressional-record/2014/12/11/house-section/article/H9307-1>. Nothing in the statement addresses the CSA or suggests that appropriated funds may not be used to enforce its criminal prohibitions or bring civil enforcement or forfeiture actions. There is no language about the provision in the reports accompanying the bill. See *Garcia v. United States*, 469 U.S. 70, 76 (1984) ("In surveying legislative history we have repeatedly stated that the authoritative source for finding the Legislature's intent lies in the Committee Reports on the bill * * * .").

Several lawmakers, including amendment sponsors, made floor statements supporting and opposing the amendment, but only in the House. There are no floor statements related to the amendment in the Senate. Some of the House floor statements did address criminal prosecutions. For example, Rep. Sam Farr (D-Calif.), a co-sponsor of the amendment, said that "if you are following State law, you are a legal resident doing your business under State law, the Feds just can't come in and bust you and bust the doctors and bust the patient." 160 Cong. Rec. at H4984 (statement of Rep. Sam Farr), <http://www.gpo.gov/fdsys/pkg/CREC-2014-05-29/pdf/CREC-2014-05-29.pdf>. Rep. Dana Titus (D-Nev.), another co-sponsor, stated: "Physicians in those States will not be prosecuted for prescribing the substance, and local businesses will not be shut down for dispensing the same." 160 Cong. Rec. at H4984 (statement of Rep. Dana Titus), <http://www.gpo.gov/fdsys/pkg/CREC-2014-05-29/pdf/CREC-2014-05-29.pdf>. And Rep. Barbara Lee (D-Calif.), also a co-sponsor, said: "It is past time for the Justice Department to stop its unwarranted persecution of medical marijuana and put its resources where they are needed." 160 Cong. Rec. at H4984 (statement of Rep. Barbara Lee), <http://www.gpo.gov/fdsys/pkg/CREC-2014-05-29/pdf/CREC-2014-05-29.pdf>. Some opponents of Section 538 observed that it could impede the Department's efforts to enforce the CSA. See, e.g., 160 Cong. Rec. H4914, H4983 (daily ed.

A fuller compilation of Section 538's legislative history is set forth in an addendum to this memorandum.

May 29, 2014) (statement of Rep. Andy Harris) (“There are two problems with medical marijuana. First, it is the camel’s nose under the tent; and second, the amendment as written would tie the DEA’s hands beyond medical marijuana.”), available at <http://www.gpo.gov/fdsys/pkg/CREC-2014-05-29/pdf/CREC-2014-05-29.pdf>; [id. \(statement of Rep. John Fleming\) \(arguing that although the amendment “wouldn’t change the law, it would just make it difficult, if not impossible, for the DEA and the Department of Justice to enforce the law”\)](#).

These floor statements are inconsistent with the text of Section 538 and with the Department’s position on the construction and scope of Section 538.⁶ We should argue that the floor statements of a handful of legislators in a single House of Congress are not sufficiently authoritative to overcome the best reading of the text. We should also argue that the isolated statements of the two House members who opposed the bill do not shed light on the meaning of the provision. See *Shell Oil Co. v. Iowa Dept. of Revenue*, 488 U.S. 19, 29 (1988) (“This Court does not usually accord much weight to the statements of a bill’s opponents. ‘[T]he fears and doubts of the opposition are no authoritative guide to the construction of legislation.’”) (quoting *Gulf Offshore Co. v. Mobil Oil Corp.*, 453 U.S. 473, 483 (1981)); *NLRB v. Fruit & Vegetable Packers & Warehousemen, Local 760*, 377 U.S. 58, 66 (1964) (“[W]e have often cautioned against the danger, when interpreting a statute, of reliance upon the views of its legislative opponents. In their zeal to defeat a bill, they understandably tend to overstate its reach. The fears and doubts of the opposition are no authoritative guide to the construction of legislation.”) (internal quotation marks omitted); *NRDC v. EPA*, 526 F.3d 591, 604-605 (9th Cir. 2008) (same).

Prior to passage of the appropriations bill, the Department provided Congress with informal talking points addressing the amendment introduced by Rep. Rohrabacher (which became Section 538). The talking points were consistent with the approach taken in this memorandum, with the exception that they warned that in states that permitted recreational marijuana, Rep. Rohrabacher’s amendment could, “in effect, limit or possibly eliminate the Department’s ability to enforce federal law in recreational marijuana cases as well.” This suggestion, which was intended to discourage passage of the rider, does not reflect our current thinking. We do not read Section 538 as placing any limitations on our ability to investigate and prosecute crimes involving recreational marijuana.

3. No Repeal of the CSA

Defendants may argue that Section 538 repeals the CSA's prohibitions on the manufacture, distribution, or possession of marijuana for medicinal purposes. It does not.

Congress did not explicitly repeal any provision of the CSA in Section 538. In *Posadas v. National City Bank*, the Supreme Court held that "the intention of the legislature to repeal must be clear and manifest." 296 U.S. 497, 503 (1936). Congress does not mention the CSA in Section 538, and lawmakers did not mention the CSA in their floor statements. See *United States v. Batchelder*, 442 U.S. 114, 120 (1979) (legislative history demonstrated no intention to alter the terms of another statute).

If it is not clear that Congress intended to repeal a statute, it may be impliedly repealed only if the two statutes are irreconcilable. *Morton v. Mancari*, 417 U.S. 535, 550 (1974) ("In the absence of some affirmative showing of an intention to repeal, the only permissible justification for a repeal by implication is when the earlier and later statutes are irreconcilable."). Legislative intent to repeal must be manifest in the "positive repugnancy between the provisions." *United States v. Borden Co.*, 308 U.S. 188, 199 (1939) (quoting *Posadas*, 296 U.S. at 504); see also *Posadas*, 296 U.S. at 503 ("repeals by implication are not favored"). Section 538 and the CSA are not irreconcilable. Whatever Section 538 means, it does not bar criminal prosecutions in non-medical marijuana states, and in the listed states, it does not bar prosecutions of individuals whose activities are not expressly authorized by state law. Moreover, Section 538 expires at the end of the fiscal year. The CSA and Section 538 are thus "fully capable of coexisting." *Batchelder*, 442 U.S. at 122.

4. Rule of Lenity

The rule of lenity does not apply in construing Section 538. Lenity applies only to statutes that create criminal liability. See *United States v. Santos*, 553 U.S. 507, 514 (2008) ("The rule of lenity requires ambiguous *criminal laws* to be interpreted in favor of the defendants subjected to them.") (emphasis added); *Skilling v. United States*, 561 U.S. 358, 410 (2010) ("ambiguity concerning the ambit of *criminal statutes* should be resolved in favor of lenity") (internal quotation marks omitted) (emphasis added). Section 538 is an appropriations provision, not a criminal statute. Even on the broadest reading, it would not make conduct in violation of the CSA lawful; rather, it would at most bar the federal government from prosecuting certain offenses. Thus the principles animating the rule of lenity are inapposite. See *United States v. Gradwell*, 243

U.S. 476, 485 (1917) (lenity is based on principle that "before a man can be punished as a criminal under the federal law his case must be plainly and unmistakably within the provisions of some statute") (internal quotation marks omitted).

II. Prosecutors Should Not Argue That Criminal Defendants Lack Standing to Challenge a Prosecution Based on Section 538.

A party's standing to raise a claim is a threshold jurisdictional question applicable to both civil and criminal cases. *See, e.g., Bond v. United States*, 131 S. Ct. 2355, 2366 (2011); *Whitmore v. Arkansas*, 495 U.S. 149, 155 (1990). "[T]he gist of the question of standing" is whether a litigant has "such a personal stake in the outcome of [a] controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination." *Baker v. Carr*, 369 U.S. 186, 204 (1962). Although prosecutors should argue that Section 538 does not affect criminal prosecutions or civil enforcement or forfeiture actions, they should not argue that defendants lack standing to raise a Section 538 claim.

The question of standing involves constitutional and prudential considerations. Article III's limitation of judicial power to cases and controversies requires that a litigant have suffered "a concrete and particularized injury" that is "fairly traceable" to the defendant's action and that is likely to be redressed by a decision in her favor. *Massachusetts v. EPA*, 549 U.S. 497, 517 (2007); *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-561 (1992). The defendant in a criminal prosecution or a civil enforcement or forfeiture action will almost always satisfy these constitutional requirements. Once the government has initiated a prosecution or enforcement action, "Article III does not restrict the [defendant's] ability to object to relief being sought at [his] expense" and has "no bearing" on the defendant's "capacity to assert defenses" to his conviction or sentence. *Bond v. United States*, 131 S. Ct. 2355, 2361-2362 (2011); *cf. Spencer v. Kemna*, 523 U.S. 1, 7 (1998) (noting that a criminal conviction "always satisfies the case-or-controversy requirement"). A criminal prosecution or enforcement or forfeiture action under the CSA satisfies Article III's injury and traceability requirements, and a decision in defendants' favor (*i.e.*, that Section 538 precludes the government from continuing to prosecute certain CSA offenses) would afford them relief.

There are also several "prudential" standing requirements: (1) the litigant must assert his own rights and interests and not those of a third party; (2) federal courts should "refrain[] from adjudicating abstract questions of wide public significance" and "generalized grievances," which are "most appropriately

addressed in the representative branches” of government; and (3) the litigant must “fall within the zone of interests to be protected or regulated by the statute *** in question.” *Valley Forge Christian College v. Am. United for Separation of Church and State, Inc.*, 454 U.S. 464, 474-475 (1982) (internal quotation marks omitted); see *Bond*, 131 S. Ct. at 2362 (criminal defendants must satisfy prudential standing requirements). None of the prudential limits on standing appear to apply here.

This inquiry, however, is inextricably intertwined with the merits of a defendant’s claim under Section 538. *Cf. Bond*, 131 S. Ct. at 2362 (noting that questions of prudential standing and statutory causes of action may be “closely connected” and “sometimes identical”) (quoting *Steel Co. v. Citizens for Better Env’t*, 523 U.S. 83, 96-97 & n.2 (1998)). The government would gain no advantage from framing the statutory interpretation issue as a threshold jurisdictional question rather than one that requires a determination on the merits. Federal courts are generally reluctant to deny standing to criminal defendants who seek to challenge their prosecutions as *ultra vires*. See, e.g., *Bond*, 131 S. Ct. at 2366-2367 (defendant has standing to argue that conviction violated principles of federalism under Tenth Amendment); *United States v. Munoz-Flores*, 495 U.S. 385, 394-396 (1990) (defendant has standing to raise separation-of-powers challenge to special assessment under Constitution’s Origination Clause). Courts have also recognized that individuals have standing to seek redress under statutory appropriations provisions that would likely inure to their benefit. See, e.g., *Clinton v. City of New York*, 524 U.S. 417, 430-431 (1998) (approving municipal and private-party standing to challenge President’s exercise of line-item veto to cancel appropriations provision); *cf. Train v. City of New York*, 420 U.S. 35, 43-49 (1975) (rejecting President’s authority to refuse to spend appropriated funds in context of suit brought by private parties, without questioning standing). Prosecutors may, and should, avoid litigating these questions by focusing on the merits of defendants’ challenges under Section 538.⁷

III. Prosecutors Should Argue In the Alternative That, Even Assuming Section 538 Applies to Criminal Prosecutions, a Particular Defendant Has Not Carried His Burden of Showing That the Prosecution Will Prevent the State from Implementing Its Medical Marijuana Laws.

By its terms, Section 538 does not bar federal prosecution where a defendant’s conduct is not authorized by State law, because the conduct would

Different standing and justiciability concerns may arise in civil cases, particularly if individuals who have not been indicted seek declaratory or injunctive relief from possible prosecution under the CSA in light of Section 538. U.S. Attorney’s Offices should consult with Jody Hunt, Director, Federal Programs Branch, if such issues arise.

not be consistent with the State's efforts to implement its medical marijuana laws. This should be our primary argument where applicable. Moreover, prosecutors should argue that the defendant bears the burden of showing that his conduct was authorized by State law and that his prosecution will prevent the State from implementing its medical marijuana laws.

Section 538 does not alter the elements of a CSA offense or provide for an affirmative defense that negates any particular element. Accordingly, the defendant should bear the burden of proving that he is entitled to relief under Section 538. See, e.g., *Smith v. United States*, 133 S. Ct. 714, 719 (2013) (defendant bears burden of establishing date of his withdrawal from conspiracy, because date goes to statute of limitations and does not negate element of the offense); *id.* at 720 ("A statute-of-limitations defense does not call the criminality of the defendant's conduct into question, but rather reflects a policy judgment by the legislature that the lapse of time may render criminal acts ill suited for prosecution."). Moreover, whether the defendant has satisfied his burden is a question to be addressed pretrial by the judge because it pertains to the government's authority to proceed, and is not properly a question for the jury because it does not go to guilt or innocence. Indeed, because Section 538 limits funding but does not prohibit or authorize conduct, it presents no triable issue for the jury. At most, the statute bars the government prospectively from spending appropriated funds on actions that would prevent the State from implementing its medical marijuana laws. Notably, it provides no remedy for the defendant in the criminal case if funds are spent in violation of Section 538 (although a violation of the section would constitute a violation of the Antideficiency Act, which carries administrative and sometimes criminal penalties). Accordingly, if the indictment was returned prior to December 16, 2014, the only remedy a defendant should be able to seek is a stay until the funding bar expires.⁸ on the ground that the indictment was *ultra vires* and thus void *ab initio*.

Our conclusion that the defendant bears the burden of proof rests on the plain language of the statute, which does not place the burden on the Department of Justice. Compare *Gonzales v. O Centro Espirita Beneficente Uniao Do Vegetal*, 546 U.S. 418, 424 (2006) (Religious Freedom Restoration Act explicitly places burden on government of demonstrating that prohibiting use of controlled substance in religious ceremony represents the least restrictive means of advancing a compelling government interest); 42 U.S.C. § 2000bb-1. Moreover, the defendant is in the best position to explain why his conduct is authorized by State law, and why his federal prosecution will prevent the

⁸ A lengthy stay could lead to violations of the Speedy Trial Act and the Sixth Amendment right to a speedy trial.

implementation of State law. For example, the defendant can produce proof, if any, that he has complied with State licensing requirements, and he can best explain how his cultivation or distribution of marijuana is integral to the State's implementation of its medical marijuana laws. In addition, because the defendant is attempting to thwart a lawful CSA prosecution on a ground unrelated to his guilt or innocence, as the moving party, he should bear the burden of proof. *United States v. Villareal*, 707 F.3d 942, 953 (8th Cir. 2013) (defendant bears burden on motion to dismiss for speedy trial violation); *cf. INS v. Abudu*, 485 U.S. 94 (1988) (movant bears burden on motion to reopen deportation proceeding, just as movant bears burden on new trial motion). Testimony or evidence offered by a defendant in attempting to meet this burden will not be available for use against the defendant at trial on the question of guilt or innocence. *Cf. Simmons v. United States*, 390 U.S. 377, 389-394 (1968) ("when a defendant testifies in support of a motion to suppress evidence on Fourth Amendment grounds, his testimony may not thereafter be admitted against him at trial on the issue of guilt unless he makes no objection"). Note that because Section 538 refers only to State law, it should not be sufficient that the defendant has complied with a local ordinance unless that compliance, in turn, makes him compliant with State law.

Even under its broadest reading, Section 538 should not bar the government from participating in post-conviction appeals or collateral review of a conviction and sentence that have already been memorialized in a judgment. By its terms, Section 538 bars the prospective expenditure of funds to prevent implementation of State medical marijuana laws. It does not purport to unwind past enforcement actions.

IV. The Department Cannot Avoid Section 538's Funding Prohibition by Using Funds from Another Source or Personnel from Another Department or Agency.

Assuming that Section 538 prohibits the use of the Department's 2015 appropriations to fund federal prosecutions and civil enforcement and forfeiture proceedings, the question remains whether we can avoid Section 538's effects by using funds from another source or staffing the case with attorneys from another Department or Agency. The short answer is no. There is no other funding source that can cover the salaries incurred by Department attorneys prosecuting federal offenses or civil enforcement of forfeiture actions and only Department of Justice attorneys may conduct such litigation.

Article II, Section 3 of the Constitution "imposes on the President the duty to 'take Care that the laws be faithfully executed.'" *United States v.*

Valenzuela-Bernal, 458 U.S. 858, 863 (1982). The Take Care Clause places in the Executive Branch “the exclusive authority and absolute discretion whether to prosecute a case.” *United States v. Nixon*, 418 U.S. 683, 693 (1974). See also *Batchelder*, 442 U.S. at 124 (“Whether to prosecute and what charge to file or bring before a grand jury are decisions that generally rest with the prosecutor’s discretion.”); *Bordenkircher v. Hayes*, 434 U.S. 357, 364 (1978) (same).

Congress, in turn, has directed that, “[e]xcept as otherwise authorized by law, the conduct of litigation in which the United States, an agency, or officer thereof is a party, or is interested, and securing evidence therefor, is reserved to the officers of the Department of Justice, under the direction of the Attorney General.” 28 U.S.C. § 516. Although Congress has given a few specialized agencies limited authority to litigate civil matters within their sphere,⁹ it has not done so with respect to our criminal laws. And even when non-DOJ attorneys appear as “special attorneys” “to assist in prosecuting Federal offenses,” they are there only “to assist United States attorneys”; they do not supplant them. See 28 U.S.C. § 543. See also *The Confiscation Cases*, 74 U.S. 454, 458-459 (1869) (“public prosecutions” and civil suits “for the benefit of the United States” are “subject to the direction, and within the control of, Attorney-General”). Because the special attorney would be supervised by an attorney paid by the Department of Justice’s 2015 appropriation, the use of a special attorney will not move the case outside the coverage of Section 538.

Nor can the President transfer funds appropriated to another Department or agency to the Department of Justice for use in prosecuting marijuana offenses. The Appropriations Clause, U.S. Const., Art. 1, § 9, cl. 7, provides that “[n]o money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law.” The President would violate the Appropriations Clause by moving funds in the United States Treasury without congressional authority. See *Office of Personnel Management v. Richmond*, 496 U.S. 414, 416 (1990) (“payments of funds from the Federal Treasury are limited to those authorized by statute”).

Under current policies, the Department will not use the Assets Forfeiture Fund to pay the salaries of our prosecuting attorneys. To be sure, the Assets Forfeiture Fund is available to the Attorney General “without fiscal year limitation” for specified “law enforcement purposes.” 28 U.S.C. § 524(c)(1). Those specified services do not explicitly include personnel expenses of a government employee, and, as a matter of policy, the Attorney General will not pay salary and

⁹ See, e.g., 15 U.S.C. § 78u (Securities and Exchange Commission); 15 U.S.C. § 717t-1 (Federal Energy Regulatory Commission); 29 U.S.C. § 1132 (Department of Labor); 52 U.S.C. § 30106(b)(1) (Federal Election Commission).

benefits from the fund without an affirmative waiver. Moreover, the Attorney General will not use the fund to pay “[e]xpenses that are expressly limited by statute.” See The Attorney General’s Guidelines on Seized and Forfeited Property (July 1990), https://cats.doj.gov/sites/afmlo/policies/Policies/AG_Guidelines.pdf; see also, e.g., (9-118.725, VII.B.5 (the Fund may be used to pay for training related to the asset forfeiture program); 9-118.725, VII.B.6 (the Fund may be used for certain investigative expenses); 9-118.740, VII.D (the Fund may not be used for personnel expenses or other listed expenses); 9-118.742, VII.D.2 (the Fund generally may not be used to pay claims of unsecured creditors)).

V. A Case Should Not Proceed Without Department of Justice Representation.

At least one court has asked whether it may sentence an already-convicted defendant without participation by the Department of Justice. We should respond no. The Department represents the interests of the United States at sentencing, and advocates for a just punishment that takes into account the need to protect the public and to deter future wrongdoing. See Rule 32(4)(A)(iii) (before imposing sentence, court must “provide an attorney for the government an opportunity to speak equivalent to that of the defendant’s attorney”). The Department also has a right to object to findings and conclusions in the presentence report. See *Fed. R. Crim. P. 32(i)* (court must “give to the defendant and an attorney for the government a written summary of *** any information excluded from the presentence report *** and give them a reasonable opportunity to comment on that information”). The government’s adversarial role cannot be replicated by the probation officer or a judicial law clerk. Moreover, if the government is dissatisfied with the sentence, it will not be able to vindicate its interests on appeal unless it has participated in the district court and preserved its claims.

The government also has strong participatory interests on direct appeal, or later on a collateral attack. The government has an interest in advocating for a particular legal position, and in identifying the appropriate facts from the record that best support its position. Even where the government elects to concede error and aligns itself with the defendant, it has a right to present that view to the court. The government does not lose its stake in the proceeding by conceding error. Instead, a court troubled by the lack of an adversary can appoint counsel to defend the judgment as an *amicus*; the *amicus*, however, does not displace the Executive Branch. See, e.g., *Dorsey v. United States*, 132 S. Ct. 2321 (2012) (appointing private counsel to defend the judgment as *amicus curiae* where government conceded application of Fair Sentencing Act). If the appeal

proceeds without the government, there will be no opportunity to reassess prosecutorial policies, or to ask a court to vacate a conviction and dismiss an indictment where the Department determines in retrospect that a particular prosecution should not have been brought. See *Rinaldi v. United States*, 434 U.S. 22 (1977) (court of appeals abused its discretion in denying government's motion to vacate conviction and dismiss indictment as violative of DOJ's successive-prosecution policy); Fed. R. Crim. P. 48(a) (government may dismiss an indictment "with leave of court").

Section 538 also should not be read to bar the Department from defending a conviction obtained prior to its enactment. Section 538's terms prohibit prospective interference with State medical marijuana laws: "None of the funds made available in this Act to the Department of Justice may be used * * * to prevent [the listed] States from implementing their own State laws that authorize the use, distribution, possession, or cultivation of medical marijuana." The statute does not purport to reach back and nullify past investigations and prosecutions. If, however, an indictment was returned prior to December 16, 2014, and the district court finds that prosecution of the pending charges would prevent the State from implementing its medical marijuana laws, prosecutors should report the adverse decision to the Criminal Division's Appellate Section so that the Solicitor General can determine whether to seek appellate review, or, alternatively, whether the government should move to dismiss the indictment or ask the court to stay proceedings until Section 538's funding restriction expires.

Finally, the Department is permitted to use appropriated funds to pay for attorneys to litigate the meaning and effect of Section 538, even if a court ultimately rules that the Department cannot continue to prosecute a case. The Department's litigation efforts in opposition to a Section 538 motion do not prevent implementation of a State law but relate to the meaning of a federal statute. The situation is analogous to the principle that a federal court always has jurisdiction to decide whether it has jurisdiction. See *United States v. Ruiz*, 536 U.S. 622, 628 (2002) (citing *United States v. United Mine Workers of America*, 330 U.S. 258, 291 (1947)); *Armstrong v. Armstrong*, 350 U.S. 568, 574 (1956).

ADDENDUM

Floor Debate Related to Section 538

Rep. Dana Rohrabacher offered the amendment on May 28, 2014. H.R. 4660, Amendment No. 25, <https://www.congress.gov/crec/2014/05/28/CREC-2014-05-28.pdf> (p. 74 of pdf). The amendment was co-sponsored by Democratic Reps. Sam Farr, Earl Blumenauer, Steve Cohen, Jared Polis, Dina Titus, and Barbara Lee, and Republican Reps. Don Young, Tom McClintock, Paul Broun, Steve Stockman, and Justin Amash. *Id.*

1. House Floor Statement by Amendment Co-Sponsor, Made on May 9, 2014
On May 9, 2014, Rep. Dana Rohrabacher said on the House floor:

Mr. Speaker, I rise today to discuss an issue that currently affects more than half the States in our Nation, and that is the inconsistency between Federal and State laws pertaining medical marijuana. Yes, Mr. Speaker, a majority of our Nation's States-Alabama, Alaska, Arizona, California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Kentucky, Maine, Maryland, Massachusetts, Michigan, Mississippi, Montana, Nevada, New Hampshire, New Jersey, New Mexico, Oregon, Rhode Island, Utah, Vermont, Wisconsin, and Washington, as well as the District of Columbia-all have some form of medical marijuana law on the books. Of course this means that these States allow their residents to engage in activities that are expressly prohibited by the Federal Government. To be exact, there are already 26 States that allow doctors to recommend the medical use of marijuana or its derivatives, and many more States are expected to take the step and do the same thing in the near future.

Importantly, the States listed are not dominated by conservatives or liberals. This isn't a Republican or a Democrat issue. Massachusetts, Alaska, Mississippi, and Oregon are hardly the same, politically speaking, in their legislature. Politically speaking, they are not the same. But their legislators and their residents all have recognized the same reality, and that is the potential medical benefits of marijuana and marijuana's derivatives, and they believe that these derivatives and the benefits of marijuana should not be denied to their people.

Unfortunately, however, the Federal Government continues to list marijuana and its derivatives as a schedule I substance, putting it in the same category as heroin, LSD, and other hard drugs.

I have long supported rescheduling marijuana so that it can be researched, prescribed, and used by legitimate health care professionals.

But multi-administrations, both Republican and Democrat alike, have refused to seriously talk about this topic. Instead, a heavy-handed, emotion-based policy continues.

Evidence suggesting that the Federal Government ought to allow the use of marijuana for medical purposes has never had the serious discussion that it deserves. Many desperate patients have defied the Federal Government's blanket ban on the use of marijuana as a remedy for numerous ailments.

The absurdity of this ban was brought home to me over a decade ago when my mother, depressed after undergoing surgery, lost her appetite and was requiring me to spoon-feed her. When I learned that medical marijuana might give her the appetite she needed and, yes, raise her spirits, the illegality of this herb was abundantly clear to me as I was there seeing my mother in the hospital bed, seeing how my mother had lost her appetite and seeing how her spirits were so low, knowing that perhaps marijuana, if the doctor had so ordered, would have been something that could have helped her and helped other people's mothers and children who were suffering the same situation.

The significance of changing-or at least altering-this prohibition could no longer be ignored by me when I was confronted by this over a decade ago. Since that time, the public's interest and support for medical marijuana has increased dramatically. As I mentioned, over half the States allow people with serious illnesses to use marijuana and/or its derivatives for medical purposes.

Recent polls show that the vast majority of the American people support the medical efficacy and use of marijuana for medical purposes: 77 percent according to Pew, 81 percent according to the ABC News poll, and a whopping 85 percent according to a FOX News poll last year. Just as interesting, 60 percent of the American people believe that the Federal Government should not prosecute people who are acting in accordance with State medical marijuana laws, and 72 percent think government efforts to enforce marijuana laws cost more than they are worth. Surprise, surprise, almost three-quarters of Americans believe that the cost of enforcing marijuana laws is far heavier than the benefits of having those laws enforced or having those laws on the books. All those numbers include majorities of both Republicans, Democrats, and, yes, it includes a majority of Independents, as well.

What is the driving force behind this surge of support for a change in Federal policy? It is the realization by patients, researchers, and

physicians that marijuana and its derivatives may offer enormous relief to numerous patients. For example, last year, the famous physician, Sanjay Gupta, released—who is a very prominent physician—released a documentary film in which he explored many of the benefits of medical marijuana. Like so many Americans, he is a relatively new convert to this position. I quote:

We have been terribly and systematically misled for nearly 70 years in the United States, and I apologize for my own role in that.

This is what the doctor said in his documentary.

His documentary explores a number of cases in which patients who have various environmental neurological disabilities were helped by marijuana. Anyone who watches this documentary will see the positive effect that marijuana and its derivatives can have on ailing patients. Dr. Gupta is not alone in his belief that it may prove beneficial to some patients.

The New England Journal of Medicine recently found that a majority of clinicians—a majority of the clinicians surveyed responded that they “would recommend the use of medicinal marijuana in certain situations.”

We have all heard anecdotes of the ability of marijuana to improve patients’ appetites, calm those with anxiety, and reduce the nausea for those who are extremely sick. Most recently, there has been an increased attention on the potential impacts of marijuana on patients who suffer from seizures, as well as those with PTSD.

Some particularly conservative States in our country—Utah, Alabama, Kentucky, and Mississippi, for instance—have recently passed laws allowing patients to access medical marijuana products such as oils that are rich in what they call the Cannabis oil, which is CBD, which has been very helpful with so many patients who are looking for relief for children with seizure disorders. They have found that the CBD helps these children meet this challenge in the families that are suffering across the country watching their children go through this suffering with this type of seizures and disorders.

These laws vary somewhat as to how patients are able to gain access to these products in various States, they differ, the laws differ, but they generally show that patients to be treated with this CBD-rich marijuana product, when administered by a physician and in the course of a State-approved medical study, have proved to be helpful to many people’s health. Under current law, however, CBD, because it is derived from marijuana, is considered a Schedule I drug, and therefore it is prohibited to

do the kind of research that is necessary to put that into the service for our people and to make sure that they have this available for their children and for other people who are suffering.

We can't even do the fundamental research as long as the Federal Government continues to label it the same as heroin or the same as other types of drugs, cocaine and the rest.

Well, we know from what I have said so far that there are numerous people in our country who understand that there are people who can benefit medically, and the people who understand this are not just civilians but medical professionals, as well as scientists.

Also, of particular and growing interest are the benefits that marijuana has for those who suffer from posttraumatic stress disorder, that is PTSD. This is one of the most commonly diagnosed disorders for our military veterans who are returning from overseas duty. Those suffering from PTSD often experience debilitating nightmares, depression, and anxiety; and, according to many of these patients, marijuana is the only thing that helps them alleviate these awful, awful symptoms.

Yet, because of our decades-old policy of not allowing the legitimate use-or even research into the legitimate use-of the medical benefits of marijuana, many individuals that we are talking about, many of these veterans, feel they have no choice but to break the law. Our Nation's heroes who are trying to escape the hellish nightmares of the war that we sent them off to fight are forced into the compromising position of illegal activity just to receive some relief from the pain they are suffering.

Parents who want to treat their children with nonpsychoactive extracts of the marijuana plant are forced to engage in activities that, if caught and convicted under Federal law, would make these parents who are just trying to help their children, it makes them felons-felons.

I would submit that this scenario undermines every legal and moral institution that we want every citizen-we want every citizen-of the United States to respect. It puts our people in an impossible position. It requires them to choose between providing relief for a loved one or breaking the law. In many cases, that behavior is in compliance-we are talking about offering medical marijuana-it is in compliance with State law; but these people who need it, whose family may need it, whose veteran coming home from the war may need it, whose mother is in the hospital who has lost her appetite and is depressed may need it, well, even if it is in compliance with State law, what we have got now is they are still a violation of Federal law, so we end up condemning these people to a crisis

in which their loved ones must either suffer or they must break the law. It is cruel nonsense to put our people through this.

Patients and providers currently run the risk of having a Federal SWAT team-like police force raid their homes or their place of business because of the consumption of a plant which could be growing right in their backyard. The militarization of the police force in order to prevent Grandma from using a medical herb that will ease her pain during her last days on Earth is the type of thing that ought to make every person who believes in liberty and freedom-it should make them shudder, as well as, of course, responsible conservatives who understand we should be making every dollar our government spends count and be doing something that absolutely needs to be done.

The harassment from the Drug Enforcement Agency is something that should not be tolerated in the land of the free. Businesspeople who are licensed and certified to provide doctor-recommended medicine within their own States have seen their businesses locked down, their assets seized, their customers driven away, and their financial lives ruined by very, very aggressive and energetic Federal law enforcers enforcing a law in which we are preventing something that doctors would recommend for the health of their patients that now some way distributing that material would result in the total destruction of that medical professional and his life.

Instead of continuing to finance this repressive and expensive approach, we should be willing to allow patients and small businesses to follow their doctor's advice under the watchful eye of State law enforcement and regulators rather than treating it like something that ought to be eradicated from our society. And, yes, I am sure there are plenty of people around who would love to just continue building our police forces, spending the money; but having them target people who are engaged not in rape or murder or some type of aggressive action on the population but instead have them focus on a doctor who is trying to alleviate the pain of someone who has just gone through an operation or one of our veterans who is suffering some sort of posttrauma from his being overseas, no. To say it is a total waste of money is just an understatement.

The 26 States that I have named have gotten this message. They have been making great strides toward compassion and, yes, towards freedom and, yes, towards a responsible use of limited government money in our country.

Now, after the States have done their job, we need the Federal

Government to do its part. In the near future, I, along with several of my colleagues in both parties, will introduce an amendment to the Commerce-Justice-Science appropriations bill to bring an end to this disruptive, ill-advised, and wasteful policy that we have pushed on our people and oppressed our people with for far too long. Specifically, our amendment would prohibit the Department of Justice from using any of the funds in this bill to prevent States from implementing their own State medical marijuana laws.

I think my conservative friends could benefit from hearing what some of their idols have to say about this. Milton Friedman stated that it is "disgraceful to deny marijuana for medical purposes." Dr. Friedman, whom I knew personally, a personal friend of mine, spent a great deal of time talking about this very issue. He and George Schultz, former Secretary-Dr. Friedman, of course, advised Ronald Reagan when I worked with Ronald Reagan in the White House. As you know, I was a special assistant to President Reagan as well as a Presidential speechwriter for President Reagan for 7 years. There with us was, of course, Dr. Milton Friedman; and he advised us of the nonsense of making marijuana illegal, especially for medical purposes.

Then we have William F. Buckley-another man who advised conservatives like Ronald Reagan-who I read as a young person. In the pages of National Review, which he edited, he wrote:

The stodgy inertia most politicians feel is up against a creeping reality, and that is that marijuana for medical relief is a movement which is attracting voters who are pretty assertive on the subject.

Yes, William F. Buckley was a visionary. He saw what direction the will of the American people would be having, and he foresaw today that the vast majority of the American people do not want the Federal Government wasting limited dollars destroying doctors' lives, preventing research into medical marijuana, and getting in the way of the people of the States who have voted to make this substance legal in their State for medical purposes.

Conservatives in this body-in this body, in this House-who regularly call for a decrease in the size and scope of the Federal Government ought to seriously consider voting for my amendment. Likewise, conservatives in this body who routinely talk about the need for the Federal Government to respect the 10th Amendment of the Constitution and those who believe that Washington should not interfere with the doctor-patient relationship, which we have heard so much about, these people, my conservative

colleagues, ought to seriously consider supporting my amendment, as well.

In fact, if you are on the wrong side of Milton Friedman and William F. Buckley and people like Grover Norquist and George Schultz on the medical marijuana issue, I would suggest to my colleagues that they ought to reconsider the position that they are taking, that it may not be the one that is consistent with the conservative belief in freedom, individual responsibility, and, of course, limited government.

This amendment has been introduced in the past, most recently in 2012, but the difference this time around is that the American people are now demanding the Federal Government respect the majority of the States in our country which have implemented various medical marijuana laws.

The question at this point is whether the American people's Representatives in this House will grant them the wish and accede to what their opinion is and understand that laws are made for these people and their opinions have a right to be heard. I would hope that my fellow Representatives hear the American people's cry, hear those people who are trying to take care of their elderly mother or a veteran coming home or their children who are suffering seizures and say it is a total waste, it is a travesty to use limited dollars, to have a Federal Government stopping a doctor in States that have declared it as legal, prevent that doctor from offering a treatment for these people, our loved ones, Americans throughout our country.

My hope and expectation is that truth and common sense will prevail. I have faith in the American people. And yes, I have faith in my colleagues. I believe that both the American people, given a choice in their lives, they will do the right thing for themselves and their family. I also believe they will do it without bureaucracy, without massive Federal intrusion into their lives. And I also have faith in my colleagues that they will begin to take a second look at this issue and see if what they are doing is consistent with our overall belief in American freedom and personal responsibility.

One final point I would like to make is that, as legislators who have the power of the purse, we have a responsibility to prioritize Federal tax dollars and how they are spent. Our debt has increased by trillions of dollars in just the last few years. This year's deficit is expected to add an additional \$500 billion to the debt, and the CBO estimates that the deficit will only slightly be lower next year before ballooning up again to unacceptable levels. What we are going through is already unacceptable to

most of us.

As we look for places to cut spending, why don't we begin by eliminating those expenditures which the vast majority of Americans believe to be an unjustified exercise of Federal powers. I ask my colleagues to join me in supporting a commonsense amendment that will be a step in the right direction in respecting State medical marijuana laws and will respect the individual liberties that our country believes in.

I would hope that the Federal Government also, finally, we in the Federal Government will understand prioritizing spending, so even if you have questions of how someone making a personal choice somewhere across the country as to whether to use medical marijuana to help a family member who is sick or to stop their own seizures or whatever, yes, even if you don't believe that individuals across our country or the State governments have a right to be able to make those decisions and local voters should be making those determinations, which is what our Founding Fathers wanted, even if you don't believe in that, we should, at the very least, understand that we do not have resources at the Federal level to do everything for everybody.

While showing compassion for thousands of ailing patients across our country, we can also do the right thing, that is the right thing for us to do in terms of balancing our budget and having responsible spending patterns and taxing patterns here in Washington. Here is where it crosses. Here is where the waste of taxpayer dollars and enforcing laws that they have already said they don't want at the State level, forcing this upon them, declaring that someone is not going to have the personal responsibility in his own life to make these decisions, even in States where our people have voted to make this legal in terms of decisionmaking for using medical marijuana, well, even in those States, and all of this in one formula, you still have to understand that we have to deal with a budget; and it is totally inconsistent with a responsible spending pattern to use such limited resources as we have, going into debt in order to fence in doctors and other people who are trying to use medical marijuana around the country and even prevent the research into medical marijuana to show that it might have some benefit. No, that is a travesty and a total waste of our limited resources.

I would call on my conservative colleagues and my liberal colleagues, my Democrat and Republican friends and the people across the country of the United States to look at this issue with an open mind, intelligently look at the issue, look at it with your heart and your brain, and we will come to the conclusion that medical marijuana, especially in those

States in which the people have decided to make medical use of marijuana legal, that it is a total waste of limited Federal funds for us to be focusing the use of those Federal funds on that activity at the State and local levels by people who are being given the choice by doctors as to what medicine they will use.

Let's get the Federal Government out of the areas that it shouldn't be in. That should be something conservatives really support. And so today, I would call on my colleagues to support the amendment that I will be offering, along with Congressman

Blumenauer and others here in the body, to make sure that we get back to the 10th Amendment of the Constitution and put into law that, when it comes to the medical use of marijuana, the Federal Government will not waste its money trying to thwart the will of people throughout our country and the various State legislatures throughout our country.

With that said, Mr. Speaker, I yield back the balance of my time.

160 Cong. Rec. 70, H4020, H4053–55 (daily ed. May 9, 2014) (statement of Rep. Dana Rohrabacher),

<https://www.congress.gov/crec/2014/05/09/CREC-2014-05-09.pdf>.

2. House Floor Statement by Amendment Co-Sponsor, Made on May 28, 2014

During debate over the amendment to the House version of the spending bill, Rep. Dana Rohrabacher, the amendment's co-sponsor, made the following statement:

Tomorrow, I will be offering an amendment to the CJS appropriations bill, along with my colleagues Sam Farr, Don Young, Earl Blumenauer, Tom McClintock, Steve Cohen, Paul Broun, Jared Polis, Steve Stockman, Barbara Lee, Justin Amash, and Dana Titus.

Very simply, our amendment would prohibit the Department of Justice from using funds in the bill from preventing States from implementing their State medical marijuana laws.

Importantly, this amendment gives us an opportunity to show our support and what we really believe about the 10th Amendment to the Constitution, and it gives us an opportunity to support the intentions of our Founding Fathers and Mothers. They never meant for the Federal Government to play the preeminent role in criminal justice.

It should be disturbing to any constitutionalist that the Federal Government insists on the supremacy of laws that allow for the medical use of marijuana.

So far, 28 States and the District of Columbia—that is a majority of the States of the Union—have enacted laws to allow access to medical marijuana or its chemical derivatives. They obviously believe enforcing such restrictions on the medical use of marijuana is a waste of extremely limited resources.

This amendment has solid bipartisan support, and we have the opportunity now, with this amendment, to tell the Department of Justice that they are not permitted to waste limited Federal dollars interfering with the duly- enacted laws of our States concerning medical marijuana.

I urge my colleagues, Democrats and Republicans alike, liberals and conservatives, to support my amendment. Respect State medical marijuana laws.

160 Cong. Rec. 82, H4839, H4878–879 (daily ed. May 28, 2014) (statement of Rep. Dana Rohrabacher), <https://www.congress.gov/crec/2014/05/28/CREC-2014-05-28.pdf>.

3. House Floor Statements in Support of the Amendment, Made on May 29, 2014

Several co-sponsors and supporters of the amendment made statements on the House floor on May 29, 2014, prior to the amendment’s passage in the House. 160 Cong. Rec. 82, H4914, H4982–H4985 (daily ed. May 29, 2014), <http://www.gpo.gov/fdsys/pkg/CREC-2014-05-29/pdf/CREC-2014-05-29.pdf>.

Rep. Dana Rohrabacher said:

Mr. Chairman, I rise to speak in favor of my amendment, which would prohibit the Department of Justice from using any of the funds appropriated in this bill to prevent States from implementing their own medical marijuana laws. Twenty-nine States have enacted laws that allow patients access to medical marijuana and its derivatives, such as CBD oils.

It is no surprise then that public opinion is shifting, too. A recent Pew Research Center survey found that 61 percent of Republicans and a

[whopping] 76 percent of Independents favor making medical marijuana legal and available to their patients who need it.

As I have said, 29 States have already enacted laws that will permit patients access to medical marijuana and their derivatives. By the way, 80 percent of Democrats feel the same way.

Despite this overwhelming shift in public opinion, the Federal Government continues its hard-line oppression against medical marijuana. For those of us who routinely talk about the 10^h Amendment, which we do in conservative ranks, and respect for State laws, this amendment should be a no-brainer.

Our amendment gives all of us an opportunity to show our constituents that we are truly constitutionalists and that we mean what we say when we talk about the importance of the 10th Amendment.

In addition, this also gives us the opportunity to prove that we really do believe in respecting the doctor-patient relationship.

I proudly offer this amendment that has the support of my colleagues on both sides of the aisle. I am joined by Republican cosponsors Don Young, Tom McClintock, Dr. Paul Broun, Steve Stockman, and Justin Amash, as well as Democrat cosponsors Sam Farr, Earl Blumenauer, Steve Cohen, Jared Polis, Barbara Lee, and Dana Titus.

I urge my colleagues to support our commonsense, states' rights, compassionate, fiscally responsible amendment.

160 Cong. Rec. 82, H4914, H4982–83 (daily ed. May 29, 2014) (statement of Rep. Dana Rohrabacher), <http://www.gpo.gov/fdsys/pkg/CREC-2014-05-29/pdf/CREC-2014-05-29.pdf>.

Rep. Thomas Massie said:

Mr. Chair, I am not here to talk about brownies and biscuits. I am here to talk about a serious medical issue, cannabidiol, the CBD oil that comes from the cannabis plant. It is very low in THC and is nonpsychoactive. Research has shown very promising results in children with epilepsy, autism, and other neurological disorders. CBD oil is also showing promising results in adults with Alzheimer's, Parkinson's, and PTSD.

We need to remove the roadblocks to these potential medical breakthroughs. This amendment would do that. The Federal Government should not countermand State law. In this case, the absurd result of that is that medical discoveries are being blocked.

I encourage my colleagues to support this amendment.

160 Cong. Rec. 82, H4914, H4983 (daily ed. May 29, 2014) (statement of Rep. Thomas Massie), <http://www.gpo.gov/fdsys/pkg/CREC-2014-05-29/pdf/CREC-2014-05-29.pdf>.

Rep. Dana Rohrabacher said:

Mr. Chair, I yield 1 minute to the gentleman from Georgia [Rep. Paul Broun], our doctor in the House. We do believe in the doctor-patient relationship and that the government shouldn't interfere.

160 Cong. Rec. 82, H4914, H4984 (daily ed. May 29, 2014) (statement of Rep. Dana Rohrabacher), <http://www.gpo.gov/fdsys/pkg/CREC-2014-05-29/pdf/CREC-2014-05-29.pdf>.

Rep. Paul Broun said:

Mr. Chair, I am a family physician and an addictionologist. Marijuana is addicting if it is used improperly. But used medically, and there are very valid medical reasons to utilize extracts or products from marijuana in medical procedures, it is a very valid medical use under the direction of a doctor. It is actually less dangerous than some narcotics that doctors prescribe all over this country.

Also, this is a states' rights, states' power issue, because many States across the country—in fact, my own State of Georgia is considering allowing the medical use under the direction of a physician. This is a states' rights, Tenth Amendment issue. We need to reserve the states' powers under the Constitution.

Please support this amendment.

160 Cong. Rec. 82, H4914, H4984 (daily ed. May 29, 2014) (statement of Rep. Paul Broun), <http://www.gpo.gov/fdsys/pkg/CREC-2014-05-29/pdf/CREC-2014-05-29.pdf>.

Rep. Earl Blumenauer said:

Mr. Chair, I am listening to our friends on the other side of the aisle in opposition here and the notion about camel's nose, this train has already left the station. Eighteen years ago, the State of California voters approved medical marijuana. We now have 22 States that are doing so.

My good friend from Georgia is right. I mean, there are a million Americans now with the legal right to medical marijuana as prescribed by a physician. The problem is that the Federal Government is getting in the way. The Federal Government makes it harder for doctors and researchers to be able to do what I think my friend from Louisiana wants than it is for parents to self-medicate with buying marijuana for a child with violent epilepsy.

This amendment is important to get the Federal Government out of the way. Let this process work going forward where we can have respect for states' rights and something that makes a huge difference to hundreds of thousands of people around the country now and more in the future.

160 Cong. Rec. 82, H4914, H4984 (daily ed. May 29, 2014) (statement of Rep. Earl Blumenauer), <http://www.gpo.gov/fdsys/pkg/CREC-2014-05-29/pdf/CREC-2014-05-29.pdf>.

Rep. Sam Farr said:

Mr. Chair, I rise in support of this amendment as a coauthor of it and to point out this is six Democrats and six Republicans that are authoring this. There are 33 States, three of which have just passed laws and the Governors have indicated they will sign them.

This is essentially saying, look, if you are following State law, you are a legal resident doing your business under State law, the Feds just can't come in and bust you and bust the doctors and bust the patient. It is more than half the States. So you don't have to have any opinion about the value of marijuana. This doesn't change any laws. This doesn't affect one law, just lists the States that have already legalized it only for medical purposes, only medical purposes, and says, Federal Government, in those States, in those places, you can't bust people. It seems to me a practical, reasonable amendment in this time and age.

160 Cong. Rec. 82, H4914, H4984 (daily ed. May 29, 2014) (statement of Rep. Sam Farr), <http://www.gpo.gov/fdsys/pkg/CREC-2014-05-29/pdf/CREC-2014-05-29.pdf>.

Rep. Dana Titus said:

Mr. Chair, for the District of Columbia and 22 States, including Nevada, with laws in place allowing the legal use of some form of marijuana for medical purposes, this commonsense amendment simply ensures that patients do not have to live in fear when following the laws of their States and the recommendations of their doctors. Physicians in those States will not be prosecuted for prescribing the substance, and local businesses will not be shut down for dispensing the same.

I urge you vote in favor.

160 Cong. Rec. 82, H4914, H4984 (daily ed. May 29, 2014) (statement of Rep. Dana Titus), <http://www.gpo.gov/fdsys/pkg/CREC-2014-05-29/pdf/CREC-2014-05-29.pdf>.

Rep. Barbara Lee said:

I rise in strong support of this bipartisan amendment, which I am proud to cosponsor along with my colleagues. This amendment will provide much needed clarity to patients and businesses in my home State of California and 31 other jurisdictions that provide safe and legal access to medicine. We should allow for the implementation of the will of the voters to comply with State laws rather than undermining our democracy.

In States with medical marijuana laws, patients face uncertainty regarding their treatment, and small business owners who have invested millions creating jobs and revenue have no assurances for the future. It is past time for the Justice Department to stop its unwarranted persecution of medical marijuana and put its resources where they are needed.

In States with medical marijuana laws, people with multiple sclerosis, glaucoma, cancer, HIV, and AIDS and other medical issues continue to face uncertainty when it comes to accessing the medicine that they need to provide some relief. So it is time to pass this. It is time to give these patients the relief that they need.

This is the humanitarian thing to do, it is the democratic thing to do,

and I hope this body will vote for it and pass it on a bipartisan basis. It is long overdue. Enough is enough.

160 Cong. Rec. 82, H4914, H4984 (daily ed. May 29, 2014) (statement of Rep. Barbara Lee), <http://www.gpo.gov/fdsys/pkg/CREC-2014-05-29/pdf/CREC-2014-05-29.pdf>.

Later in the floor debate, Rep. Dana Rohrabacher said:

Mr. Chairman, this is the most incredible debate we have had. Over half the States have already gone through every argument that was presented and decided against what you just heard. There are doctors at every one of those States that participated in a long debate over this and found exactly the opposite of what we have heard today.

Some people are suffering and if a doctor feels that he needs to prescribe something to alleviate that suffering, it is immoral for this government to get in the way, and that is what is happening. The State governments have recognized that a doctor has a right to treat his patient any way he sees fit, and so did our Founding Fathers.

I ask for support of my amendment, and I yield back the balance of my time.

160 Cong. Rec. 82, H4914, H4985 (daily ed. May 29, 2014) (statement of Rep. Dana Rohrabacher), <http://www.gpo.gov/fdsys/pkg/CREC-2014-05-29/pdf/CREC-2014-05-29.pdf>.

4. House Floor Statements in Opposition to the Amendment, Made on May 29, 2014

Rep. Frank Wolf, speaking in opposition to the amendment, said:

The following national medical organizations are currently opposed to medical marijuana: American Medical Association, American Cancer Society, American Glaucoma Society, Glaucoma Research Foundation, American Academy of Pediatrics, American Academy of Child and Adolescent Psychiatry, and American Psychiatric Association.

Also, recent research has demonstrated that marijuana use during teen years decreases IQ rates by an average of eight points.

160 Cong. Rec. 82, H4914, H4983 (daily ed. May 29, 2014) (statement of Rep. Frank Wolf), <http://www.gpo.gov/fdsys/pkg/CREC-2014-05-29/pdf/CREC-2014-05-29.pdf>.

Rep. Andy Harris said:

Mr. Chair, I rise to oppose the amendment. My State is named in the amendment.

Look, everyone supports compassionate, effective medical care for patients with cancer, epilepsy, chronic pain. You will probably hear anecdotal reports, maybe even during the testimony this evening, about how medical marijuana can solve some of these problems.

There are two problems with medical marijuana. First, it is the camel's nose under the tent; and second, the amendment as written would tie the DEA's hands beyond medical marijuana.

With regard to the camel's nose under the tent, let me just quote from the DEA report just published this month: Organizers behind the medical marijuana movement did not really concern themselves with marijuana as a medicine. They just saw it as a means to an end, which is the legalization of marijuana for recreational purposes. They did not deal with ensuring that the product meets the standards of modern medicine: quality, safety, and efficacy.

Because, Mr. Chairman, the term "medical marijuana" is generally used to refer—and this is from the NIH. We respect the NIH. This is the National Institute on Drug Abuse: The term "medical marijuana" is generally used to refer to the whole, unprocessed marijuana plant or its crude extracts.

Mr. Chairman, that is not what medicine is about. Medicine is about refining the components THC and CBD, actually making sure they are efficacious, giving the exact dose, not two joints a day, not a brownie here, a biscuit there. That is not modern medicine. In fact, the DEA supports those studies, looking at the safety and efficacy and dosing regimens for these, THC, CBD. They have licensed some of the drugs.

Mr. Chairman, according to the National Institute on Drug Abuse, medical and street marijuana are not different. Most marijuana sold in dispensaries as medicine, again reading from the National Institute on

Drug Abuse, is the same quality and carries the same health risks as marijuana sold on the street.

Mr. Chairman, we know there are health problems. The problem is that the way the amendment is drafted, in a State like Maryland which has medical marijuana, if we ever legalized it, the amendment would stop the DEA from going after more than medical marijuana.

160 Cong. Rec. 82, H4914, H4983 (daily ed. May 29, 2014) (statement of Rep. Andy Harris), <http://www.gpo.gov/fdsys/pkg/CREC-2014-05-29/pdf/CREC-2014-05-29.pdf>.

Later in the floor debate, Rep. Andy Harris said:

Mr. Chair, marijuana is neither safe nor legal. Let's get it straight. The Controlled Substances Act makes marijuana in the United States illegal because it is not safe.

Mr. Chairman, there is more and more evidence every day that it is not safe. The effect on the brains, developing brains of teenagers and young adults, is becoming more and more clear, as the doctor from Louisiana has talked about, the effect on affect, the effect on mood; it is not safe.

Mr. Chairman, this is not a medicine. This would be like me as a physician saying: You know, I think you need penicillin, go chew on some mold. Of course I wouldn't do that. I write: for 250 milligrams of penicillin q.6 hours times 10 days. I don't write: chew on a mold a couple of times a day.

Mr. Chairman, why don't we have therapeutic tobacco? Nicotine, one of the substances in tobacco, purified is actually useful as a drug to treat autosomal dominant nocturnal frontal lobe epilepsy. Nobody writes a prescription: smoke a couple of cigarettes and cure your epilepsy. But that is what we are being asked to do.

Mr. Chairman, worse than that, this blurs the line in those States that have gone beyond medical marijuana. For instance, in Colorado, under Amendment 64, a person can grow six plants under the new law for general use, but if it is medical marijuana you can grow as many plants as you want as long you can prove you have a medicinal use.

So how is the DEA going to enforce anything when, under this amendment, they are prohibited from going into that person's house growing as many plants as they want, because that is legal under the medical marijuana part of the law, not under the new law?

Mr. Chairman, this is not the right place for this. The Ogden memorandum from this administration clearly states that the Department of Justice does not prioritize prosecution for medical marijuana—clearly states it. They don't do it. This is a solution in search of a problem that opens many other doors to the dangers of marijuana.

60 Cong. Rec. 82, H4914, H4984 (daily ed. May 29, 2014) (statement of Rep. Andy Harris), <http://www.gpo.gov/fdsys/pkg/CREC-2014-05-29/pdf/CREC-2014-05-29.pdf>.

Rep. John Fleming said:

Mr. Chairman, let me say that in this discussion you may have heard reference to the 10th Amendment and the Commerce Clause. Let me address that. I want to get that out of the way, because I have talked tremendously over the past few days and weeks about the dangers of marijuana.

This controversy came before the U.S. Supreme Court in 2005 in *Gonzales v. Raich*. The Supreme Court reviewed the Federal Government's authority to enforce the Controlled Substances Act. In a 6–3 decision, Justice Scalia, a strong states' rights advocate, concurred with the majority ruling that the CSA does not violate the Commerce Clause or the principles of State sovereignty.

Just to read what he said:

Not only is it impossible to distinguish controlled substances manufactured and distributed intrastate from controlled substances manufactured and distributed interstate, but it hardly makes sense to speak in such terms.

Drugs like marijuana are fungible commodities, as the Court explains marijuana that is grown at home and possessed for personal use is never more than an instant from the interstate market, and this is so whether or not the possession is for medicinal use or lawful use under the laws of a particular State.

Again, if we want to make a statement principle on the Tenth Amendment, fine, but don't do it on the backs of our kids and our grandkids. This is dangerous for them. How do we know this? The health risks: brain development, schizophrenia, increased risk of stroke. A study at Northwestern University recently showed profound changes in the brain just in casual marijuana users. Heart complications, three times normal in such use. Recent studies shows, as I said, not only damage in certain structures in the brain, but the same structures that attend to motivation, which again underlines the amotivational syndrome that we have all heard about.

So again, it is settled law. The Supreme Court has already spoken on the constitutionality of this. It is settled when it comes to medicine. We hear anecdotal stories, but there is no widespread accepted use of marijuana, medicinal marijuana and so forth. There is no acceptance of this by the medical community. It is not evidence-based. Fine, if you want to do research on it, but this will take away the ability of the Department of Justice to protect our young people.

160 Cong. Rec. 82, H4914, H4983–84 (daily ed. May 29, 2014) (statement of Rep. John Fleming), <http://www.gpo.gov/fdsys/pkg/CREC-2014-05-29/pdf/CREC-2014-05-29.pdf>.

Later in the floor debate, Rep. John Fleming said:

Look, first of all, let's be clear, marijuana is an addicting substance. It is schedule I, it is against Federal law, it was passed that way into the CSA in 1970.

What this amendment would do is, it wouldn't change the law, it would just make it difficult, if not impossible, for the DEA and the Department of Justice to enforce the law.

Members on my side have been criticizing President Obama for selective enforcement of ObamaCare and for immigration and other laws like that. So now we are going to start going down the road of selective enforcement for our drug policy.

Medicinal marijuana, what is it exactly? Folks, I can tell you it is nothing more than the end run around the laws against the legalization of marijuana. There is nothing medical or medicinal about it. It is not

accepted by physicians. Oh, somebody claims it may do something for glaucoma, perhaps. Well, maybe it will, maybe it won't. But there are a lot more drugs that do a much better job than that and they are much safer.

But the most important thing I want everybody to know, Mr. Chairman, today is the fact that marijuana is highly addicting. It is the most common diagnosis for addiction in admissions to rehab centers for young people. Why in the world do we want to take away drug enforcement and leave our young people out there vulnerable? Yes, you say it can only be used by adults. Well, if it is sitting around on shelves at home the kids are going to get into it. We are already hearing about Colorado fourth-graders dealing with it. We hear about more poisonings in the emergency room.

If you look at other places that have gone down this road like Alaska, they retracted from their legalization. So I don't think we should accept at all that this is history in the making and that we are never going to go back. You look at Amsterdam, they put a lot more restrictions back in the control even in that very, very liberal nation.

So for that and many reasons I would just say tonight from a legal standpoint this amendment would not be constitutional. Our laws are currently constitutional, as found so in 2005 by the Supreme Court. And this is an extremely dangerous drug for our children and future adults and future generations.

160 Cong. Rec. 82, H4914, H4984–85 (daily ed. May 29, 2014) (statement of Rep. John Fleming), <http://www.gpo.gov/fdsys/pkg/CREC-2014-05-29/pdf/CREC-2014-05-29.pdf>.

5. House Floor Statement in Support of the Amendment, Made on June 19, 2014

On June 19, 2014, Rep. Alcee Hastings said:

Mr. Speaker, I rise today to express my support for the medical marijuana provision that came before the House of Representatives for a vote on May 30, 2014-H. Amdt. 748 to H.R. 4460-an amendment to prohibit the use of funds to prevent certain States from implementing their own State laws that authorize the use, distribution, possession, or cultivation of medical marijuana.

Had I voted on May 30, 2014, I would have voted in favor of H. Amdt. 748 to H.R. 4460, which was offered by Rep. Dana Rohrabacher to the FY

2015 Commerce, Justice, and Science (CSJ) Appropriations bill. The amendment was agreed to by recorded vote: 219-189.

Specifically, the bill is a bipartisan appropriations measure that looks to prohibit the Drug Enforcement Agency (DEA) from spending funds to arrest state-licensed medical marijuana patients and providers. Many of my colleagues and their constituencies agree that patients who are allowed to purchase and consume medical marijuana in their respective states should not be punished by the federal government.

I believe that we must modernize our federal laws to reflect the updated approaches to medical marijuana use, and allow states to determine the parameters, practices, and effects of legalization. Mr. Speaker, 22 states and the District of Columbia have legalized marijuana for medical use. In my home state of Florida, the majority of voters support the legalization of marijuana for medical use, and I stand behind them.

Mr. Speaker, I support the legalization of marijuana for medical use, and remain committed to protecting citizens nationwide that are the subject to detainment for use despite their medical needs.

160 Cong. Rec. 97, H5562, E1034 (daily ed. June 20, 2014) (statement of Rep. Alcee Hastings),
<https://www.congress.gov/crec/2014/05/09/CREC-2014-05-09.pdf>.

**COUNTY OF SAN LUIS OBISPO
DEPARTMENT OF PLANNING AND BUILDING
STAFF REPORT**

Planning Commission



Promoting the wise use of land
Helping build great communities

MEETING DATE July 9, 2015	CONTACT/PHONE Airlin M. Singewald (805) 781-5198 asingewald@co.slo.ca.us	APPLICANT Ethnobotanica	FILE NO. DRC2014-00070
EFFECTIVE DATE July 23, 2015			
SUBJECT Hearing to consider a request by ETHNOBOTANICA for a Minor Use Permit to establish a medical marijuana dispensary and construct related tenant improvements in an existing 2,636 square-foot commercial/office suite, which is part of an existing 11,675 square-foot building. The 2.72-acre parcel is in the Commercial Service land use category and is located at 2122 Hutton Road, approximately 450 feet north of the Highway 101/Highway 166 off-ramp, approximately 3 miles south of the community of Nipomo. The site is in the South County planning area.			
RECOMMENDED ACTION Approve Minor Use Permit DRC2014-00070 based on the findings listed in Exhibit A and the conditions listed in Exhibit B.			
ENVIRONMENTAL DETERMINATION A Class 3 categorical exemption was issued on June 2, 2015 (ED14-252).			
LAND USE CATEGORY Commercial Service	COMBINING DESIGNATION None	ASSESSOR PARCEL NUMBER 090-301-064	SUPERVISOR DISTRICT(S) 4
PLANNING AREA STANDARDS: Limitation on Use for Commercial Service (CS) Land Use Category Does the project meet applicable Planning Area Standards: Yes – see discussion			
LAND USE ORDINANCE STANDARDS: Medical Marijuana Dispensaries Does the project conform to the Land Use Ordinance Standards: Yes – see discussion			
EXISTING USES: Metal building with tenants including a sanitation company and security contractor			
SURROUNDING LAND USE CATEGORIES AND USES: <i>North:</i> Commercial Service / vacant <i>South:</i> Commercial Service / RV storage		<i>East:</i> Agriculture / Highway 101 <i>West:</i> Residential Suburban / residence, Nipomo Creek	
OTHER AGENCY / ADVISORY GROUP INVOLVEMENT: The project was referred to: Public Works, Environmental Health, Building Division, Sheriff, Cal Fire, Santa Barbara County, City of Santa Maria, and South County Advisory Council			
TOPOGRAPHY: Gently sloping to moderately sloping		VEGETATION: Ornamental trees and turf grass	
PROPOSED SERVICES: Water supply: On-site well Sewage Disposal: Individual septic Fire Protection: Cal Fire		ACCEPTANCE DATE: March 7, 2015	
ADDITIONAL INFORMATION MAY BE OBTAINED BY CONTACTING THE DEPARTMENT OF PLANNING & BUILDING AT: COUNTY GOVERNMENT CENTER γ SAN LUIS OBISPO γ CALIFORNIA 93408 γ (805) 781-5600 γ FAX: (805) 781-1242			

Agenda Item No: 16 • Meeting Date: November 3, 2015
Presented By: Resident of Nipomo
Rec'd prior to the meeting & posted on: November 2, 2015

DISCUSSION

The proposed project is a request to establish a medical marijuana dispensary in an existing commercial building. According to Land Use Ordinance Section 22.30.225, minor use permit approval is required to establish a medical marijuana dispensary. Minor use permits are normally reviewed by a Planning Department Hearing Officer; however, the Planning Director may elevate minor use permits to the Planning Commission for projects that may generate substantial public controversy or involve significant land use policy decisions. The Planning Director has elevated this project to the Planning Commission based on the controversial nature of medical marijuana and concerns raised by the community, the South County Advisory Council, and the Sheriff's Department.

Background

In 1996, California voters approved Proposition 215, the Compassionate Use Act (CUA) exempting certain patients and their primary caregivers from criminal liability under state law for the possession and cultivation of marijuana. In 2004, Senate Bill 420 became law and enacted the Medical Marijuana Program Act (MMP). The MMP requires the California Department of Public Health to establish and maintain a program for the voluntary registration of qualified medical marijuana patients and their primary caregivers through a statewide identification card system.

On August 1, 2006 the Board of Supervisors authorized the San Luis Obispo County Public Health Department (PHD) to implement the State Medical Marijuana Identification Card (MMIC) program. The proposed fee ordinance was introduced on October 24, 2006. The Board of Supervisors adopted the fee schedule on November 14, 2006 and the program commenced on December 14, 2006.

On February 6, 2007, the Board of Supervisors adopted Ordinance Number 3114 relating to the establishment of medical marijuana dispensaries, which amended the Inland Land Use Ordinance by adding a new Section 22.30.225 to govern dispensary applications.

Past proposals are summarized below:

- **Connella Minor Use Permit DRC2006-00159.** This project was proposed on Ramada Drive in Templeton and requested a waiver of the ordinance requirement for 1,000 feet of separation between the dispensary and a playground. The dispensary was located between 925 and 1,004 feet from the playground depending on the measurement technique and was separated from the playground by Highway 101. It was approved by the Planning Commission and denied on appeal to the Board of Supervisors on April 8, 2008.
- **Gross/Brody Minor Use Permit DRC2009-00044.** This project was proposed on North Frontage Road in Nipomo. Although the proposed dispensary met the 1,000 foot separation requirement for the uses described in the ordinance (schools, libraries, parks, playgrounds, and recreation or youth centers), it was located within 94 feet of a private gymnastics studio that primarily served children. It was denied by the Planning Commission and the denial was upheld by the Board of Supervisors on appeal on August 24, 2010.
- **Murray Minor Use Permit DRC2010-00070.** This project was proposed on South 4th Street in Oceano and requested a waiver of the ordinance requirement for 1,000 feet of separation between the dispensary and a park (the dispensary was proposed within 922 feet of Oceano Park). It was approved by the Planning Commission and denied on appeal to the Board of Supervisors on March 12, 2012.

Updated California Case Law, and State Attorney General and Federal Government Involvement

The California Supreme Court recently confirmed that local jurisdictions may regulate medical marijuana dispensaries pursuant to their inherent police powers and land use authority. (See *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal.4th 729.) In its opinion, the Court concluded:

“We thus conclude that neither the CUA nor the MMP expressly or impliedly preempts the authority of California cities and counties, under their traditional land use and police powers, to allow, restrict, limit, or entirely exclude facilities that distribute medical marijuana, and to enforce such policies by nuisance actions.”

In 2008, the California Attorney General issued “Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use,” which are attached to this staff report as Attachment 9. Those Guidelines are intended, in part, to “help patients and primary caregivers understand how they may cultivate, transport, possess and use medical marijuana under California law.”

For its part, the federal government has continued to list marijuana as a Schedule 1 controlled substance under the Federal Controlled Substances Act, meaning that it is still a crime to manufacture, distribute, or possess marijuana pursuant to federal law. However, in December 2014 U.S. Congress passed a spending bill, which included a provision limiting the Justice Department’s ability to take criminal action against state-licensed individuals or operations that are acting in full compliance with the medical marijuana laws of their states. Specifically, the bill states, “None of the funds made available in this act to the Department of Justice may be used...to prevent...states...from implementing their own state laws that authorize the use, distribution, possession, or cultivation of medical marijuana.”

LAND USE ORDINANCE STANDARDS

Section 22.30.225 – General Retail

Land Use Ordinance Section 22.30.225 (attached) establishes special use standards for medical marijuana dispensaries. The project’s compliance with these standards is described below.

Location

Medical Marijuana Dispensaries shall be located outside of the CBD, a minimum of 1,000 feet from any pre-school, elementary school, high school, library, park, playground, recreation or youth center. Distance shall be measured from the building which contains the Medical Marijuana Dispensary to the property line of the enumerated use using a direct straight line measurement.

This section uses similar criteria as the California Attorney General’s August 2008 guidelines¹ which prohibit the smoking of medical marijuana within 1,000 feet of a school, recreation center, or youth center; however, it applies to the location of dispensaries (not just smoking marijuana) and adds libraries, parks, and playgrounds to the list.

Staff has measured the 1,000 foot distance requirement using GeoView, an up-to-date software application used to obtain accurate measurements of distance. This software allows staff to apply a specific radius around a property. Using this software application, staff has determined that the building where the dispensary is proposed is not located within 1,000 feet of any pre-school, elementary school, high school, library, park, playground, recreation or youth center. The nearest sensitive use is Preisker

¹ See Attachment 9 to this staff report, page 6; B. Enforcement Guidelines (1.) Location of Use.

Park located about 4,300 feet to the south in the City of Santa Maria. The proposed project therefore complies with the location requirement of the ordinance.

Table 1: Distance to Sensitive Uses

Sensitive Use	Address	Distance from Dispensary
Preisker Park	330 Hidden Pines Way, Santa Maria	4,300 feet to the south
Tommie Kunst Junior High School	930 Hidden Pines Way, Santa Maria	5,300 feet to the southwest
All About Kids Preschool	613 N. Elizabeth Street, Santa Maria	14,400 feet to the south
Santa Maria Public Library	421 S. McClelland Street, Santa Maria	18,000 feet to the south
Nipomo Public Library	918 W. Tefft Street, Nipomo	21,000 feet to the northwest
Boys and Girls Club	901 N. Railroad Avenue, Santa Maria	13,000 feet to the southwest

Limitation on use

The following use limitations apply to proposed medical marijuana dispensaries:

- a. *Hours of operation are limited to 11:00 a.m. to 6 p.m. seven days per week.*
- b. *No person under age of 18 shall be permitted in the dispensary at any time except in the presence of his/her parent or guardian.*
- c. *No retail sales of paraphernalia as defined in Health and Safety Code section 11364.5 are permitted at the dispensary.*
- d. *No cultivation of medical marijuana is permitted at the dispensary or on dispensary property.*

The proposed project complies with these use limitations.

Employees

All staff/employees employed by the Medical Marijuana Dispensary must be 21 years of age or older.

The applicant's proposal meets this requirement.

Security Plan

A security plan shall be submitted with the Minor Use Permit Application that includes lighting, security video cameras, alarm systems, and secure area for medical marijuana storage. The security plan shall include a requirement that there be at least 30 business days of surveillance video (that captures both inside and outside images) stored on an ongoing basis. The video system for the security cameras must be located in a locked, tamper-proof compartment.

In addition to this ordinance standard, the Attorney General's guidelines also require that, "Collectives and cooperatives should provide adequate security to ensure that patients are safe and that the surrounding homes or businesses are not negatively impacted by nuisance activity such as loitering or crime."

The applicant has provided a detailed operations plan, floor plan, and security plan (see Attachment 6), which meet the criteria of the ordinance. The security plan includes indoor/outdoor video surveillance and alarm system by Sentinel Security and an onsite guard by Bomar Security for 10 hours per day, 7 days per week. Security will assist in opening and closing of the facility, including escorting employees

to their vehicles after closing. Security will also be responsible for verifying that each person entering the facility is a medical marijuana patient, caregiver, employee, or other allowed person.

The proposed project was referred to the Sheriff's Office for review and comment. In a response, dated January 20, 2014, Chief Deputy Rob Reid stated "Based on a historical need for increased measures at locations involving medical marijuana dispensaries to protect against burglary and/or robbery, we anticipate an increased workload due to calls for service and reported crimes if this project is approved." This response concludes that the Sheriff's Office has limited resources and may not be able to meet the need for increased patrol efforts that could result from the project.

The purpose of the security plan is to minimize demands on law enforcement resources.

Displayed notice

Each dispensary, inside of the dispensary itself, shall display in a manner legible and visible to its clientele:

- a. *Notice that persons under the age of 18 are not allowed in the dispensary except in the presence of his/her parent or guardian;*
- b. *Notice that there is no consumption of medical marijuana in the vicinity of the dispensary.*

The proposed project is conditioned to comply with this requirement.

Sheriff notification

A condition to establishment of a Medical Marijuana Dispensary shall be notification to the Sheriff's Department informing it of the name, location, and contact information for the owner/operator of the dispensary.

The proposed project is conditioned to comply with this requirement.

Section 22.18.050 – Required Number of Parking Spaces

The parking requirement for retail uses is 1 space for every 300 square feet of sales area plus 1 space per 600 square feet of storage area. Based on the site plan and space usage of the tenant space, approximately 50 percent of the 2,136 square-foot space is dedicated to sales uses with the remainder dedicated to storage or non-sales areas. Based on these use areas and the corresponding parking requirements, the project is required to provide six on-site parking spaces. With 11 dedicated on-site parking spaces, the project meets this requirement.

Use Area	Square Footage	Requirement	Spaces Required
Sales Area	1,068	1 space / 300 SF	4
Storage Area	1,068	1 space / 600 SF	2
Total Area	2,136		6

PLANNING AREA STANDARDS

Section 22.98.072(C)(1) – Commercial Service (CS) Land Use Category Limitation on Use

This standard prohibits certain allowable CS uses (e.g. agricultural processing, broadcasting studios, etc.) in the South County planning area. The list of prohibited uses does not include Medical Marijuana

Dispensaries or General Retail establishments. Therefore, dispensaries are allowable on the project site per Section 22.30.030.

COMMUNITY ADVISORY GROUP COMMENTS

The proposed project was reviewed by the South County Advisory Council (SCAC) on February 23, 2015. On an 8-2 vote, SCAC recommended denial of the proposed dispensary based on public safety concerns due to "...very limited availability of Sheriff's deputies deployed in the South County, and potential crime problems associated with medical marijuana dispensaries."

AGENCY REVIEW

County Sheriff	In a response, dated January 20, 2014, Chief Deputy Rob Reid stated "Based on a historical need for increased measures at locations involving medical marijuana dispensaries to protect against burglary and/or robbery, we anticipate an increased workload due to calls for service and reported crimes if this project approved." This response concludes that the Sheriff's Office has limited resources and may not be able to meet the need for increased patrol efforts that could result from the project.
Public Works	In a response, dated April 22, 2015, Glenn Marshall indicated that based on review of the project's traffic study (see Attachment 8), Public Works has no traffic concerns. Road improvement fees would be required. Most northerly driveway to be limited to egress only.
Cal Trans	Reviewed the traffic study and has no concerns regarding impacts to Highway 101 / Highway 166 interchange.

ATTACHMENTS

1. Exhibit A – Findings
2. Exhibit B – Conditions of Approval
3. CEQA Notice of Exemption
4. Referral Responses
5. Graphics – Vicinity map, land use category map, and floor plans
6. Ethnobotanica Security and Operations Plan
7. Applicable Land Use Ordinance Section – 22.30.225
8. Traffic Study (Orosz Engineering Group; April 13, 2015)
9. Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use (State of California Attorney General; August 2008)

Staff report prepared by Airlin M. Singewald, Senior Planner, and reviewed by Bill Robeson, Deputy Director – Permitting.

Assembly Bill No. 243

CHAPTER 688

An act to add Article 6 (commencing with Section 19331), Article 13 (commencing with Section 19350), and Article 17 (commencing with Section 19360) to Chapter 3.5 of Division 8 of the Business and Professions Code, to add Section 12029 to the Fish and Game Code, to add Sections 11362.769 and 11362.777 to the Health and Safety Code, and to add Section 13276 to the Water Code, relating to medical marijuana, and making an appropriation therefor.

[Approved by Governor October 9, 2015. Filed with
Secretary of State October 9, 2015.]

LEGISLATIVE COUNSEL'S DIGEST

AB 243, Wood. Medical marijuana.

Existing law, the Compassionate Use Act of 1996, an initiative measure enacted by the approval of Proposition 215 at the November 5, 1996, statewide general election, authorizes the use of marijuana for medical purposes. Existing law enacted by the Legislature requires the establishment of a program for the issuance of identification cards to qualified patients so that they may lawfully use marijuana for medical purposes, and requires the establishment of guidelines for the lawful cultivation of marijuana grown for medical use. Existing law provides for the licensure of various professions by boards or bureaus within the Department of Consumer Affairs. Existing law, the Sherman Food, Drug, and Cosmetic Law, provides for the regulation of food, drugs, devices, and cosmetics, as specified. A violation of that law is a crime.

This bill would require the Department of Food and Agriculture, the Department of Pesticide Regulation, the State Department of Public Health, the Department of Fish and Wildlife, and the State Water Resources Control Board to promulgate regulations or standards relating to medical marijuana and its cultivation, as specified. The bill would also require various state agencies to take specified actions to mitigate the impact that marijuana cultivation has on the environment. By requiring cities, counties, and their local law enforcement agencies to coordinate with state agencies to enforce laws addressing the environmental impacts of medical marijuana cultivation, and by including medical marijuana within the Sherman Act, the bill would impose a state-mandated local program.

This bill would require a state licensing authority to charge each licensee under the act a licensure and renewal fee, as applicable, and would further require the deposit of those collected fees into an account specific to that licensing authority in the Medical Marijuana Regulation and Safety Act Fund, which this bill would establish. This bill would impose certain fines

and civil penalties for specified violations of the Medical Marijuana Regulation and Safety Act, and would require moneys collected as a result of these fines and civil penalties to be deposited into the Medical Cannabis Fines and Penalties Account, which this bill would establish within the fund. Moneys in the fund and each account of the fund would be available upon appropriation of the Legislature.

This bill would authorize the Director of Finance to provide an initial operating loan from the General Fund to the Medical Marijuana Regulation and Safety Act Fund of up to \$10,000,000, and would appropriate \$10,000,000 from the Medical Marijuana Regulation and Safety Act Fund to the Department of Consumer Affairs to begin the activities of the bureau.

This bill would provide that its provisions are severable.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

This bill would become operative only if AB 266 and SB 643 of the 2015–16 Regular Session are enacted and take effect on or before January 1, 2016.

Appropriation: yes.

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

SECTION 1. Article 6 (commencing with Section 19331) is added to Chapter 3.5 of Division 8 of the Business and Professions Code, to read:

Article 6. Licensed Cultivation Sites

19331. The Legislature finds and declares all of the following:

(a) The United States Environmental Protection Agency has not established appropriate pesticide tolerances for, or permitted the registration and lawful use of, pesticides on cannabis crops intended for human consumption pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.).

(b) The use of pesticides is not adequately regulated due to the omissions in federal law, and cannabis cultivated in California for California patients can and often does contain pesticide residues.

(c) Lawful California medical cannabis growers and caregivers urge the Department of Pesticide Regulation to provide guidance, in absence of federal guidance, on whether the pesticides currently used at most cannabis

cultivation sites are actually safe for use on cannabis intended for human consumption.

19332. (a) The Department of Food and Agriculture shall promulgate regulations governing the licensing of indoor and outdoor cultivation sites.

(b) The Department of Pesticide Regulation, in consultation with the Department of Food and Agriculture, shall develop standards for the use of pesticides in cultivation, and maximum tolerances for pesticides and other foreign object residue in harvested cannabis.

(c) The State Department of Public Health shall develop standards for the production and labeling of all edible medical cannabis products.

(d) The Department of Food and Agriculture, in consultation with the Department of Fish and Wildlife and the State Water Resources Control Board, shall ensure that individual and cumulative effects of water diversion and discharge associated with cultivation do not affect the instream flows needed for fish spawning, migration, and rearing, and the flows needed to maintain natural flow variability.

(e) The Department of Food and Agriculture shall have the authority necessary for the implementation of the regulations it adopts pursuant to this chapter. The regulations shall do all of the following:

(1) Provide that weighing or measuring devices used in connection with the sale or distribution of medical cannabis are required to meet standards equivalent to Division 5 (commencing with Section 12001).

(2) Require that cannabis cultivation by licensees is conducted in accordance with state and local laws related to land conversion, grading, electricity usage, water usage, agricultural discharges, and similar matters. Nothing in this chapter, and no regulation adopted by the department, shall be construed to supersede or limit the authority of the State Water Resources Control Board, regional water quality control boards, or the Department of Fish and Wildlife to implement and enforce their statutory obligations or to adopt regulations to protect water quality, water supply, and natural resources.

(3) Establish procedures for the issuance and revocation of unique identifiers for activities associated with a cannabis cultivation license, pursuant to Article 8 (commencing with Section 19337). All cannabis shall be labeled with the unique identifier issued by the Department of Food and Agriculture.

(4) Prescribe standards, in consultation with the bureau, for the reporting of information as necessary related to unique identifiers, pursuant to Article 8 (commencing with Section 19337).

(f) The Department of Pesticide Regulation, in consultation with the State Water Resources Control Board, shall promulgate regulations that require that the application of pesticides or other pest control in connection with the indoor or outdoor cultivation of medical cannabis meets standards equivalent to Division 6 (commencing with Section 11401) of the Food and Agricultural Code and its implementing regulations.

(g) State cultivator license types issued by the Department of Food and Agriculture include:

(1) Type 1, or “specialty outdoor,” for outdoor cultivation using no artificial lighting of less than or equal to 5,000 square feet of total canopy size on one premises, or up to 50 mature plants on noncontiguous plots.

(2) Type 1A, or “specialty indoor,” for indoor cultivation using exclusively artificial lighting of less than or equal to 5,000 square feet of total canopy size on one premises.

(3) Type 1B, or “specialty mixed-light,” for cultivation using a combination of natural and supplemental artificial lighting at a maximum threshold to be determined by the licensing authority, of less than or equal to 5,000 square feet of total canopy size on one premises.

(4) Type 2, or “small outdoor,” for outdoor cultivation using no artificial lighting between 5,001 and 10,000 square feet, inclusive, of total canopy size on one premises.

(5) Type 2A, or “small indoor,” for indoor cultivation using exclusively artificial lighting between 5,001 and 10,000 square feet, inclusive, of total canopy size on one premises.

(6) Type 2B, or “small mixed-light,” for cultivation using a combination of natural and supplemental artificial lighting at a maximum threshold to be determined by the licensing authority, between 5,001 and 10,000 square feet, inclusive, of total canopy size on one premises.

(7) Type 3, or “outdoor,” for outdoor cultivation using no artificial lighting from 10,001 square feet to one acre, inclusive, of total canopy size on one premises. The Department of Food and Agriculture shall limit the number of licenses allowed of this type.

(8) Type 3A, or “indoor,” for indoor cultivation using exclusively artificial lighting between 10,001 and 22,000 square feet, inclusive, of total canopy size on one premises. The Department of Food and Agriculture shall limit the number of licenses allowed of this type.

(9) Type 3B, or “mixed-light,” for cultivation using a combination of natural and supplemental artificial lighting at a maximum threshold to be determined by the licensing authority, between 10,001 and 22,000 square feet, inclusive, of total canopy size on one premises. The Department of Food and Agriculture shall limit the number of licenses allowed of this type.

(10) Type 4, or “nursery,” for cultivation of medical cannabis solely as a nursery. Type 4 licensees may transport live plants.

19333. An employee engaged in commercial cannabis cultivation activity shall be subject to Wage Order 4-2001 of the Industrial Welfare Commission.

SEC. 2. Article 13 (commencing with Section 19350) is added to Chapter 3.5 of Division 8 of the Business and Professions Code, to read:

Article 13. Funding

19350. Each licensing authority shall establish a scale of application, licensing, and renewal fees, based upon the cost of enforcing this chapter, as follows:

(a) Each licensing authority shall charge each licensee a licensure and renewal fee, as applicable. The licensure and renewal fee shall be calculated to cover the costs of administering this chapter. The licensure fee may vary depending upon the varying costs associated with administering the various regulatory requirements of this chapter as they relate to the nature and scope of the different licensure activities, including, but not limited to, the track and trace program required pursuant to Section 19335, but shall not exceed the reasonable regulatory costs to the licensing authority.

(b) The total fees assessed pursuant to this chapter shall be set at an amount that will fairly and proportionately generate sufficient total revenue to fully cover the total costs of administering this chapter.

(c) All license fees shall be set on a scaled basis by the licensing authority, dependent on the size of the business.

(d) The licensing authority shall deposit all fees collected in a fee account specific to that licensing authority, to be established in the Medical Marijuana Regulation and Safety Act Fund. Moneys in the licensing authority fee accounts shall be used, upon appropriation of the Legislature, by the designated licensing authority for the administration of this chapter.

19351. (a) The Medical Marijuana Regulation and Safety Act Fund is hereby established within the State Treasury. Moneys in the fund shall be available upon appropriation by the Legislature. Notwithstanding Section 16305.7 of the Government Code, the fund shall include any interest and dividends earned on the moneys in the fund.

(b) (1) Funds for the establishment and support of the regulatory activities pursuant to this chapter shall be advanced as a General Fund or special fund loan, and shall be repaid by the initial proceeds from fees collected pursuant to this chapter or any rule or regulation adopted pursuant to this chapter, by January 1, 2022. Should the initial proceeds from fees not be sufficient to repay the loan, moneys from the Medical Cannabis Fines and Penalties Account shall be made available to the bureau, by appropriation of the Legislature, to repay the loan.

(2) Funds advanced pursuant to this subdivision shall be appropriated to the bureau, which shall distribute the moneys to the appropriate licensing authorities, as necessary to implement the provisions of this chapter.

(3) The Director of Finance may provide an initial operating loan from the General Fund to the Medical Marijuana Regulation and Safety Act Fund that does not exceed ten million dollars (\$10,000,000).

(c) Except as otherwise provided, all moneys collected pursuant to this chapter as a result of fines or penalties imposed under this chapter shall be deposited directly into the Medical Marijuana Fines and Penalties Account, which is hereby established within the fund, and shall be available, upon appropriation by the Legislature to the bureau, for the purposes of funding the enforcement grant program pursuant to subdivision (d).

(d) (1) The bureau shall establish a grant program to allocate moneys from the Medical Cannabis Fines and Penalties Account to state and local entities for the following purposes:

(A) To assist with medical cannabis regulation and the enforcement of this chapter and other state and local laws applicable to cannabis activities.

(B) For allocation to state and local agencies and law enforcement to remedy the environmental impacts of cannabis cultivation.

(2) The costs of the grant program under this subdivision shall, upon appropriation by the Legislature, be paid for with moneys in the Medical Cannabis Fines and Penalties Account.

(3) The grant program established by this subdivision shall only be implemented after the loan specified in this section is repaid.

19352. The sum of ten million dollars (\$10,000,000) is hereby appropriated from the Medical Marijuana Regulation and Safety Act Fund to the Department of Consumer Affairs to begin the activities of the Bureau of Medical Marijuana Regulation. Funds appropriated pursuant to this section shall not include moneys received from fines or penalties.

SEC. 3. Article 17 (commencing with Section 19360) is added to Chapter 3.5 of Division 8 of the Business and Professions Code, to read:

Article 17. Penalties and Violations

19360. (a) A person engaging in cannabis activity without a license and associated unique identifiers required by this chapter shall be subject to civil penalties of up to twice the amount of the license fee for each violation, and the department, state or local authority, or court may order the destruction of medical cannabis associated with that violation. Each day of operation shall constitute a separate violation of this section. All civil penalties imposed and collected pursuant to this section shall be deposited into the Marijuana Production and Environment Mitigation Fund established pursuant to Section 31013 of the Revenue and Taxation Code.

(b) If an action for civil penalties is brought against a licensee pursuant to this chapter by the Attorney General, the penalty collected shall be deposited into the General Fund. If the action is brought by a district attorney or county counsel, the penalty collected shall be paid to the treasurer of the county in which the judgment was entered. If the action is brought by a city attorney or city prosecutor, the penalty collected shall be paid to the treasurer of the city or city and county in which the judgment was entered. If the action is brought by a city attorney and is adjudicated in a superior court located in the unincorporated area or another city in the same county, the penalty shall be paid one-half to the treasurer of the city in which the complaining attorney has jurisdiction and one-half to the treasurer of the county in which the judgment is entered.

(c) Notwithstanding subdivision (a), criminal penalties shall continue to apply to an unlicensed person or entity engaging in cannabis activity in violation of this chapter, including, but not limited to, those individuals covered under Section 11362.7 of the Health and Safety Code.

SEC. 4. Section 12029 is added to the Fish and Game Code, to read:

12029. (a) The Legislature finds and declares all of the following:

(1) The environmental impacts associated with marijuana cultivation have increased, and unlawful water diversions for marijuana irrigation have a detrimental effect on fish and wildlife and their habitat, which are held in trust by the state for the benefit of the people of the state.

(2) The remediation of existing marijuana cultivation sites is often complex and the permitting of these sites requires greater department staff time and personnel expenditures. The potential for marijuana cultivation sites to significantly impact the state's fish and wildlife resources requires immediate action on the part of the department's lake and streambed alteration permitting staff.

(b) In order to address unlawful water diversions and other violations of the Fish and Game Code associated with marijuana cultivation, the department shall establish the watershed enforcement program to facilitate the investigation, enforcement, and prosecution of these offenses.

(c) The department, in coordination with the State Water Resources Control Board, shall establish a permanent multiagency task force to address the environmental impacts of marijuana cultivation. The multiagency task force, to the extent feasible and subject to available Resources, shall expand its enforcement efforts on a statewide level to ensure the reduction of adverse impacts of marijuana cultivation on fish and wildlife and their habitats throughout the state.

(d) In order to facilitate the remediation and permitting of marijuana cultivation sites, the department shall adopt regulations to enhance the fees on any entity subject to Section 1602 for marijuana cultivation sites that require remediation. The fee schedule established pursuant to this subdivision shall not exceed the fee limits in Section 1609.

SEC. 5. Section 11362.769 is added to the Health and Safety Code, to read:

11362.769. Indoor and outdoor medical marijuana cultivation shall be conducted in accordance with state and local laws related to land conversion, grading, electricity usage, water usage, water quality, woodland and riparian habitat protection, agricultural discharges, and similar matters. State agencies, including, but not limited to, the State Board of Forestry and Fire Protection, the Department of Fish and Wildlife, the State Water Resources Control Board, the California regional water quality control boards, and traditional state law enforcement agencies shall address environmental impacts of medical marijuana cultivation and shall coordinate, when appropriate, with cities and counties and their law enforcement agencies in enforcement efforts.

SEC. 6. Section 11362.777 is added to the Health and Safety Code, to read:

11362.777. (a) The Department of Food and Agriculture shall establish a Medical Cannabis Cultivation Program to be administered by the secretary, except as specified in subdivision (c), shall administer this section as it pertains to the cultivation of medical marijuana. For purposes of this section and Chapter 3.5 (commencing with Section 19300) of the Business and Professions Code, medical cannabis is an agricultural product.

(b) (1) A person or entity shall not cultivate medical marijuana without first obtaining both of the following:

(A) A license, permit, or other entitlement, specifically permitting cultivation pursuant to these provisions, from the city, county, or city and county in which the cultivation will occur.

(B) A state license issued by the department pursuant to this section.

(2) A person or entity shall not submit an application for a state license issued by the department pursuant to this section unless that person or entity has received a license, permit, or other entitlement, specifically permitting cultivation pursuant to these provisions, from the city, county, or city and county in which the cultivation will occur.

(3) A person or entity shall not submit an application for a state license issued by the department pursuant to this section if the proposed cultivation of marijuana will violate the provisions of any local ordinance or regulation, or if medical marijuana is prohibited by the city, county, or city and county in which the cultivation is proposed to occur, either expressly or otherwise under principles of permissive zoning.

(c) (1) Except as otherwise specified in this subdivision, and without limiting any other local regulation, a city, county, or city and county, through its current or future land use regulations or ordinance, may issue or deny a permit to cultivate medical marijuana pursuant to this section. A city, county, or city and county may inspect the intended cultivation site for suitability prior to issuing a permit. After the city, county, or city and county has approved a permit, the applicant shall apply for a state medical marijuana cultivation license from the department. A locally issued cultivation permit shall only become active upon licensing by the department and receiving final local approval. A person shall not cultivate medical marijuana prior to obtaining both a permit from the city, county, or city and county and a state medical marijuana cultivation license from the department.

(2) A city, county, or city and county that issues or denies conditional licenses to cultivate medical marijuana pursuant to this section shall notify the department in a manner prescribed by the secretary.

(3) A city, county, or city and county's locally issued conditional permit requirements must be at least as stringent as the department's state licensing requirements.

(4) If a city, county, or city and county does not have land use regulations or ordinances regulating or prohibiting the cultivation of marijuana, either expressly or otherwise under principles of permissive zoning, or chooses not to administer a conditional permit program pursuant to this section, then commencing March 1, 2016, the division shall be the sole licensing authority for medical marijuana cultivation applicants in that city, county, or city and county.

(d) (1) The secretary may prescribe, adopt, and enforce regulations relating to the implementation, administration, and enforcement of this part, including, but not limited to, applicant requirements, collections, reporting, refunds, and appeals.

(2) The secretary may prescribe, adopt, and enforce any emergency regulations as necessary to implement this part. Any emergency regulation prescribed, adopted, or enforced pursuant to this section shall be adopted in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and, for purposes of that chapter, including Section 11349.6 of the Government Code, the adoption of the regulation is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health and safety, and general welfare.

(3) The secretary may enter into a cooperative agreement with a county agricultural commissioner to carry out the provisions of this chapter, including, but not limited to, administration, investigations, inspections, licensing and assistance pertaining to the cultivation of medical marijuana. Compensation under the cooperative agreement shall be paid from assessments and fees collected and deposited pursuant to this chapter and shall provide reimbursement to the county agricultural commissioner for associated costs.

(e) (1) The department, in consultation with, but not limited to, the Bureau of Medical Marijuana Regulation, the State Water Resources Control Board, and the Department of Fish and Wildlife, shall implement a unique identification program for medical marijuana. In implementing the program, the department shall consider issues, including, but not limited to, water use and environmental impacts. In implementing the program, the department shall ensure that:

(A) Individual and cumulative effects of water diversion and discharge associated with cultivation do not affect the instream flows needed for fish spawning, migration, and rearing, and the flows needed to maintain natural flow variability.

(B) Cultivation will not negatively impact springs, riparian wetlands, and aquatic habitats.

(2) The department shall establish a program for the identification of permitted medical marijuana plants at a cultivation site during the cultivation period. The unique identifier shall be attached at the base of each plant. A unique identifier, such as, but not limited to, a zip tie, shall be issued for each medical marijuana plant.

(A) Unique identifiers will only be issued to those persons appropriately licensed by this section.

(B) Information associated with the assigned unique identifier and licensee shall be included in the trace and track program specified in Section 19335 of the Business and Professions Code.

(C) The department may charge a fee to cover the reasonable costs of issuing the unique identifier and monitoring, tracking, and inspecting each medical marijuana plant.

(D) The department may promulgate regulations to implement this section.

(3) The department shall take adequate steps to establish protections against fraudulent unique identifiers and limit illegal diversion of unique identifiers to unlicensed persons.

(f) (1) A city, county, or city and county that issues or denies licenses to cultivate medical marijuana pursuant to this section shall notify the department in a manner prescribed by the secretary.

(2) Unique identifiers and associated identifying information administered by a city or county shall adhere to the requirements set by the department and be the equivalent to those administered by the department.

(g) This section does not apply to a qualified patient cultivating marijuana pursuant to Section 11362.5 if the area he or she uses to cultivate marijuana does not exceed 100 square feet and he or she cultivates marijuana for his or her personal medical use and does not sell, distribute, donate, or provide marijuana to any other person or entity. This section does not apply to a primary caregiver cultivating marijuana pursuant to Section 11362.5 if the area he or she uses to cultivate marijuana does not exceed 500 square feet and he or she cultivates marijuana exclusively for the personal medical use of no more than five specified qualified patients for whom he or she is the primary caregiver within the meaning of Section 11362.7 and does not receive remuneration for these activities, except for compensation provided in full compliance with subdivision (c) of Section 11362.765. For purposes of this section, the area used to cultivate marijuana shall be measured by the aggregate area of vegetative growth of live marijuana plants on the premises. Exemption from the requirements of this section does not limit or prevent a city, county, or city and county from regulating or banning the cultivation, storage, manufacture, transport, provision, or other activity by the exempt person, or impair the enforcement of that regulation or ban.

SEC. 7. Section 13276 is added to the Water Code, to read:

13276. (a) The multiagency task force, the Department of Fish and Wildlife and State Water Resources Control Board pilot project to address the Environmental Impacts of Cannabis Cultivation, assigned to respond to the damages caused by marijuana cultivation on public and private lands in California, shall continue its enforcement efforts on a permanent basis and expand them to a statewide level to ensure the reduction of adverse impacts of marijuana cultivation on water quality and on fish and wildlife throughout the state.

(b) Each regional board shall, and the State Water Resources Control Board may, address discharges of waste resulting from medical marijuana cultivation and associated activities, including by adopting a general permit, establishing waste discharge requirements, or taking action pursuant to Section 13269. In addressing these discharges, each regional board shall include conditions to address items that include, but are not limited to, all of the following:

(1) Site development and maintenance, erosion control, and drainage features.

(2) Stream crossing installation and maintenance.

(3) Riparian and wetland protection and management.

- (4) Soil disposal.
- (5) Water storage and use.
- (6) Irrigation runoff.
- (7) Fertilizers and soil.
- (8) Pesticides and herbicides.
- (9) Petroleum products and other chemicals.
- (10) Cultivation-related waste.
- (11) Refuse and human waste.
- (12) Cleanup, restoration, and mitigation.

SEC. 8. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 9. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

SEC. 10. This measure shall become operative only if both Assembly Bill 266 and Senate Bill 643 of the 2015–16 Regular Session are enacted and become operative.

O

Assembly Bill No. 266

CHAPTER 689

An act to amend Sections 27 and 101 of, to add Section 205.1 to, and to add Chapter 3.5 (commencing with Section 19300) to Division 8 of, the Business and Professions Code, to amend Section 9147.7 of the Government Code, to amend Section 11362.775 of the Health and Safety Code, to add Section 147.5 to the Labor Code, and to add Section 31020 to the Revenue and Taxation Code, relating to medical marijuana.

[Approved by Governor October 9, 2015. Filed with
Secretary of State October 9, 2015.]

LEGISLATIVE COUNSEL'S DIGEST

AB 266, Bonta. Medical marijuana.

(1) Existing law, the Compassionate Use Act of 1996, an initiative measure enacted by the approval of Proposition 215 at the November 5, 1996, statewide general election, authorizes the use of marijuana for medical purposes. Existing law enacted by the Legislature requires the establishment of a program for the issuance of identification cards to qualified patients so that they may lawfully use marijuana for medical purposes, and requires the establishment of guidelines for the lawful cultivation of marijuana grown for medical use. Existing law provides for the licensure of various professions by boards or bureaus within the Department of Consumer Affairs. Existing law, the Sherman Food, Drug, and Cosmetic Law, provides for the regulation of food, drugs, devices, and cosmetics, as specified. A violation of that law is a crime.

This bill, among other things, would enact the Medical Marijuana Regulation and Safety Act for the licensure and regulation of medical marijuana and would establish within the Department of Consumer Affairs the Bureau of Medical Marijuana Regulation, under the supervision and control of the Director of Consumer Affairs. The bill would require the director to administer and enforce the provisions of the act.

This bill would also require the Board of Equalization, in consultation with the Department of Food and Agriculture, to adopt a system for reporting the movement of commercial cannabis and cannabis products.

This bill would impose certain fines and civil penalties for specified violations of the act, and would require moneys collected as a result of these fines and civil penalties to be deposited into the Medical Cannabis Fines and Penalties Account.

(2) Under existing law, certain persons with identification cards, who associate within the state in order collectively or cooperatively to cultivate marijuana for medical purposes, are not solely on the basis of that fact subject to specified state criminal sanctions.

This bill would repeal these provisions upon the issuance of licenses by licensing authorities pursuant to the Medical Marijuana Regulation and Safety Act, as specified, and would instead provide that actions of licensees with the relevant local permits, in accordance with the act and applicable local ordinances, are not offenses subject to arrest, prosecution, or other sanction under state law.

(3) This bill would provide that its provisions are severable.

(4) Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

(6) The bill would provide that it shall become operative only if SB 643 and AB 243 of the 2015–16 Regular Session are also enacted and become operative.

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

SECTION 1. Section 27 of the Business and Professions Code is amended to read:

27. (a) Each entity specified in subdivisions (c), (d), and (e) shall provide on the Internet information regarding the status of every license issued by that entity in accordance with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code). The public information to be provided on the Internet shall include information on suspensions and revocations of licenses issued by the entity and other related enforcement action, including accusations filed pursuant to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code) taken by the entity relative to persons, businesses, or facilities subject to licensure or regulation by the entity. The information may not include personal information, including home telephone number, date of birth, or social security number. Each entity shall disclose a licensee's address of record. However, each entity shall allow a licensee to provide a post office box number or other alternate address, instead of his or her home address, as the address of record. This section shall not preclude an entity from also requiring a licensee, who has provided a post office box number or other alternative mailing address as his or her address of record, to provide a

physical business address or residence address only for the entity's internal administrative use and not for disclosure as the licensee's address of record or disclosure on the Internet.

(b) In providing information on the Internet, each entity specified in subdivisions (c) and (d) shall comply with the Department of Consumer Affairs' guidelines for access to public records.

(c) Each of the following entities within the Department of Consumer Affairs shall comply with the requirements of this section:

(1) The Board for Professional Engineers, Land Surveyors, and Geologists shall disclose information on its registrants and licensees.

(2) The Bureau of Automotive Repair shall disclose information on its licensees, including auto repair dealers, smog stations, lamp and brake stations, smog check technicians, and smog inspection certification stations.

(3) The Bureau of Electronic and Appliance Repair, Home Furnishings, and Thermal Insulation shall disclose information on its licensees and registrants, including major appliance repair dealers, combination dealers (electronic and appliance), electronic repair dealers, service contract sellers, and service contract administrators.

(4) The Cemetery and Funeral Bureau shall disclose information on its licensees, including cemetery brokers, cemetery salespersons, cemetery managers, crematory managers, cemetery authorities, crematories, cremated remains disposers, embalmers, funeral establishments, and funeral directors.

(5) The Professional Fiduciaries Bureau shall disclose information on its licensees.

(6) The Contractors' State License Board shall disclose information on its licensees and registrants in accordance with Chapter 9 (commencing with Section 7000) of Division 3. In addition to information related to licenses as specified in subdivision (a), the board shall also disclose information provided to the board by the Labor Commissioner pursuant to Section 98.9 of the Labor Code.

(7) The Bureau for Private Postsecondary Education shall disclose information on private postsecondary institutions under its jurisdiction, including disclosure of notices to comply issued pursuant to Section 94935 of the Education Code.

(8) The California Board of Accountancy shall disclose information on its licensees and registrants.

(9) The California Architects Board shall disclose information on its licensees, including architects and landscape architects.

(10) The State Athletic Commission shall disclose information on its licensees and registrants.

(11) The State Board of Barbering and Cosmetology shall disclose information on its licensees.

(12) The State Board of Guide Dogs for the Blind shall disclose information on its licensees and registrants.

(13) The Acupuncture Board shall disclose information on its licensees.

(14) The Board of Behavioral Sciences shall disclose information on its licensees, including licensed marriage and family therapists, licensed clinical

social workers, licensed educational psychologists, and licensed professional clinical counselors.

(15) The Dental Board of California shall disclose information on its licensees.

(16) The State Board of Optometry shall disclose information regarding certificates of registration to practice optometry, statements of licensure, optometric corporation registrations, branch office licenses, and fictitious name permits of its licensees.

(17) The Board of Psychology shall disclose information on its licensees, including psychologists, psychological assistants, and registered psychologists.

(d) The State Board of Chiropractic Examiners shall disclose information on its licensees.

(e) The Structural Pest Control Board shall disclose information on its licensees, including applicators, field representatives, and operators in the areas of fumigation, general pest and wood destroying pests and organisms, and wood roof cleaning and treatment.

(f) The Bureau of Medical Marijuana Regulation shall disclose information on its licensees.

(g) "Internet" for the purposes of this section has the meaning set forth in paragraph (6) of subdivision (f) of Section 17538.

SEC. 2. Section 101 of the Business and Professions Code is amended to read:

101. The department is comprised of the following:

- (a) The Dental Board of California.
- (b) The Medical Board of California.
- (c) The State Board of Optometry.
- (d) The California State Board of Pharmacy.
- (e) The Veterinary Medical Board.
- (f) The California Board of Accountancy.
- (g) The California Architects Board.
- (h) The Bureau of Barbering and Cosmetology.
- (i) The Board for Professional Engineers and Land Surveyors.
- (j) The Contractors' State License Board.
- (k) The Bureau for Private Postsecondary Education.
- (l) The Bureau of Electronic and Appliance Repair, Home Furnishings, and Thermal Insulation.
- (m) The Board of Registered Nursing.
- (n) The Board of Behavioral Sciences.
- (o) The State Athletic Commission.
- (p) The Cemetery and Funeral Bureau.
- (q) The State Board of Guide Dogs for the Blind.
- (r) The Bureau of Security and Investigative Services.
- (s) The Court Reporters Board of California.
- (t) The Board of Vocational Nursing and Psychiatric Technicians.
- (u) The Landscape Architects Technical Committee.
- (v) The Division of Investigation.

- (w) The Bureau of Automotive Repair.
- (x) The Respiratory Care Board of California.
- (y) The Acupuncture Board.
- (z) The Board of Psychology.
- (aa) The California Board of Podiatric Medicine.
- (ab) The Physical Therapy Board of California.
- (ac) The Arbitration Review Program.
- (ad) The Physician Assistant Committee.
- (ae) The Speech-Language Pathology and Audiology Board.
- (af) The California Board of Occupational Therapy.
- (ag) The Osteopathic Medical Board of California.
- (ah) The Naturopathic Medicine Committee.
- (ai) The Dental Hygiene Committee of California.
- (aj) The Professional Fiduciaries Bureau.
- (ak) The State Board of Chiropractic Examiners.
- (al) The Bureau of Real Estate.
- (am) The Bureau of Real Estate Appraisers.
- (an) The Structural Pest Control Board.
- (ao) The Bureau of Medical Marijuana Regulation.
- (ap) Any other boards, offices, or officers subject to its jurisdiction by law.

SEC. 3. Section 205.1 is added to the Business and Professions Code, to read:

205.1. Notwithstanding subdivision (a) of Section 205, the Medical Marijuana Regulation and Safety Act Fund is a special fund within the Professions and Vocations Fund, and is subject to subdivision (b) of Section 205.

SEC. 4. Chapter 3.5 (commencing with Section 19300) is added to Division 8 of the Business and Professions Code, to read:

CHAPTER 3.5. MEDICAL MARIJUANA REGULATION AND SAFETY ACT

Article 1. Definitions

19300. This act shall be known and may be cited as the Medical Marijuana Regulation and Safety Act.

19300.5. For purposes of this chapter, the following definitions shall apply:

(a) "Accrediting body" means a nonprofit organization that requires conformance to ISO/IEC 17025 requirements and is a signatory to the International Laboratory Accreditation Cooperation Mutual Recognition Arrangement for Testing.

(b) "Applicant," for purposes of Article 4 (commencing with Section 19319), means the following:

(1) Owner or owners of a proposed facility, including all persons or entities having ownership interest other than a security interest, lien, or encumbrance on property that will be used by the facility.

(2) If the owner is an entity, "owner" includes within the entity each person participating in the direction, control, or management of, or having a financial interest in, the proposed facility.

(3) If the applicant is a publicly traded company, "owner" means the chief executive officer or any person or entity with an aggregate ownership interest of 5 percent or more.

(c) "Batch" means a specific quantity of medical cannabis or medical cannabis products that is intended to have uniform character and quality, within specified limits, and is produced according to a single manufacturing order during the same cycle of manufacture.

(d) "Bureau" means the Bureau of Medical Marijuana Regulation within the Department of Consumer Affairs.

(e) "Cannabinoid" or "phytocannabinoid" means a chemical compound that is unique to and derived from cannabis.

(f) "Cannabis" means all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. "Cannabis" also means the separated resin, whether crude or purified, obtained from marijuana. "Cannabis" also means marijuana as defined by Section 11018 of the Health and Safety Code as enacted by Chapter 1407 of the Statutes of 1972. "Cannabis" 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 which is incapable of germination. For the purpose of this chapter, "cannabis" does not mean "industrial hemp" as defined by Section 81000 of the Food and Agricultural Code or Section 11018.5 of the Health and Safety Code.

(g) "Cannabis concentrate" means manufactured cannabis that has undergone a process to concentrate the cannabinoid active ingredient, thereby increasing the product's potency. An edible medical cannabis product is not considered food, as defined by Section 109935 of the Health and Safety Code, or a drug, as defined by Section 109925 of the Health and Safety Code.

(h) "Caregiver" or "primary caregiver" has the same meaning as that term is defined in Section 11362.7 of the Health and Safety Code.

(i) "Certificate of accreditation" means a certificate issued by an accrediting body to a licensed testing laboratory, entity, or site to be registered in the state.

(j) "Chief" means Chief of the Bureau of Medical Marijuana Regulation within the Department of Consumer Affairs.

(k) “Commercial cannabis activity” includes cultivation, possession, manufacture, processing, storing, laboratory testing, labeling, transporting, distribution, or sale of medical cannabis or a medical cannabis product, except as set forth in Section 19319, related to qualifying patients and primary caregivers.

(l) “Cultivation” means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.

(m) “Delivery” means the commercial transfer of medical cannabis or medical cannabis products from a dispensary, up to an amount determined by the bureau to a primary caregiver or qualified patient as defined in Section 11362.7 of the Health and Safety Code, or a testing laboratory. “Delivery” also includes the use by a dispensary of any technology platform owned and controlled by the dispensary, or independently licensed under this chapter, that enables qualified patients or primary caregivers to arrange for or facilitate the commercial transfer by a licensed dispensary of medical cannabis or medical cannabis products.

(n) “Dispensary” means a facility where medical cannabis, medical cannabis products, or devices for the use of medical cannabis or medical cannabis products are offered, either individually or in any combination, for retail sale, including an establishment that delivers, pursuant to express authorization by local ordinance, medical cannabis and medical cannabis products as part of a retail sale.

(o) “Dispensing” means any activity involving the retail sale of medical cannabis or medical cannabis products from a dispensary.

(p) “Distribution” means the procurement, sale, and transport of medical cannabis and medical cannabis products between entities licensed pursuant to this chapter.

(q) “Distributor” means a person licensed under this chapter to engage in the business of purchasing medical cannabis from a licensed cultivator, or medical cannabis products from a licensed manufacturer, for sale to a licensed dispensary.

(r) “Dried flower” means all dead medical cannabis that has been harvested, dried, cured, or otherwise processed, excluding leaves and stems.

(s) “Edible cannabis product” means manufactured cannabis that is intended to be used, in whole or in part, for human consumption, including, but not limited to, chewing gum. An edible medical cannabis product is not considered food as defined by Section 109935 of the Health and Safety Code or a drug as defined by Section 109925 of the Health and Safety Code.

(t) “Fund” means the Medical Marijuana Regulation and Safety Act Fund established pursuant to Section 19351.

(u) “Identification program” means the universal identification certificate program for commercial medical cannabis activity authorized by this chapter.

(v) “Labor peace agreement” means an agreement between a licensee and a bona fide labor organization that, at a minimum, protects the state’s proprietary interests by prohibiting labor organizations and members from engaging in picketing, work stoppages, boycotts, and any other economic interference with the applicant’s business. This agreement means that the

applicant has agreed not to disrupt efforts by the bona fide labor organization to communicate with, and attempt to organize and represent, the applicant's employees. The agreement shall provide a bona fide labor organization access at reasonable times to areas in which the applicant's employees work, for the purpose of meeting with employees to discuss their right to representation, employment rights under state law, and terms and conditions of employment. This type of agreement shall not mandate a particular method of election or certification of the bona fide labor organization.

(w) "Licensing authority" means the state agency responsible for the issuance, renewal, or reinstatement of the license, or the state agency authorized to take disciplinary action against the license.

(x) "Cultivation site" means a facility where medical cannabis is planted, grown, harvested, dried, cured, graded, or trimmed, or that does all or any combination of those activities, that holds a valid state license pursuant to this chapter, and that holds a valid local license or permit.

(y) "Manufacturer" means a person that conducts the production, preparation, propagation, or compounding of manufactured medical cannabis, as described in subdivision (ae), or medical cannabis products either directly or indirectly or by extraction methods, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis at a fixed location that packages or repackages medical cannabis or medical cannabis products or labels or relabels its container, that holds a valid state license pursuant to this chapter, and that holds a valid local license or permit.

(z) "Testing laboratory" means a facility, entity, or site in the state that offers or performs tests of medical cannabis or medical cannabis products and that is both of the following:

(1) Accredited by an accrediting body that is independent from all other persons involved in the medical cannabis industry in the state.

(2) Registered with the State Department of Public Health.

(aa) "Transporter" means a person issued a state license by the bureau to transport medical cannabis or medical cannabis products in an amount above a threshold determined by the bureau between facilities that have been issued a state license pursuant to this chapter.

(ab) "Licensee" means a person issued a state license under this chapter to engage in commercial cannabis activity.

(ac) "Live plants" means living medical cannabis flowers and plants, including seeds, immature plants, and vegetative stage plants.

(ad) "Lot" means a batch, or a specifically identified portion of a batch, having uniform character and quality within specified limits. In the case of medical cannabis or a medical cannabis product produced by a continuous process, "lot" means a specifically identified amount produced in a unit of time or a quantity in a manner that ensures its having uniform character and quality within specified limits.

(ae) "Manufactured cannabis" means raw cannabis that has undergone a process whereby the raw agricultural product has been transformed into a concentrate, an edible product, or a topical product.

(af) "Manufacturing site" means a location that produces, prepares, propagates, or compounds manufactured medical cannabis or medical cannabis products, directly or indirectly, by extraction methods, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and is owned and operated by a licensee for these activities.

(ag) "Medical cannabis," "medical cannabis product," or "cannabis product" means a product containing cannabis, including, but not limited to, concentrates and extractions, intended to be sold for use by medical cannabis patients in California pursuant to the Compassionate Use Act of 1996 (Proposition 215), found at Section 11362.5 of the Health and Safety Code. For the purposes of this chapter, "medical cannabis" does not include "industrial hemp" as defined by Section 81000 of the Food and Agricultural Code or Section 11018.5 of the Health and Safety Code.

(ah) "Nursery" means a licensee that produces only clones, immature plants, seeds, and other agricultural products used specifically for the planting, propagation, and cultivation of medical cannabis.

(ai) "Permit," "local license," or "local permit" means an official document granted by a local jurisdiction that specifically authorizes a person to conduct commercial cannabis activity in the local jurisdiction.

(aj) "Person" means an individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit and includes the plural as well as the singular number.

(ak) "State license," "license," or "registration" means a state license issued pursuant to this chapter.

(al) "Topical cannabis" means a product intended for external use. A topical cannabis product is not considered a drug as defined by Section 109925 of the Health and Safety Code.

(am) "Transport" means the transfer of medical cannabis or medical cannabis products from the permitted business location of one licensee to the permitted business location of another licensee, for the purposes of conducting commercial cannabis activity authorized pursuant to this chapter.

19300.7. License classifications pursuant to this chapter are as follows:

- (a) Type 1 = Cultivation; Specialty outdoor; Small.
- (b) Type 1A = Cultivation; Specialty indoor; Small.
- (c) Type 1B = Cultivation; Specialty mixed-light; Small.
- (d) Type 2 = Cultivation; Outdoor; Small.
- (e) Type 2A = Cultivation; Indoor; Small.
- (f) Type 2B = Cultivation; Mixed-light; Small.
- (g) Type 3 = Cultivation; Outdoor; Medium.
- (h) Type 3A = Cultivation; Indoor; Medium.
- (i) Type 3B = Cultivation; Mixed-light; Medium.
- (j) Type 4 = Cultivation; Nursery.
- (k) Type 6 = Manufacturer 1.
- (l) Type 7 = Manufacturer 2.
- (m) Type 8 = Testing.

- (n) Type 10 = Dispensary; General.
- (o) Type 10A = Dispensary; No more than three retail sites.
- (p) Type 11 = Distribution.
- (q) Type 12 = Transporter.

Article 2. Administration

19302. There is in the Department of Consumer Affairs the Bureau of Medical Marijuana Regulation, under the supervision and control of the director. The director shall administer and enforce the provisions of this chapter.

19303. Protection of the public shall be the highest priority for the bureau in exercising its licensing, regulatory, and disciplinary functions under this chapter. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

19304. The bureau shall make and prescribe reasonable rules as may be necessary or proper to carry out the purposes and intent of this chapter and to enable it to exercise the powers and duties conferred upon it by this chapter, not inconsistent with any statute of this state, including particularly this chapter and Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. For the performance of its duties, the bureau has the power conferred by Sections 11180 to 11191, inclusive, of the Government Code.

19305. Notice of any action of the licensing authority required by this chapter to be given may be signed and given by the director or an authorized employee of the department and may be made personally or in the manner prescribed by Section 1013 of the Code of Civil Procedure.

19306. (a) The bureau may convene an advisory committee to advise the bureau and licensing authorities on the development of standards and regulations pursuant to this chapter, including best practices and guidelines to ensure qualified patients have adequate access to medical cannabis and medical cannabis products. The advisory committee members shall be determined by the chief.

(b) The advisory committee members may include, but not be limited to, representatives of the medical marijuana industry, representatives of medical marijuana cultivators, appropriate local and state agencies, appropriate local and state law enforcement, physicians, environmental and public health experts, and medical marijuana patient advocates.

19307. A licensing authority may make or cause to be made such investigation as it deems necessary to carry out its duties under this chapter.

19308. For any hearing held pursuant to this chapter, the director, or a licensing authority, may delegate the power to hear and decide to an administrative law judge. Any hearing before an administrative law judge shall be pursuant to the procedures, rules, and limitations prescribed in

Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

19309. In any hearing before a licensing authority pursuant to this chapter, the licensing authority may pay any person appearing as a witness at the hearing at the request of the licensing authority pursuant to a subpoena, his or her actual, necessary, and reasonable travel, food, and lodging expenses, not to exceed the amount authorized for state employees.

19310. The department may on its own motion at any time before a penalty assessment is placed into effect and without any further proceedings, review the penalty, but such review shall be limited to its reduction.

Article 3. Enforcement

19311. Grounds for disciplinary action include:

(a) Failure to comply with the provisions of this chapter or any rule or regulation adopted pursuant to this chapter.

(b) Conduct that constitutes grounds for denial of licensure pursuant to Chapter 3 (commencing with Section 490) of Division 1.5.

(c) Any other grounds contained in regulations adopted by a licensing authority pursuant to this chapter.

(d) Failure to comply with any state law, except as provided for in this chapter or other California law.

19312. Each licensing authority may suspend or revoke licenses, after proper notice and hearing to the licensee, if the licensee is found to have committed any of the acts or omissions constituting grounds for disciplinary action. The disciplinary proceedings under this chapter shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the director of each licensing authority shall have all the powers granted therein.

19313. Each licensing authority may take disciplinary action against a licensee for any violation of this chapter when the violation was committed by the licensee's agent or employee while acting on behalf of the licensee or engaged in commercial cannabis activity.

19313.5. Upon suspension or revocation of a license, the licensing authority shall inform the bureau. The bureau shall then inform all other licensing authorities and the Department of Food and Agriculture.

19314. All accusations against licensees shall be filed by the licensing authority within five years after the performance of the act or omission alleged as the ground for disciplinary action; provided, however, that the foregoing provision shall not constitute a defense to an accusation alleging fraud or misrepresentation as a ground for disciplinary action. The cause for disciplinary action in such case shall not be deemed to have accrued until discovery, by the licensing authority, of the facts constituting the fraud or misrepresentation, and, in such case, the accusation shall be filed within five years after such discovery.

19315. (a) Nothing in this chapter shall be interpreted to supersede or limit existing local authority for law enforcement activity, enforcement of local zoning requirements or local ordinances, or enforcement of local permit or licensing requirements.

(b) Nothing in this chapter shall be interpreted to require the Department of Consumer Affairs to undertake local law enforcement responsibilities, enforce local zoning requirements, or enforce local licensing requirements.

(c) Nothing in this chapter shall be interpreted to supersede or limit state agencies from exercising their existing enforcement authority under the Fish and Game Code, the Water Code, the Food and Agricultural Code, or the Health and Safety Code.

19316. (a) Pursuant to Section 7 of Article XI of the California Constitution, a city, county, or city and county may adopt ordinances that establish additional standards, requirements, and regulations for local licenses and permits for commercial cannabis activity. Any standards, requirements, and regulations regarding health and safety, testing, security, and worker protections established by the state shall be the minimum standards for all licensees statewide.

(b) For facilities issued a state license that are located within the incorporated area of a city, the city shall have full power and authority to enforce this chapter and the regulations promulgated by the bureau or any licensing authority, if delegated by the state. Notwithstanding Sections 101375, 101400, and 101405 of the Health and Safety Code or any contract entered into pursuant thereto, or any other law, the city shall further assume complete responsibility for any regulatory function relating to those licensees within the city limits that would otherwise be performed by the county or any county officer or employee, including a county health officer, without liability, cost, or expense to the county.

(c) Nothing in this chapter, or any regulations promulgated thereunder, shall be deemed to limit the authority or remedies of a city, county, or city and county under any provision of law, including, but not limited to, Section 7 of Article XI of the California Constitution.

19317. (a) The actions of a licensee, its employees, and its agents that are (1) permitted pursuant to both a state license and a license or permit issued by the local jurisdiction following the requirements of the applicable local ordinances, and (2) conducted in accordance with the requirements of this chapter and regulations adopted pursuant to this chapter, are not unlawful under state law and shall not be an offense subject to arrest, prosecution, or other sanction under state law, or be subject to a civil fine or be a basis for seizure or forfeiture of assets under state law.

(b) The actions of a person who, in good faith, allows his or her property to be used by a licensee, its employees, and its agents, as permitted pursuant to both a state license and a local license or permit following the requirements of the applicable local ordinances, are not unlawful under state law and shall not be an offense subject to arrest, prosecution, or other sanction under state law, or be subject to a civil fine or be a basis for seizure or forfeiture of assets under state law.

19318. (a) A person engaging in commercial cannabis activity without a license required by this chapter shall be subject to civil penalties of up to twice the amount of the license fee for each violation, and the court may order the destruction of medical cannabis associated with that violation in accordance with Section 11479 of the Health and Safety Code. Each day of operation shall constitute a separate violation of this section. All civil penalties imposed and collected pursuant to this section by a licensing authority shall be deposited into the Medical Cannabis Fines and Penalties Account established pursuant to Section 19351.

(b) If an action for civil penalties is brought against a licensee pursuant to this chapter by the Attorney General on behalf of the people, the penalty collected shall be deposited into the Medical Cannabis Fines and Penalties Account established pursuant to Section 19351. If the action is brought by a district attorney or county counsel, the penalty collected shall be paid to the treasurer of the county in which the judgment was entered. If the action is brought by a city attorney or city prosecutor, the penalty collected shall be paid to the treasurer of the city or city and county in which the judgment was entered. If the action is brought by a city attorney and is adjudicated in a superior court located in the unincorporated area or another city in the same county, the penalty shall be paid one-half to the treasurer of the city in which the complaining attorney has jurisdiction and one-half to the treasurer of the county in which the judgment is entered.

(c) Notwithstanding subdivision (a), criminal penalties shall continue to apply to an unlicensed person engaging in commercial cannabis activity in violation of this chapter, including, but not limited to, those individuals covered under Section 11362.7 of the Health and Safety Code.

Article 4. Licensing

19320. (a) Licensing authorities administering this chapter may issue state licenses only to qualified applicants engaging in commercial cannabis activity pursuant to this chapter. Upon the date of implementation of regulations by the licensing authority, no person shall engage in commercial cannabis activity without possessing both a state license and a local permit, license, or other authorization. A licensee shall not commence activity under the authority of a state license until the applicant has obtained, in addition to the state license, a license or permit from the local jurisdiction in which he or she proposes to operate, following the requirements of the applicable local ordinance.

(b) Revocation of a local license, permit, or other authorization shall terminate the ability of a medical cannabis business to operate within that local jurisdiction until the local jurisdiction reinstates or reissues the local license, permit, or other required authorization. Local authorities shall notify the bureau upon revocation of a local license. The bureau shall inform relevant licensing authorities.

(c) Revocation of a state license shall terminate the ability of a medical cannabis licensee to operate within California until the licensing authority reinstates or reissues the state license. Each licensee shall obtain a separate license for each location where it engages in commercial medical cannabis activity. However, transporters only need to obtain licenses for each physical location where the licensee conducts business while not in transport, or any equipment that is not currently transporting medical cannabis or medical cannabis products, permanently resides.

(d) In addition to the provisions of this chapter, local jurisdictions retain the power to assess fees and taxes, as applicable, on facilities that are licensed pursuant to this chapter and the business activities of those licensees.

(e) Nothing in this chapter shall be construed to supersede or limit state agencies, including the State Water Resources Control Board and Department of Fish and Wildlife, from establishing fees to support their medical cannabis regulatory programs.

19321. (a) The Department of Consumer Affairs, the Department of Food and Agriculture, and the State Department of Public Health shall promulgate regulations for implementation of their respective responsibilities in the administration of this chapter.

(b) A license issued pursuant to this section shall be valid for 12 months from the date of issuance. The license shall be renewed annually. Each licensing authority shall establish procedures for the renewal of a license.

(c) Notwithstanding subdivision (a) of Section 19320, a facility or entity that is operating in compliance with local zoning ordinances and other state and local requirements on or before January 1, 2018, may continue its operations until its application for licensure is approved or denied pursuant to this chapter. In issuing licenses, the licensing authority shall prioritize any facility or entity that can demonstrate to the authority's satisfaction that it was in operation and in good standing with the local jurisdiction by January 1, 2016.

(d) Issuance of a state license or a determination of compliance with local law by the licensing authority shall in no way limit the ability of the City of Los Angeles to prosecute any person or entity for a violation of, or otherwise enforce, Proposition D, approved by the voters of the City of Los Angeles on the May 21, 2013, ballot for the city, or the city's zoning laws. Nor may issuance of a license or determination of compliance with local law by the licensing authority be deemed to establish, or be relied upon, in determining satisfaction with the immunity requirements of Proposition D or local zoning law, in court or in any other context or forum.

Article 5. Medical Marijuana Regulation

19326. (a) A person other than a licensed transporter shall not transport medical cannabis or medical cannabis products from one licensee to another licensee, unless otherwise specified in this chapter.

(b) All licensees holding cultivation or manufacturing licenses shall send all medical cannabis and medical cannabis products cultivated or manufactured to a distributor, as defined in Section 19300.5, for quality assurance and inspection by the Type 11 licensee and for a batch testing by a Type 8 licensee prior to distribution to a dispensary. Those licensees holding a Type 10A license in addition to a cultivation license or a manufacturing license shall send all medical cannabis and medical cannabis products to a Type 11 licensee for presale inspection and for a batch testing by a Type 8 licensee prior to dispensing any product. The licensing authority shall fine a licensee who violates this subdivision in an amount determined by the licensing authority to be reasonable.

(c) (1) Upon receipt of medical cannabis or medical cannabis products by a holder of a cultivation or manufacturing license, the Type 11 licensee shall first inspect the product to ensure the identity and quantity of the product and then ensure a random sample of the medical cannabis or medical cannabis product is tested by a Type 8 licensee prior to distributing the batch of medical cannabis or medical cannabis products.

(2) Upon issuance of a certificate of analysis by the Type 8 licensee that the product is fit for manufacturing or retail, all medical cannabis and medical cannabis products shall undergo a quality assurance review by the Type 11 licensee prior to distribution to ensure the quantity and content of the medical cannabis or medical cannabis product, and for tracking and taxation purposes by the state. Licensed cultivators and manufacturers shall package or seal all medical cannabis and medical cannabis products in tamper-evident packaging and use a unique identifier, as prescribed by the Department of Food and Agriculture, for the purpose of identifying and tracking medical cannabis or medical cannabis products. Medical cannabis and medical cannabis products shall be labeled as required by Section 19347. All packaging and sealing shall be completed prior to medical cannabis or medical cannabis products being transported or delivered to a licensee, qualified patient, or caregiver.

(3) This section does not limit the ability of licensed cultivators, manufacturers, and dispensaries to directly enter into contracts with one another indicating the price and quantity of medical cannabis or medical cannabis products to be distributed. However, a Type 11 licensee responsible for executing the contract is authorized to collect a fee for the services rendered, including, but not limited to, costs incurred by a Type 8 licensee, as well as applicable state or local taxes and fees.

(d) Medical cannabis and medical cannabis products shall be tested by a registered testing laboratory, prior to retail sale or dispensing, as follows:

(1) Medical cannabis from dried flower shall, at a minimum, be tested for concentration, pesticides, mold, and other contaminants.

(2) Medical cannabis extracts shall, at a minimum, be tested for concentration and purity of the product.

(3) This chapter shall not prohibit a licensee from performing on-site testing for the purposes of quality assurance of the product in conjunction

with reasonable business operations. On-site testing by the licensee shall not be certified by the State Department of Public Health.

(e) All commercial cannabis activity shall be conducted between licensees, when these are available.

19327. (a) A licensee shall keep accurate records of commercial cannabis activity.

(b) All records related to commercial cannabis activity as defined by the licensing authorities shall be maintained for a minimum of seven years.

(c) The bureau may examine the books and records of a licensee and inspect the premises of a licensee as the licensing authority or a state or local agency deems necessary to perform its duties under this chapter. All inspections shall be conducted during standard business hours of the licensed facility or at any other reasonable time.

(d) Licensees shall keep records identified by the licensing authorities on the premises of the location licensed. The licensing authorities may make any examination of the records of any licensee. Licensees shall also provide and deliver copies of documents to the licensing agency upon request.

(e) A licensee or its agent, or employee, that refuses, impedes, obstructs, or interferes with an inspection of the premises or records of the licensee pursuant to this section has engaged in a violation of this chapter.

(f) If a licensee or an employee of a licensee fails to maintain or provide the records required pursuant to this section, the licensee shall be subject to a citation and fine of thirty thousand dollars (\$30,000) per individual violation.

19328. (a) A licensee may only hold a state license in up to two separate license categories, as follows:

(1) Type 1, 1A, 1B, 2, 2A, or 2B licensees may also hold either a Type 6 or 7 state license.

(2) Type 6 or 7 licensees, or a combination thereof, may also hold either a Type 1, 1A, 1B, 2, 2A, or 2B state license.

(3) Type 6 or 7 licensees, or a combination thereof, may also hold a Type 10A state license.

(4) Type 10A licensees may also hold either a Type 6 or 7 state license, or a combination thereof.

(5) Type 1, 1A, 1B, 2, 2A, or 2B licensees, or a combination thereof, may also hold a Type 10A state license.

(6) Type 10A licensees may apply for Type 1, 1A, 1B, 2, 2A, or 2B state license, or a combination thereof.

(7) Type 11 licensees shall apply for a Type 12 state license, but shall not apply for any other type of state license.

(8) Type 12 licensees may apply for a Type 11 state license.

(9) A Type 10A licensee may apply for a Type 6 or 7 state license and hold a 1, 1A, 1B, 2, 2A, 2B, 3, 3A, 3B, 4 or combination thereof if, under the 1, 1A, 1B, 2, 2A, 2B, 3, 3A, 3B, 4 or combination of licenses thereof, no more than four acres of total canopy size of cultivation by the licensee is occurring throughout the state during the period that the respective licenses

are valid. All cultivation pursuant to this section shall comply with local ordinances. This paragraph shall become inoperative on January 1, 2026.

(b) Except as provided in subdivision (a), a person or entity that holds a state license is prohibited from licensure for any other activity authorized under this chapter, and is prohibited from holding an ownership interest in real property, personal property, or other assets associated with or used in any other license category.

(c) (1) In a jurisdiction that adopted a local ordinance, prior to July 1, 2015, allowing or requiring qualified businesses to cultivate, manufacture, and dispense medical cannabis or medical cannabis products, with all commercial cannabis activity being conducted by a single qualified business, upon licensure that business shall not be subject to subdivision (a) if it meets all of the following conditions:

(A) The business was cultivating, manufacturing, and dispensing medical cannabis or medical cannabis products on July 1, 2015, and has continuously done so since that date.

(B) The business has been in full compliance with all applicable local ordinances at all times prior to licensure.

(C) The business is registered with the State Board of Equalization.

(2) A business licensed pursuant to paragraph (1) is not required to conduct all cultivation or manufacturing within the bounds of a local jurisdiction, but all cultivation and manufacturing shall have commenced prior to July 1, 2015, and have been in full compliance with applicable local ordinances.

(d) This section shall remain in effect only until January 1, 2026, and as of that date is repealed.

19329. A licensee shall not also be licensed as a retailer of alcoholic beverages pursuant to Division 9 (commencing with Section 23000).

19330. This chapter and 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 shall not interfere with an employer's rights and obligations to maintain a drug and alcohol free workplace or require an employer to permit or accommodate the use, consumption, possession, transfer, display, transportation, sale, or growth of cannabis in the workplace or affect the ability of employers to have policies prohibiting the use of cannabis by employees and prospective employees, or prevent employers from complying with state or federal law.

Article 7. Licensed Distributors, Dispensaries, and Transporters

19334. (a) State licenses to be issued by the Department of Consumer Affairs are as follows:

(1) "Dispensary," as defined in this chapter. This license shall allow for delivery pursuant to Section 19340.

(2) "Distributor," for the distribution of medical cannabis and medical cannabis products from manufacturer to dispensary. A Type 11 licensee

shall hold a Type 12, or transporter, license and register each location where product is stored for the purposes of distribution. A Type 11 licensee shall not hold a license in a cultivation, manufacturing, dispensing, or testing license category and shall not own, or have an ownership interest in, a facility licensed in those categories other than a security interest, lien, or encumbrance on property that is used by a licensee. A Type 11 licensee shall be bonded and insured at a minimum level established by the licensing authority.

(3) "Transport," for transporters of medical cannabis or medical cannabis products between licensees. A Type 12 licensee shall be bonded and insured at a minimum level established by the licensing authority.

(4) "Special dispensary status" for dispensers who have no more than three licensed dispensary facilities. This license shall allow for delivery where expressly authorized by local ordinance.

(b) The bureau shall establish minimum security requirements for the commercial transportation and delivery of medical cannabis and products.

(c) A licensed dispensary shall implement sufficient security measures to both deter and prevent unauthorized entrance into areas containing medical cannabis or medical cannabis products and theft of medical cannabis or medical cannabis products at the dispensary. These security measures shall include, but not be limited to, all of the following:

(1) Preventing individuals from remaining on the premises of the dispensary if they are not engaging in activity expressly related to the operations of the dispensary.

(2) Establishing limited access areas accessible only to authorized dispensary personnel.

(3) Storing all finished medical cannabis and medical cannabis products in a secured and locked room, safe, or vault, and in a manner as to prevent diversion, theft, and loss, except for limited amounts of cannabis used for display purposes, samples, or immediate sale.

(d) A dispensary shall notify the licensing authority and the appropriate law enforcement authorities within 24 hours after discovering any of the following:

(1) Significant discrepancies identified during inventory. The level of significance shall be determined by the bureau.

(2) Diversion, theft, loss, or any criminal activity involving the dispensary or any agent or employee of the dispensary.

(3) The loss or unauthorized alteration of records related to cannabis, registered qualifying patients, primary caregivers, or dispensary employees or agents.

(4) Any other breach of security.

Article 9. Delivery

19340. (a) Deliveries, as defined in this chapter, can only be made by a dispensary and in a city, county, or city and county that does not explicitly prohibit it by local ordinance.

(b) Upon approval of the licensing authority, a licensed dispensary that delivers medical cannabis or medical cannabis products shall comply with both of the following:

(1) The city, county, or city and county in which the licensed dispensary is located, and in which each delivery is made, do not explicitly by ordinance prohibit delivery, as defined in Section 19300.5.

(2) All employees of a dispensary delivering medical cannabis or medical cannabis products shall carry a copy of the dispensary's current license authorizing those services with them during deliveries and the employee's government-issued identification, and shall present that license and identification upon request to state and local law enforcement, employees of regulatory authorities, and other state and local agencies enforcing this chapter.

(c) A county shall have the authority to impose a tax, pursuant to Article 11 (commencing with Section 19348), on each delivery transaction completed by a licensee.

(d) During delivery, the licensee shall maintain a physical copy of the delivery request and shall make it available upon request of the licensing authority and law enforcement officers. The delivery request documentation shall comply with state and federal law regarding the protection of confidential medical information.

(e) The qualified patient or primary caregiver requesting the delivery shall maintain a copy of the delivery request and shall make it available, upon request, to the licensing authority and law enforcement officers.

(f) A local jurisdiction shall not prevent carriage of medical cannabis or medical cannabis products on public roads by a licensee acting in compliance with this chapter.

Article 10. Licensed Manufacturers and Licensed Laboratories

19341. The State Department of Public Health shall promulgate regulations governing the licensing of cannabis manufacturers and testing laboratories. Licenses to be issued are as follows:

(a) "Manufacturing level 1," for manufacturing sites that produce medical cannabis products using nonvolatile solvents.

(b) "Manufacturing level 2," for manufacturing sites that produce medical cannabis products using volatile solvents. The State Department of Public Health shall limit the number of licenses of this type.

(c) "Testing," for testing of medical cannabis and medical cannabis products. Testing licensees shall have their facilities licensed according to regulations set forth by the division. A testing licensee shall not hold a

license in another license category of this chapter and shall not own or have ownership interest in a facility licensed pursuant to this chapter.

19342. (a) For the purposes of testing medical cannabis or medical cannabis products, licensees shall use a licensed testing laboratory that has adopted a standard operating procedure using methods consistent with general requirements for the competence of testing and calibration activities, including sampling, using standard methods established by the International Organization for Standardization, specifically ISO/IEC 17020 and ISO/IEC 17025 to test medical cannabis and medical cannabis products that are approved by an accrediting body that is a signatory to the International Laboratory Accreditation Cooperation Mutual Recognition Arrangement.

(b) An agent of a licensed testing laboratory shall obtain samples according to a statistically valid sampling method for each lot.

(c) A licensed testing laboratory shall analyze samples according to either of the following:

(1) The most current version of the cannabis inflorescence monograph published by the American Herbal Pharmacopoeia.

(2) Scientifically valid methodology that is demonstrably equal or superior to paragraph (1), in the opinion of the accrediting body.

(d) If a test result falls outside the specifications authorized by law or regulation, the licensed testing laboratory shall follow a standard operating procedure to confirm or refute the original result.

(e) A licensed testing laboratory shall destroy the remains of the sample of medical cannabis or medical cannabis product upon completion of the analysis.

19343. A licensed testing laboratory shall not handle, test, or analyze medical cannabis or medical cannabis products unless the licensed testing laboratory meets all of the following:

(a) Is registered by the State Department of Public Health.

(b) Is independent from all other persons and entities involved in the medical cannabis industry.

(c) Follows the methodologies, ranges, and parameters that are contained in the scope of the accreditation for testing medical cannabis or medical cannabis products. The testing lab shall also comply with any other requirements specified by the State Department of Public Health.

(d) Notifies the State Department of Public Health within one business day after the receipt of notice of any kind that its accreditation has been denied, suspended, or revoked.

(e) Has established standard operating procedures that provide for adequate chain of custody controls for samples transferred to the licensed testing laboratory for testing.

19344. (a) A licensed testing laboratory shall issue a certificate of analysis for each lot, with supporting data, to report both of the following:

(1) Whether the chemical profile of the lot conforms to the specifications of the lot for compounds, including, but not limited to, all of the following:

(A) Tetrahydrocannabinol (THC).

(B) Tetrahydrocannabinolic Acid (THCA).

- (C) Cannabidiol (CBD).
- (D) Cannabidiolic Acid (CBDA).
- (E) The terpenes described in the most current version of the cannabis inflorescence monograph published by the American Herbal Pharmacopoeia.
- (F) Cannabigerol (CBG).
- (G) Cannabinol (CBN).
- (H) Any other compounds required by the State Department of Public Health.

(2) That the presence of contaminants does not exceed the levels that are the lesser of either the most current version of the American Herbal Pharmacopoeia monograph or the State Department of Public Health. For purposes of this paragraph, contaminants includes, but is not limited to, all of the following:

- (A) Residual solvent or processing chemicals.
- (B) Foreign material, including, but not limited to, hair, insects, or similar or related adulterant.
- (C) Microbiological impurity, including total aerobic microbial count, total yeast mold count, *P. aeruginosa*, *aspergillus* spp., *s. aureus*, aflatoxin B1, B2, G1, or G2, or ochratoxin A.

(D) Whether the batch is within specification for odor and appearance.

(b) Residual levels of volatile organic compounds shall be below the lesser of either the specifications set by the United States Pharmacopeia (U.S.P. Chapter 467) or those set by the State Department of Public Health.

19345. (a) Except as provided in this chapter, a licensed testing laboratory shall not acquire or receive medical cannabis or medical cannabis products except from a licensed facility in accordance with this chapter, and shall not distribute, sell, deliver, transfer, transport, or dispense medical cannabis or medical cannabis products, from which the medical cannabis or medical cannabis products were acquired or received. All transfer or transportation shall be performed pursuant to a specified chain of custody protocol.

(b) A licensed testing laboratory may receive and test samples of medical cannabis or medical cannabis products from a qualified patient or primary caregiver only if he or she presents his or her valid recommendation for cannabis for medical purposes from a physician. A licensed testing laboratory shall not certify samples from a qualified patient or caregiver for resale or transfer to another party or licensee. All tests performed by a licensed testing laboratory for a qualified patient or caregiver shall be recorded with the name of the qualified patient or caregiver and the amount of medical cannabis or medical cannabis product received.

(c) The State Department of Public Health shall develop procedures to ensure that testing of cannabis occurs prior to delivery to dispensaries or any other business, specify how often licensees shall test cannabis and that the cost of testing shall be borne by the licensed cultivators, and require destruction of harvested batches whose testing samples indicate noncompliance with health and safety standards promulgated by the State Department of Public Health, unless remedial measures can bring the

cannabis into compliance with quality assurance standards as promulgated by the State Department of Public Health.

(d) The State Department of Public Health shall establish a licensing fee, and laboratories shall pay a fee to be licensed. Licensing fees shall not exceed the reasonable regulatory cost of the licensing activities.

19347. (a) Prior to delivery or sale at a dispensary, medical cannabis products shall be labeled and in a tamper-evident package. Labels and packages of medical cannabis products shall meet the following requirements:

(1) Medical cannabis packages and labels shall not be made to be attractive to children.

(2) All medical cannabis product labels shall include the following information, prominently displayed and in a clear and legible font:

(A) Manufacture date and source.

(B) The statement "SCHEDULE I CONTROLLED SUBSTANCE."

(C) The statement "KEEP OUT OF REACH OF CHILDREN AND ANIMALS" in bold print.

(D) The statement "FOR MEDICAL USE ONLY."

(E) The statement "THE INTOXICATING EFFECTS OF THIS PRODUCT MAY BE DELAYED BY UP TO TWO HOURS."

(F) The statement "THIS PRODUCT MAY IMPAIR THE ABILITY TO DRIVE OR OPERATE MACHINERY. PLEASE USE EXTREME CAUTION."

(G) For packages containing only dried flower, the net weight of medical cannabis in the package.

(H) A warning if nuts or other known allergens are used.

(I) List of pharmacologically active ingredients, including, but not limited to, tetrahydrocannabinol (THC), cannabidiol (CBD), and other cannabinoid content, the THC and other cannabinoid amount in milligrams per serving, servings per package, and the THC and other cannabinoid amount in milligrams for the package total.

(J) Clear indication, in bold type, that the product contains medical cannabis.

(K) Identification of the source and date of cultivation and manufacture.

(L) Any other requirement set by the bureau.

(M) Information associated with the unique identifier issued by the Department of Food and Agriculture pursuant to Section 11362.777 of the Health and Safety Code.

(b) Only generic food names may be used to describe edible medical cannabis products.

Article 14. Reporting

19353. Beginning on March 1, 2023, and on or before March 1 of each following year, each licensing authority shall prepare and submit to the Legislature an annual report on the authority's activities and post the report

on the authority's Internet Web site. The report shall include, but not be limited to, the following information for the previous fiscal year:

(a) The amount of funds allocated and spent by the licensing authority for medical cannabis licensing, enforcement, and administration.

(b) The number of state licenses issued, renewed, denied, suspended, and revoked, by state license category.

(c) The average time for processing state license applications, by state license category.

(d) The number and type of enforcement activities conducted by the licensing authorities and by local law enforcement agencies in conjunction with the licensing authorities or the bureau.

(e) The number, type, and amount of penalties, fines, and other disciplinary actions taken by the licensing authorities.

19354. The bureau shall contract with the California Marijuana Research Program, known as the Center for Medicinal Cannabis Research, authorized pursuant to Section 11362.9 of the Health and Safety Code, to develop a study that identifies the impact that cannabis has on motor skills.

Article 15. Privacy

19355. (a) Information identifying the names of patients, their medical conditions, or the names of their primary caregivers received and contained in records kept by the office or licensing authorities for the purposes of administering this chapter are confidential and shall not be disclosed pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), except as necessary for authorized employees of the State of California or any city, county, or city and county to perform official duties pursuant to this chapter, or a local ordinance.

(b) Information identifying the names of patients, their medical conditions, or the names of their primary caregivers received and contained in records kept by the bureau for the purposes of administering this chapter shall be maintained in accordance with Chapter 1 (commencing with Section 123100) of Part 1 of Division 106 of the Health and Safety Code, Part 2.6 (commencing with Section 56) of Division 1 of the Civil Code, and other state and federal laws relating to confidential patient information.

(c) Nothing in this section precludes the following:

(1) Employees of the bureau or any licensing authorities notifying state or local agencies about information submitted to the agency that the employee suspects is falsified or fraudulent.

(2) Notifications from the bureau or any licensing authorities to state or local agencies about apparent violations of this chapter or applicable local ordinance.

(3) Verification of requests by state or local agencies to confirm licenses and certificates issued by the regulatory authorities or other state agency.

(4) Provision of information requested pursuant to a court order or subpoena issued by a court or an administrative agency or local governing body authorized by law to issue subpoenas.

(d) Information shall not be disclosed by any state or local agency beyond what is necessary to achieve the goals of a specific investigation, notification, or the parameters of a specific court order or subpoena.

SEC. 5. Section 9147.7 of the Government Code is amended to read:

9147.7. (a) For the purpose of this section, "eligible agency" means any agency, authority, board, bureau, commission, conservancy, council, department, division, or office of state government, however denominated, excluding an agency that is constitutionally created or an agency related to postsecondary education, for which a date for repeal has been established by statute on or after January 1, 2011.

(b) The Joint Sunset Review Committee is hereby created to identify and eliminate waste, duplication, and inefficiency in government agencies. The purpose of the committee is to conduct a comprehensive analysis over 15 years, and on a periodic basis thereafter, of every eligible agency to determine if the agency is still necessary and cost effective.

(c) Each eligible agency scheduled for repeal shall submit to the committee, on or before December 1 prior to the year it is set to be repealed, a complete agency report covering the entire period since last reviewed, including, but not limited to, the following:

(1) The purpose and necessity of the agency.

(2) A description of the agency budget, priorities, and job descriptions of employees of the agency.

(3) Any programs and projects under the direction of the agency.

(4) Measures of the success or failures of the agency and justifications for the metrics used to evaluate successes and failures.

(5) Any recommendations of the agency for changes or reorganization in order to better fulfill its purpose.

(d) The committee shall take public testimony and evaluate the eligible agency prior to the date the agency is scheduled to be repealed. An eligible agency shall be eliminated unless the Legislature enacts a law to extend, consolidate, or reorganize the eligible agency. No eligible agency shall be extended in perpetuity unless specifically exempted from the provisions of this section. The committee may recommend that the Legislature extend the statutory sunset date for no more than one year to allow the committee more time to evaluate the eligible agency.

(e) The committee shall be comprised of 10 members of the Legislature. The Senate Committee on Rules shall appoint five members of the Senate to the committee, not more than three of whom shall be members of the same political party. The Speaker of the Assembly shall appoint five members of the Assembly to the committee, not more than three of whom shall be members of the same political party. Members shall be appointed within 15 days after the commencement of the regular session. Each member of the committee who is appointed by the Senate Committee on Rules or the Speaker of the Assembly shall serve during that committee member's

term of office or until that committee member no longer is a Member of the Senate or the Assembly, whichever is applicable. A vacancy on the committee shall be filled in the same manner as the original appointment. Three Assembly Members and three Senators who are members of the committee shall constitute a quorum for the conduct of committee business. Members of the committee shall receive no compensation for their work with the committee.

(f) The committee shall meet not later than 30 days after the first day of the regular session to choose a chairperson and to establish the schedule for eligible agency review provided for in the statutes governing the eligible agencies. The chairperson of the committee shall alternate every two years between a Member of the Senate and a Member of the Assembly, and the vice chairperson of the committee shall be a member of the opposite house as the chairperson.

(g) This section shall not be construed to change the existing jurisdiction of the budget or policy committees of the Legislature.

(h) This section shall not apply to the Bureau of Medical Marijuana Regulation.

SEC. 6. Section 11362.775 of the Health and Safety Code is amended to read:

11362.775. (a) Subject to subdivision (b), 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 cannabis for medical purposes, shall not solely on the basis of that fact be subject to state criminal sanctions under Section 11357, 11358, 11359, 11360, 11366, 11366.5, or 11570.

(b) This section shall remain in effect only until one year after the Bureau of Medical Marijuana Regulation posts a notice on its Internet Web site that the licensing authorities have commenced issuing licenses pursuant to the Medical Marijuana Regulation and Safety Act (Chapter 3.5 (commencing with Section 19300) of Division 8 of the Business and Professions Code), and is repealed upon issuance of licenses.

SEC. 7. Section 147.5 is added to the Labor Code, to read:

147.5. (a) By January 1, 2017, the Division of Occupational Safety and Health shall convene an advisory committee to evaluate whether there is a need to develop industry-specific regulations related to the activities of facilities issued a license pursuant to Chapter 3.5 (commencing with Section 19300) of Division 8 of the Business and Professions Code.

(b) By July 1, 2017, the advisory committee shall present to the board its findings and recommendations for consideration by the board. By July 1, 2017, the board shall render a decision regarding the adoption of industry-specific regulations pursuant to this section.

SEC. 8. Section 31020 is added to the Revenue and Taxation Code, to read:

31020. The board, in consultation with the Department of Food and Agriculture, shall adopt a system for reporting the movement of commercial

cannabis and cannabis products throughout the distribution chain. The system shall not be duplicative of the electronic database administered by the Department of Food and Agriculture specified in Section 19335 of the Business and Professions Code. The system shall also employ secure packaging and be capable of providing information to the board. This system shall capture, at a minimum, all of the following:

- (a) The amount of tax due by the designated entity.
- (b) The name, address, and license number of the designated entity that remitted the tax.
- (c) The name, address, and license number of the succeeding entity receiving the product.
- (d) The transaction date.
- (e) Any other information deemed necessary by the board for the taxation and regulation of marijuana and marijuana products.

SEC. 9. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 10. The Legislature finds and declares that Section 4 of this act, which adds Section 19355 to the Business and Professions Code, thereby imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

The limitation imposed under this act is necessary for purposes of compliance with the federal Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. Sec. 1320d et seq.), the Confidentiality of Medical Information Act (Part 2.6 (commencing with Section 56) of Division 1 of the Civil Code), and the Insurance Information and Privacy Protection Act (Article 6.6 (commencing with Section 791) of Part 2 of Division 1 of the Insurance Code).

SEC. 11. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

SEC. 12. This act shall become operative only if Senate Bill 643 and Assembly Bill 243 of the 2015–16 Regular Session are also enacted and become operative.

O

Senate Bill No. 643

CHAPTER 719

An act to amend Sections 144, 2220.05, 2241.5, and 2242.1 of, to add Sections 19302.1, 19319, 19320, 19322, 19323, 19324, and 19325 to, to add Article 25 (commencing with Section 2525) to Chapter 5 of Division 2 of, and to add Article 6 (commencing with Section 19331), Article 7.5 (commencing with Section 19335), Article 8 (commencing with Section 19337), and Article 11 (commencing with Section 19348) to Chapter 3.5 of Division 8 of, the Business and Professions Code, relating to medical marijuana.

[Approved by Governor October 9, 2015. Filed with
Secretary of State October 9, 2015.]

LEGISLATIVE COUNSEL'S DIGEST

SB 643, McGuire. Medical marijuana.

(1) Existing law, the Compassionate Use Act of 1996, an initiative measure enacted by the approval of Proposition 215 at the November 6, 1996, statewide general election, authorizes the use of marijuana for medical purposes. Existing law enacted by the Legislature requires the establishment of a program for the issuance of identification cards to qualified patients so that they may lawfully use marijuana for medical purposes, and requires the establishment of guidelines for the lawful cultivation of marijuana grown for medical use. Existing law provides for the licensure of various professions by the Department of Consumer Affairs. Existing law, the Sherman Food, Drug, and Cosmetic Law, provides for the regulation of food, drugs, devices, and cosmetics, as specified. A violation of that law is a crime.

This bill would, among other things, set forth standards for a physician and surgeon prescribing medical cannabis and require the Medical Board of California to prioritize its investigative and prosecutorial resources to identify and discipline physicians and surgeons that have repeatedly recommended excessive cannabis to patients for medical purposes or repeatedly recommended cannabis to patients for medical purposes without a good faith examination, as specified. The bill would require the Bureau of Medical Marijuana to require an applicant to furnish a full set of fingerprints for the purposes of conducting criminal history record checks. The bill would prohibit a physician and surgeon who recommends cannabis to a patient for a medical purpose from accepting, soliciting, or offering any form of remuneration from a facility licensed under the Medical Marijuana Regulation and Safety Act. The bill would make a violation of this prohibition a misdemeanor, and by creating a new crime, this bill would impose a state-mandated local program.

This bill would require the Governor, under the Medical Marijuana Regulation and Safety Act, to appoint, subject to confirmation by the Senate, a chief of the Bureau of Medical Marijuana Regulation. The act would require the Department of Consumer Affairs to have the sole authority to create, issue, renew, discipline, suspend, or revoke licenses for the transportation and storage, unrelated to manufacturing, of medical marijuana, and would authorize the department to collect fees for its regulatory activities and impose specified duties on this department in this regard. The act would require the Department of Food and Agriculture to administer the provisions of the act related to, and associated with, the cultivation, and transportation of, medical cannabis and would impose specified duties on this department in this regard. The act would require the State Department of Public Health to administer the provisions of the act related to, and associated with, the manufacturing and testing of medical cannabis and would impose specified duties on this department in this regard.

This bill would authorize counties to impose a tax upon specified cannabis-related activity.

This bill would require an applicant for a state license pursuant to the act to provide a statement signed by the applicant under penalty of perjury, thereby changing the scope of a crime and imposing a state-mandated local program.

This bill would set forth standards for the licensed cultivation of medical cannabis, including, but not limited to, establishing duties relating to the environmental impact of cannabis and cannabis products. The bill would also establish state cultivator license types, as specified.

(2) This bill would provide that its provisions are severable.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

(4) Existing constitutional provisions require that a statute that limits the right of access to the meeting of public bodies or the writings of public bodies or the writings of public officials and agencies be adopted with finding demonstrating the interest protected by the limitation and the need for protecting that interest. The bill would make legislative findings to that effect.

(5) The bill would become operative only if AB 266 and AB 243 of the 2015–16 Regular Session are enacted and take effect on or before January 1, 2016.

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

SECTION 1. Section 144 of the Business and Professions Code is amended to read:

144. (a) Notwithstanding any other provision of law, an agency designated in subdivision (b) shall require an applicant to furnish to the agency a full set of fingerprints for purposes of conducting criminal history record checks. Any agency designated in subdivision (b) may obtain and receive, at its discretion, criminal history information from the Department of Justice and the United States Federal Bureau of Investigation.

(b) Subdivision (a) applies to the following:

- (1) California Board of Accountancy.
- (2) State Athletic Commission.
- (3) Board of Behavioral Sciences.
- (4) Court Reporters Board of California.
- (5) State Board of Guide Dogs for the Blind.
- (6) California State Board of Pharmacy.
- (7) Board of Registered Nursing.
- (8) Veterinary Medical Board.
- (9) Board of Vocational Nursing and Psychiatric Technicians.
- (10) Respiratory Care Board of California.
- (11) Physical Therapy Board of California.
- (12) Physician Assistant Committee of the Medical Board of California.
- (13) Speech-Language Pathology and Audiology and Hearing Aid Dispenser Board.
- (14) Medical Board of California.
- (15) State Board of Optometry.
- (16) Acupuncture Board.
- (17) Cemetery and Funeral Bureau.
- (18) Bureau of Security and Investigative Services.
- (19) Division of Investigation.
- (20) Board of Psychology.
- (21) California Board of Occupational Therapy.
- (22) Structural Pest Control Board.
- (23) Contractors' State License Board.
- (24) Naturopathic Medicine Committee.
- (25) Professional Fiduciaries Bureau.
- (26) Board for Professional Engineers, Land Surveyors, and Geologists.
- (27) Bureau of Medical Marijuana Regulation.

(c) For purposes of paragraph (26) of subdivision (b), the term "applicant" shall be limited to an initial applicant who has never been registered or licensed by the board or to an applicant for a new licensure or registration category.

SEC. 2. Section 2220.05 of the Business and Professions Code is amended to read:

2220.05. (a) In order to ensure that its resources are maximized for the protection of the public, the Medical Board of California shall prioritize its

investigative and prosecutorial resources to ensure that physicians and surgeons representing the greatest threat of harm are identified and disciplined expeditiously. Cases involving any of the following allegations shall be handled on a priority basis, as follows, with the highest priority being given to cases in the first paragraph:

(1) Gross negligence, incompetence, or repeated negligent acts that involve death or serious bodily injury to one or more patients, such that the physician and surgeon represents a danger to the public.

(2) Drug or alcohol abuse by a physician and surgeon involving death or serious bodily injury to a patient.

(3) Repeated acts of clearly excessive prescribing, furnishing, or administering of controlled substances, or repeated acts of prescribing, dispensing, or furnishing of controlled substances without a good faith prior examination of the patient and medical reason therefor. However, in no event shall a physician and surgeon prescribing, furnishing, or administering controlled substances for intractable pain consistent with lawful prescribing, including, but not limited to, Sections 725, 2241.5, and 2241.6 of this code and Sections 11159.2 and 124961 of the Health and Safety Code, be prosecuted for excessive prescribing and prompt review of the applicability of these provisions shall be made in any complaint that may implicate these provisions.

(4) Repeated acts of clearly excessive recommending of cannabis to patients for medical purposes, or repeated acts of recommending cannabis to patients for medical purposes without a good faith prior examination of the patient and a medical reason for the recommendation.

(5) Sexual misconduct with one or more patients during a course of treatment or an examination.

(6) Practicing medicine while under the influence of drugs or alcohol.

(b) The board may by regulation prioritize cases involving an allegation of conduct that is not described in subdivision (a). Those cases prioritized by regulation shall not be assigned a priority equal to or higher than the priorities established in subdivision (a).

(c) The Medical Board of California shall indicate in its annual report mandated by Section 2312 the number of temporary restraining orders, interim suspension orders, and disciplinary actions that are taken in each priority category specified in subdivisions (a) and (b).

SEC. 3. Section 2241.5 of the Business and Professions Code is amended to read:

2241.5. (a) A physician and surgeon may prescribe for, or dispense or administer to, a person under his or her treatment for a medical condition dangerous drugs or prescription controlled substances for the treatment of pain or a condition causing pain, including, but not limited to, intractable pain.

(b) No physician and surgeon shall be subject to disciplinary action for prescribing, dispensing, or administering dangerous drugs or prescription controlled substances in accordance with this section.

(c) This section shall not affect the power of the board to take any action described in Section 2227 against a physician and surgeon who does any of the following:

(1) Violates subdivision (b), (c), or (d) of Section 2234 regarding gross negligence, repeated negligent acts, or incompetence.

(2) Violates Section 2241 regarding treatment of an addict.

(3) Violates Section 2242 or 2525.3 regarding performing an appropriate prior examination and the existence of a medical indication for prescribing, dispensing, or furnishing dangerous drugs or recommending medical cannabis.

(4) Violates Section 2242.1 regarding prescribing on the Internet.

(5) Fails to keep complete and accurate records of purchases and disposals of substances listed in the California Uniform Controlled Substances Act (Division 10 (commencing with Section 11000) of the Health and Safety Code) or controlled substances scheduled in the federal Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. Sec. 801 et seq.), or pursuant to the federal Comprehensive Drug Abuse Prevention and Control Act of 1970. A physician and surgeon shall keep records of his or her purchases and disposals of these controlled substances or dangerous drugs, including the date of purchase, the date and records of the sale or disposal of the drugs by the physician and surgeon, the name and address of the person receiving the drugs, and the reason for the disposal or the dispensing of the drugs to the person, and shall otherwise comply with all state recordkeeping requirements for controlled substances.

(6) Writes false or fictitious prescriptions for controlled substances listed in the California Uniform Controlled Substances Act or scheduled in the federal Comprehensive Drug Abuse Prevention and Control Act of 1970.

(7) Prescribes, administers, or dispenses in violation of this chapter, or in violation of Chapter 4 (commencing with Section 11150) or Chapter 5 (commencing with Section 11210) of Division 10 of the Health and Safety Code.

(d) A physician and surgeon shall exercise reasonable care in determining whether a particular patient or condition, or the complexity of a patient's treatment, including, but not limited to, a current or recent pattern of drug abuse, requires consultation with, or referral to, a more qualified specialist.

(e) Nothing in this section shall prohibit the governing body of a hospital from taking disciplinary actions against a physician and surgeon pursuant to Sections 809.05, 809.4, and 809.5.

SEC. 4. Section 2242.1 of the Business and Professions Code is amended to read:

2242.1. (a) No person or entity may prescribe, dispense, or furnish, or cause to be prescribed, dispensed, or furnished, dangerous drugs or dangerous devices, as defined in Section 4022, on the Internet for delivery to any person in this state, without an appropriate prior examination and medical indication, except as authorized by Section 2242.

(b) Notwithstanding any other provision of law, a violation of this section may subject the person or entity that has committed the violation to either

a fine of up to twenty-five thousand dollars (\$25,000) per occurrence pursuant to a citation issued by the board or a civil penalty of twenty-five thousand dollars (\$25,000) per occurrence.

(c) The Attorney General may bring an action to enforce this section and to collect the fines or civil penalties authorized by subdivision (b).

(d) For notifications made on and after January 1, 2002, the Franchise Tax Board, upon notification by the Attorney General or the board of a final judgment in an action brought under this section, shall subtract the amount of the fine or awarded civil penalties from any tax refunds or lottery winnings due to the person who is a defendant in the action using the offset authority under Section 12419.5 of the Government Code, as delegated by the Controller, and the processes as established by the Franchise Tax Board for this purpose. That amount shall be forwarded to the board for deposit in the Contingent Fund of the Medical Board of California.

(e) If the person or entity that is the subject of an action brought pursuant to this section is not a resident of this state, a violation of this section shall, if applicable, be reported to the person's or entity's appropriate professional licensing authority.

(f) Nothing in this section shall prohibit the board from commencing a disciplinary action against a physician and surgeon pursuant to Section 2242 or 2525.3.

SEC. 5. Article 25 (commencing with Section 2525) is added to Chapter 5 of Division 2 of the Business and Professions Code, to read:

Article 25. Recommending Medical Cannabis

2525. (a) It is unlawful for a physician and surgeon who recommends cannabis to a patient for a medical purpose to accept, solicit, or offer any form of remuneration from or to a facility issued a state license pursuant to Chapter 3.5 (commencing with Section 19300) of Division 8, if the physician and surgeon or his or her immediate family have a financial interest in that facility.

(b) For the purposes of this section, "financial interest" shall have the same meaning as in Section 650.01.

(c) A violation of this section shall be a misdemeanor punishable by up to one year in county jail and a fine of up to five thousand dollars (\$5,000) or by civil penalties of up to five thousand dollars (\$5,000) and shall constitute unprofessional conduct.

2525.1. The Medical Board of California shall consult with the California Marijuana Research Program, known as the Center for Medicinal Cannabis Research, authorized pursuant to Section 11362.9 of the Health and Safety Code, on developing and adopting medical guidelines for the appropriate administration and use of medical cannabis.

2525.2. An individual who possesses a license in good standing to practice medicine or osteopathy issued by the Medical Board of California or the Osteopathic Medical Board of California shall not recommend medical

cannabis to a patient, unless that person is the patient's attending physician, as defined by subdivision (a) of Section 11362.7 of the Health and Safety Code.

2525.3. Recommending medical cannabis to a patient for a medical purpose without an appropriate prior examination and a medical indication constitutes unprofessional conduct.

2525.4. It is unprofessional conduct for any attending physician recommending medical cannabis to be employed by, or enter into any other agreement with, any person or entity dispensing medical cannabis.

2525.5. (a) A person shall not distribute any form of advertising for physician recommendations for medical cannabis in California unless the advertisement bears the following notice to consumers:

NOTICE TO CONSUMERS: The Compassionate Use Act of 1996 ensures that seriously ill Californians have the right to obtain and use cannabis for medical purposes where 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 medical cannabis. Recommendations must come from an attending physician as defined in Section 11362.7 of the Health and Safety Code. Cannabis is a Schedule I drug according to the federal Controlled Substances Act. Activity related to cannabis use is subject to federal prosecution, regardless of the protections provided by state law.

(b) Advertising for attending physician recommendations for medical cannabis shall meet all of the requirements in Section 651. Price advertising shall not be fraudulent, deceitful, or misleading, including statements or advertisements of bait, discounts, premiums, gifts, or statements of a similar nature.

SEC. 6. Section 19302.1 is added to the Business and Professions Code, to read:

19302.1. (a) The Governor shall appoint a chief of the bureau, subject to confirmation by the Senate, at a salary to be fixed and determined by the director with the approval of the Director of Finance. The chief shall serve under the direction and supervision of the director and at the pleasure of the Governor.

(b) Every power granted to or duty imposed upon the director under this chapter may be exercised or performed in the name of the director by a deputy or assistant director or by the chief, subject to conditions and limitations that the director may prescribe. In addition to every power granted or duty imposed with this chapter, the director shall have all other powers and duties generally applicable in relation to bureaus that are part of the Department of Consumer Affairs.

(c) The director may employ and appoint all employees necessary to properly administer the work of the bureau, in accordance with civil service laws and regulations.

(d) The Department of Consumer Affairs shall have the sole authority to create, issue, renew, discipline, suspend, or revoke licenses for the

transportation, storage unrelated to manufacturing activities, distribution, and sale of medical marijuana within the state and to collect fees in connection with activities the bureau regulates. The bureau may create licenses in addition to those identified in this chapter that the bureau deems necessary to effectuate its duties under this chapter.

(e) The Department of Food and Agriculture shall administer the provisions of this chapter related to and associated with the cultivation of medical cannabis. The Department of Food and Agriculture shall have the authority to create, issue, and suspend or revoke cultivation licenses for violations of this chapter. The State Department of Public Health shall administer the provisions of this chapter related to and associated with the manufacturing and testing of medical cannabis.

SEC. 7. Section 19319 is added to the Business and Professions Code, to read:

19319. (a) A qualified patient, as defined in Section 11362.7 of the Health and Safety Code, who cultivates, possesses, stores, manufactures, or transports cannabis exclusively for his or her personal medical use but who does not provide, donate, sell, or distribute cannabis to any other person is not thereby engaged in commercial cannabis activity and is therefore exempt from the licensure requirements of this chapter.

(b) A primary caregiver who cultivates, possesses, stores, manufactures, transports, donates, or provides cannabis exclusively for the personal medical purposes of no more than five specified qualified patients for whom he or she is the primary caregiver within the meaning of Section 11362.7 of the Health and Safety Code, but who does not receive remuneration for these activities except for compensation in full compliance with subdivision (c) of Section 11362.765 of the Health and Safety Code, is exempt from the licensure requirements of this chapter.

SEC. 8. Section 19320 is added to the Business and Professions Code, to read:

19320. (a) Licensing authorities administering this chapter may issue state licenses only to qualified applicants engaging in commercial cannabis activity pursuant to this chapter. Upon the date of implementation of regulations by the licensing authority, no person shall engage in commercial cannabis activity without possessing both a state license and a local permit, license, or other authorization. A licensee shall not commence activity under the authority of a state license until the applicant has obtained, in addition to the state license, a license or permit from the local jurisdiction in which he or she proposes to operate, following the requirements of the applicable local ordinance.

(b) Revocation of a local license, permit, or other authorization shall terminate the ability of a medical cannabis business to operate within that local jurisdiction until the local jurisdiction reinstates or reissues the local license, permit, or other required authorization. Local authorities shall notify the bureau upon revocation of a local license. The bureau shall inform relevant licensing authorities.

(c) Revocation of a state license shall terminate the ability of a medical cannabis licensee to operate within California until the licensing authority reinstates or reissues the state license. Each licensee shall obtain a separate license for each location where it engages in commercial medical cannabis activity. However, transporters only need to obtain licenses for each physical location where the licensee conducts business while not in transport, or any equipment that is not currently transporting medical cannabis or medical cannabis products, permanently resides.

(d) In addition to the provisions of this chapter, local jurisdictions retain the power to assess fees and taxes, as applicable, on facilities that are licensed pursuant to this chapter and the business activities of those licensees.

(e) Nothing in this chapter shall be construed to supersede or limit state agencies, including the State Water Resources Control Board and Department of Fish and Wildlife, from establishing fees to support their medical cannabis regulatory programs.

SEC. 9. Section 19322 is added to the Business and Professions Code, to read:

19322. (a) A person or entity shall not submit an application for a state license issued by the department pursuant to this chapter unless that person or entity has received a license, permit, or authorization by a local jurisdiction. An applicant for any type of state license issued pursuant to this chapter shall do all of the following:

(1) Electronically submit to the Department of Justice fingerprint images and related information required by the Department of Justice for the purpose of obtaining information as to the existence and content of a record of state or federal convictions and arrests, and information as to the existence and content of a record of state or federal convictions and arrests for which the Department of Justice establishes that the person is free on bail or on his or her own recognizance, pending trial or appeal.

(A) The Department of Justice shall provide a response to the licensing authority pursuant to paragraph (1) of subdivision (p) of Section 11105 of the Penal Code.

(B) The licensing authority shall request from the Department of Justice subsequent notification service, as provided pursuant to Section 11105.2 of the Penal Code, for applicants.

(C) The Department of Justice shall charge the applicant a fee sufficient to cover the reasonable cost of processing the requests described in this paragraph.

(2) Provide documentation issued by the local jurisdiction in which the proposed business is operating certifying that the applicant is or will be in compliance with all local ordinances and regulations.

(3) Provide evidence of the legal right to occupy and use the proposed location. For an applicant seeking a cultivator, distributor, manufacturing, or dispensary license, provide a statement from the owner of real property or their agent where the cultivation, distribution, manufacturing, or dispensing commercial medical cannabis activities will occur, as proof to demonstrate the landowner has acknowledged and consented to permit

cultivation, distribution, manufacturing, or dispensary activities to be conducted on the property by the tenant applicant.

(4) If the application is for a cultivator or a dispensary, provide evidence that the proposed location is located beyond at least a 600-foot radius from a school, as required by Section 11362.768 of the Health and Safety Code.

(5) Provide a statement, signed by the applicant under penalty of perjury, that the information provided is complete, true, and accurate.

(6) (A) For an applicant with 20 or more employees, provide a statement that the applicant will enter into, or demonstrate that it has already entered into, and abide by the terms of a labor peace agreement.

(B) For the purposes of this paragraph, "employee" does not include a supervisor.

(C) For purposes of this paragraph, "supervisor" means an individual having authority, in the interest of the licensee, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them or to adjust their grievances, or effectively to recommend such action, if, in connection with the foregoing, the exercise of that authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

(7) Provide the applicant's seller's permit number issued pursuant to Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code or indicate that the applicant is currently applying for a seller's permit.

(8) Provide any other information required by the licensing authority.

(9) For an applicant seeking a cultivation license, provide a statement declaring the applicant is an "agricultural employer," as defined in the Alatorre-Zenovich-Dunlap-Berman Agricultural Labor Relations Act of 1975 (Part 3.5 (commencing with Section 1140) of Division 2 of the Labor Code), to the extent not prohibited by law.

(10) For an applicant seeking licensure as a testing laboratory, register with the State Department of Public Health and provide any information required by the State Department of Public Health.

(11) Pay all applicable fees required for licensure by the licensing authority.

(b) For applicants seeking licensure to cultivate, distribute, or manufacture medical cannabis, the application shall also include a detailed description of the applicant's operating procedures for all of the following, as required by the licensing authority:

- (1) Cultivation.
- (2) Extraction and infusion methods.
- (3) The transportation process.
- (4) Inventory procedures.
- (5) Quality control procedures.

SEC. 10. Section 19323 is added to the Business and Professions Code, to read:

19323. (a) The licensing authority shall deny an application if either the applicant or the premises for which a state license is applied do not qualify for licensure under this chapter.

(b) The licensing authority may deny the application for licensure or renewal of a state license if any of the following conditions apply:

(1) Failure to comply with the provisions of this chapter or any rule or regulation adopted pursuant to this chapter, including but not limited to, any requirement imposed to protect natural resources, instream flow, and water quality pursuant to subdivision (a) of Section 19332.

(2) Conduct that constitutes grounds for denial of licensure pursuant to Chapter 2 (commencing with Section 480) of Division 1.5.

(3) A local agency has notified the licensing authority that a licensee or applicant within its jurisdiction is in violation of state rules and regulation relating to commercial cannabis activities, and the licensing authority, through an investigation, has determined that the violation is grounds for termination or revocation of the license. The licensing authority shall have the authority to collect reasonable costs, as determined by the licensing authority, for investigation from the licensee or applicant.

(4) The applicant has failed to provide information required by the licensing authority.

(5) The applicant or licensee has been convicted of an offense that is substantially related to the qualifications, functions, or duties of the business or profession for which the application is made, except that if the licensing authority determines that the applicant or licensee is otherwise suitable to be issued a license and granting the license would not compromise public safety, the licensing authority shall conduct a thorough review of the nature of the crime, conviction, circumstances, and evidence of rehabilitation of the applicant, and shall evaluate the suitability of the applicant or licensee to be issued a license based on the evidence found through the review. In determining which offenses are substantially related to the qualifications, functions, or duties of the business or profession for which the application is made, the licensing authority shall include, but not be limited to, the following:

(A) A felony conviction for the illegal possession for sale, sale, manufacture, transportation, or cultivation of a controlled substance.

(B) A violent felony conviction, as specified in subdivision (c) of Section 667.5 of the Penal Code.

(C) A serious felony conviction, as specified in subdivision (c) of Section 1192.7 of the Penal Code.

(D) A felony conviction involving fraud, deceit, or embezzlement.

(6) The applicant, or any of its officers, directors, or owners, is a licensed physician making patient recommendations for medical cannabis pursuant to Section 11362.7 of the Health and Safety Code.

(7) The applicant or any of its officers, directors, or owners has been subject to fines or penalties for cultivation or production of a controlled substance on public or private lands pursuant to Section 12025 or 12025.1 of the Fish and Game Code.

(8) The applicant, or any of its officers, directors, or owners, has been sanctioned by a licensing authority or a city, county, or city and county for unlicensed commercial medical cannabis activities or has had a license revoked under this chapter in the three years immediately preceding the date the application is filed with the licensing authority.

(9) Failure to obtain and maintain a valid seller's permit required pursuant to Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code.

SEC. 11. Section 19324 is added to the Business and Professions Code, to read:

19324. Upon the denial of any application for a license, the licensing authority shall notify the applicant in writing. Within 30 days of service of the notice, the applicant may file a written petition for a license with the licensing authority. Upon receipt of a timely filed petition, the licensing authority shall set the petition for hearing. The hearing shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the director of each licensing authority shall have all the powers granted therein.

SEC. 12. Section 19325 is added to the Business and Professions Code, to read:

19325. An applicant shall not be denied a state license if the denial is based solely on any of the following:

(a) A conviction or act that is substantially related to the qualifications, functions, or duties of the business or profession for which the application is made for which the applicant or licensee has obtained a certificate of rehabilitation pursuant to Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code.

(b) A conviction that was subsequently dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code.

SEC. 13. Article 6 (commencing with Section 19331) is added to Chapter 3.5 of Division 8 of the Business and Professions Code, to read:

Article 6. Licensed Cultivation Sites

19331. The Legislature finds and declares all of the following:

(a) The United States Environmental Protection Agency has not established appropriate pesticide tolerances for, or permitted the registration and lawful use of, pesticides on cannabis crops intended for human consumption pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.).

(b) The use of pesticides is not adequately regulated due to the omissions in federal law, and cannabis cultivated in California for California patients can and often does contain pesticide residues.

(c) Lawful California medical cannabis growers and caregivers urge the Department of Pesticide Regulation to provide guidance, in absence of federal guidance, on whether the pesticides currently used at most cannabis

cultivation sites are actually safe for use on cannabis intended for human consumption.

19332. (a) The Department of Food and Agriculture shall promulgate regulations governing the licensing of indoor and outdoor cultivation sites.

(b) The Department of Pesticide Regulation, in consultation with the Department of Food and Agriculture, shall develop standards for the use of pesticides in cultivation, and maximum tolerances for pesticides and other foreign object residue in harvested cannabis.

(c) The State Department of Public Health shall develop standards for the production and labeling of all edible medical cannabis products.

(d) The Department of Food and Agriculture, in consultation with the Department of Fish and Wildlife and the State Water Resources Control Board, shall ensure that individual and cumulative effects of water diversion and discharge associated with cultivation do not affect the instream flows needed for fish spawning, migration, and rearing, and the flows needed to maintain natural flow variability.

(e) The Department of Food and Agriculture shall have the authority necessary for the implementation of the regulations it adopts pursuant to this chapter. The regulations shall do all of the following:

(1) Provide that weighing or measuring devices used in connection with the sale or distribution of medical cannabis are required to meet standards equivalent to Division 5 (commencing with Section 12001).

(2) Require that cannabis cultivation by licensees is conducted in accordance with state and local laws related to land conversion, grading, electricity usage, water usage, agricultural discharges, and similar matters. Nothing in this chapter, and no regulation adopted by the department, shall be construed to supersede or limit the authority of the State Water Resources Control Board, regional water quality control boards, or the Department of Fish and Wildlife to implement and enforce their statutory obligations or to adopt regulations to protect water quality, water supply, and natural resources.

(3) Establish procedures for the issuance and revocation of unique identifiers for activities associated with a cannabis cultivation license, pursuant to Article 8 (commencing with Section 19337). All cannabis shall be labeled with the unique identifier issued by the Department of Food and Agriculture.

(4) Prescribe standards, in consultation with the bureau, for the reporting of information as necessary related to unique identifiers, pursuant to Article 8 (commencing with Section 19337).

(f) The Department of Pesticide Regulation, in consultation with the State Water Resources Control Board, shall promulgate regulations that require that the application of pesticides or other pest control in connection with the indoor or outdoor cultivation of medical cannabis meets standards equivalent to Division 6 (commencing with Section 11401) of the Food and Agricultural Code and its implementing regulations.

(g) State cultivator license types issued by the Department of Food and Agriculture include:

(1) Type 1, or “specialty outdoor,” for outdoor cultivation using no artificial lighting of less than or equal to 5,000 square feet of total canopy size on one premises, or up to 50 mature plants on noncontiguous plots.

(2) Type 1A, or “specialty indoor,” for indoor cultivation using exclusively artificial lighting of less than or equal to 5,000 square feet of total canopy size on one premises.

(3) Type 1B, or “specialty mixed-light,” for cultivation using a combination of natural and supplemental artificial lighting at a maximum threshold to be determined by the licensing authority, of less than or equal to 5,000 square feet of total canopy size on one premises.

(4) Type 2, or “small outdoor,” for outdoor cultivation using no artificial lighting between 5,001 and 10,000 square feet, inclusive, of total canopy size on one premises.

(5) Type 2A, or “small indoor,” for indoor cultivation using exclusively artificial lighting between 5,001 and 10,000 square feet, inclusive, of total canopy size on one premises.

(6) Type 2B, or “small mixed-light,” for cultivation using a combination of natural and supplemental artificial lighting at a maximum threshold to be determined by the licensing authority, between 5,001 and 10,000 square feet, inclusive, of total canopy size on one premises.

(7) Type 3, or “outdoor,” for outdoor cultivation using no artificial lighting from 10,001 square feet to one acre, inclusive, of total canopy size on one premises. The Department of Food and Agriculture shall limit the number of licenses allowed of this type.

(8) Type 3A, or “indoor,” for indoor cultivation using exclusively artificial lighting between 10,001 and 22,000 square feet, inclusive, of total canopy size on one premises. The Department of Food and Agriculture shall limit the number of licenses allowed of this type.

(9) Type 3B, or “mixed-light,” for cultivation using a combination of natural and supplemental artificial lighting at a maximum threshold to be determined by the licensing authority, between 10,001 and 22,000 square feet, inclusive, of total canopy size on one premises. The Department of Food and Agriculture shall limit the number of licenses allowed of this type.

(10) Type 4, or “nursery,” for cultivation of medical cannabis solely as a nursery. Type 4 licensees may transport live plants.

19332.5. (a) Not later than January 1, 2020, the Department of Food and Agriculture in conjunction with the bureau, shall make available a certified organic designation and organic certification program for medical marijuana, if permitted under federal law and the National Organic Program (Section 6517 of the federal Organic Foods Production Act of 1990 (7 U.S.C. Sec. 6501 et seq.)), and Article 7 (commencing with Section 110810) of Chapter 5 of Part 5 of Division 104 of the Health and Safety Code.

(b) The bureau may establish appellations of origin for marijuana grown in California.

(c) It is unlawful for medical marijuana to be marketed, labeled, or sold as grown in a California county when the medical marijuana was not grown in that county.

(d) It is unlawful to use the name of a California county in the labeling, marketing, or packaging of medical marijuana products unless the product was grown in that county.

19333. An employee engaged in commercial cannabis cultivation activity shall be subject to Wage Order 4-2001 of the Industrial Welfare Commission.

SEC. 14. Article 7.5 (commencing with Section 19335) is added to Chapter 3.5 of Division 8 of the Business and Professions Code, to read:

Article 7.5. Unique Identifier and Track and Trace Program

19335. (a) The Department of Food and Agriculture, in consultation with the bureau, shall establish a track and trace program for reporting the movement of medical marijuana items throughout the distribution chain that utilizes a unique identifier pursuant to Section 11362.777 of the Health and Safety Code and secure packaging and is capable of providing information that captures, at a minimum, all of the following:

(1) The licensee receiving the product.

(2) The transaction date.

(3) The cultivator from which the product originates, including the associated unique identifier, pursuant to Section 11362.777 of the Health and Safety Code.

(b) (1) The Department of Food and Agriculture shall create an electronic database containing the electronic shipping manifests which shall include, but not be limited to, the following information:

(A) The quantity, or weight, and variety of products shipped.

(B) The estimated times of departure and arrival.

(C) The quantity, or weight, and variety of products received.

(D) The actual time of departure and arrival.

(E) A categorization of the product.

(F) The license number and the unique identifier pursuant to Section 11362.777 of the Health and Safety Code issued by the licensing authority for all licensees involved in the shipping process, including cultivators, transporters, distributors, and dispensaries.

(2) (A) The database shall be designed to flag irregularities for all licensing authorities in this chapter to investigate. All licensing authorities pursuant to this chapter may access the database and share information related to licensees under this chapter, including social security and individual taxpayer identifications notwithstanding Section 30.

(B) The Department of Food and Agriculture shall immediately inform the bureau upon the finding of an irregularity or suspicious finding related to a licensee, applicant, or commercial cannabis activity for investigatory purposes.

(3) Licensing authorities and state and local agencies may, at any time, inspect shipments and request documentation for current inventory.

(4) The bureau shall have 24-hour access to the electronic database administered by the Department of Food and Agriculture.

(5) The Department of Food and Agriculture shall be authorized to enter into memoranda of understandings with licensing authorities for data sharing purposes, as deemed necessary by the Department of Food and Agriculture.

(6) Information received and contained in records kept by the Department of Food and Agriculture or licensing authorities for the purposes of administering this section are confidential and shall not be disclosed pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), except as necessary for authorized employees of the State of California or any city, county, or city and county to perform official duties pursuant to this chapter or a local ordinance.

(7) Upon the request of a state or local law enforcement agency, licensing authorities shall allow access to or provide information contained within the database to assist law enforcement in their duties and responsibilities pursuant to this chapter.

19336. (a) Chapter 4 (commencing with Section 55121) of Part 30 of Division 2 of the Revenue and Taxation Code shall apply with respect to the bureau's collection of the fees, civil fines, and penalties imposed pursuant to this chapter.

(b) Chapter 8 (commencing with Section 55381) of Part 30 of Division 2 of the Revenue and Taxation Code shall apply with respect to the disclosure of information under this chapter.

SEC. 15. Article 8 (commencing with Section 19337) is added to Chapter 3.5 of Division 8 of the Business and Professions Code, to read:

Article 8. Licensed Transporters

19337. (a) A licensee authorized to transport medical cannabis and medical cannabis products between licenses shall do so only as set forth in this chapter.

(b) Prior to transporting medical cannabis or medical cannabis products, a licensed transporter of medical cannabis or medical cannabis products shall do both of the following:

(1) Complete an electronic shipping manifest as prescribed by the licensing authority. The shipping manifest must include the unique identifier, pursuant to Section 11362.777 of the Health and Safety Code, issued by the Department of Food and Agriculture for the original cannabis product.

(2) Securely transmit the manifest to the bureau and the licensee that will receive the medical cannabis product. The bureau shall inform the Department of Food and Agriculture of information pertaining to commercial cannabis activity for the purpose of the track and trace program identified in Section 19335.

(c) During transportation, the licensed transporter shall maintain a physical copy of the shipping manifest and make it available upon request to agents of the Department of Consumer Affairs and law enforcement officers.

(d) The licensee receiving the shipment shall maintain each electronic shipping manifest and shall make it available upon request to the Department of Consumer Affairs and any law enforcement officers.

(e) Upon receipt of the transported shipment, the licensee receiving the shipment shall submit to the licensing agency a record verifying receipt of the shipment and the details of the shipment.

(f) Transporting, or arranging for or facilitating the transport of, medical cannabis or medical cannabis products in violation of this chapter is grounds for disciplinary action against the license.

19338. (a) This chapter shall not be construed to authorize or permit a licensee to transport or cause to be transported cannabis or cannabis products outside the state, unless authorized by federal law.

(b) A local jurisdiction shall not prevent transportation of medical cannabis or medical cannabis products on public roads by a licensee transporting medical cannabis or medical cannabis products in compliance with this chapter.

SEC. 16. Article 11 (commencing with Section 19348) is added to Chapter 3.5 of Division 8 of the Business and Professions Code, to read:

Article 11. Taxation

19348. (a) (1) A county may impose a tax on the privilege of cultivating, dispensing, producing, processing, preparing, storing, providing, donating, selling, or distributing medical cannabis or medical cannabis products by a licensee operating pursuant to this chapter.

(2) The board of supervisors shall specify in the ordinance proposing the tax the activities subject to the tax, the applicable rate or rates, the method of apportionment, if necessary, and the manner of collection of the tax. The tax may be imposed for general governmental purposes or for purposes specified in the ordinance by the board of supervisors.

(3) In addition to any other method of collection authorized by law, the board of supervisors may provide for the collection of the tax imposed pursuant to this section in the same manner, and subject to the same penalties and priority of lien, as other charges and taxes fixed and collected by the county. A tax imposed pursuant to this section is a tax and not a fee or special assessment. The board of supervisors shall specify whether the tax applies throughout the entire county or within the unincorporated area of the county.

(4) The tax authorized by this section may be imposed upon any or all of the activities set forth in paragraph (1), as specified in the ordinance, regardless of whether the activity is undertaken individually, collectively, or cooperatively, and regardless of whether the activity is for compensation or gratuitous, as determined by the board of supervisors.

(b) A tax imposed pursuant to this section shall be subject to applicable voter approval requirements imposed by law.

(c) This section is declaratory of existing law and does not limit or prohibit the levy or collection of any other fee, charge, or tax, or a license or service fee or charge upon, or related to, the activities set forth in subdivision (a) as otherwise provided by law. This section shall not be construed as a limitation upon the taxing authority of a county as provided by law.

(d) This section shall not be construed to authorize a county to impose a sales or use tax in addition to the sales and use tax imposed under an ordinance conforming to the provisions of Sections 7202 and 7203 of the Revenue and Taxation Code.

SEC. 17. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 18. The Legislature finds and declares that Section 14 of this act, which adds Section 19335 to the Business and Professions Code, thereby imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

The limitation imposed under this act is necessary for purposes of compliance with the federal Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. Sec. 1320d et seq.), the Confidentiality of Medical Information Act (Part 2.6 (commencing with Section 56) of Division 1 of the Civil Code), and the Insurance Information and Privacy Protection Act (Article 6.6 (commencing with Section 791) of Part 2 of Division 1 of the Insurance Code).

SEC. 19. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

SEC. 20. This act shall become operative only if Assembly Bill 266 and Assembly Bill 243 of the 2015–16 Session are enacted and take effect on or before January 1, 2016.

O

Death Following Ingestion of an Edible Marijuana Product — Colorado, March 2014

Jessica B. Hancock-Allen, MSN; Lisa Barker; Michael VanDyke, PhD; Dawn B. Holmes, MD
Morbidity and Mortality Weekly Report. 2015;64(28):771-772.

In March 2014, the Colorado Department of Public Health and Environment (CDPHE) learned of the death of a man aged 19 years after consuming an edible marijuana product. CDPHE reviewed autopsy and police reports to assess factors associated with his death and to guide prevention efforts. The decedent's friend, aged 23 years, had purchased marijuana cookies and provided one to the decedent. A police report indicated that initially the decedent ate only a single piece of his cookie, as directed by the sales clerk. Approximately 30–60 minutes later, not feeling any effects, he consumed the remainder of the cookie. During the next 2 hours, he reportedly exhibited erratic speech and hostile behaviors. Approximately 3.5 hours after initial ingestion, and 2.5 hours after consuming the remainder of the cookie, he jumped off a fourth floor balcony and died from trauma. The autopsy, performed 29 hours after time of death, found marijuana intoxication as a chief contributing factor. Quantitative toxicologic analyses for drugs of abuse, synthetic cannabinoid, and cathinones ("bath salts") were performed on chest cavity blood by gas chromatography and mass spectrometry. The only confirmed findings were cannabinoids (7.2 ng/mL delta-9 tetrahydrocannabinol [THC] and 49 ng/mL delta-9 carboxy-THC, an inactive marijuana metabolite). The legal whole blood limit of delta-9 THC for driving a vehicle in Colorado is 5.0 ng/mL. This was the first reported death in Colorado linked to marijuana consumption without evidence of polysubstance use since the state approved recreational use of marijuana in 2012.

According to the police report, the decedent had been marijuana-naïve, with no known history of alcohol abuse, illicit drug use, or mental illness. In addition to listing inactive ingredients, the cookie label described the psychoactive ingredients as "65 mg THC/6.5 servings (THC, tetrahydrocannabinol, the principal psychoactive agent in cannabis)." The label also noted, "This marijuana product has not been tested for contaminants or potency." According to the police report, the sales clerk had instructed the buyer and decedent to divide each cookie into sixths, each piece containing approximately 10 mg of THC, the serving size, and to ingest one serving at a time. The police report did not indicate whether the sales clerk provided specific instructions for how long to wait between ingesting each serving.

This case illustrates a potential danger associated with recreational edible marijuana use. Some studies have suggested an association between cannabis and psychological disturbances.^[1] Second to alcohol, marijuana is the most commonly used recreational drug in the United States, with an estimated 19.8 million past-month users during 2013.^[2] In 2012, Colorado and Washington became the first states to permit recreational use of marijuana under their state laws.^[3] The first state-licensed recreational

marijuana stores in Colorado opened in January 2014. An estimated 45% of Colorado's marijuana sales involve edible marijuana, including THC-infused food, drink, and pills.^[4, 5] Colorado's marijuana surveillance system collects adverse outcomes data from hospitalizations, emergency department visits, and poison center calls.

Systemic THC levels and psychoactive effects after ingestion are highly variable because of differences in bioavailability, rate of gastrointestinal absorption, and metabolic first-pass effect whereby an orally administered drug is partially metabolized (principally in the liver) before reaching systemic distribution.^[6, 7] Because absorption is slower, the onset of effects is delayed (with mean peak plasma concentration at 1–2 hours after ingestion, in contrast with 5–10 minutes to peak plasma concentrations if smoked), and duration of intoxication is longer when THC is ingested compared with when it is smoked.^[7] Whereas a single-serving recreational edible marijuana dose in Colorado was set at 10 mg of THC, multiple-dose recreational edible products, often containing 100 mg of THC, were available during March 2014.^[4] The marijuana store where the implicated cookies had been purchased voluntarily gave all 67 remaining cookies of the same brand to the Denver Police Department. Testing confirmed that the THC levels in the items were within required limits. Because of the delayed effects of THC-infused edibles, multiple servings might be consumed in close succession before experiencing the "high" from the initial serving, as reportedly occurred in this case. Consuming a large dose of THC can result in a higher THC concentration, greater intoxication, and an increased risk for adverse psychological effects.

Recreational marijuana is now permitted for persons aged ≥ 21 years under state law in four states (Alaska, Colorado, Oregon, and Washington) and the District of Columbia; marijuana-attributed morbidity and mortality surveillance can help guide efforts to prevent overconsumption in these jurisdictions. Regulation of recreational marijuana edibles in Colorado continues to evolve. On the basis of initial surveillance data in Colorado and numerous cases of accidental overconsumption, on February 1, 2015, Colorado instituted new packaging and labeling rules, requiring that recreational edible marijuana products contain no more than 10 mg of THC, or have clear demarcation of each 10-mg serving.^[8] In addition, before distribution, cannabinoid potency testing is now performed on batches of recreational edible marijuana products by state-certified laboratories. Other states permitting recreational marijuana use could potentially reduce adverse health effects by considering similar THC limits in marijuana edible products, and by enforcing clear labeling standards that require information on multidose products. Although the decedent in this case was advised against eating multiple servings at one time, he reportedly consumed all five of the remaining servings of the THC-infused cookie within 30–60 minutes after the first serving, suggesting a need for improved public health messaging to reduce the risk for overconsumption of THC.

References

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3. Colorado Department of Revenue. Laws: constitution, statutes and regulations—marijuana enforcement. Available at <https://www.colorado.gov/pacific/enforcement/laws-constitution-statutes-and-regulations-marijuana-enforcement>.
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8. Marijuana Enforcement Division, Colorado Department of Revenue. Retail marijuana product manufacturing, packaging, and labeling compliance guidance. Available at https://www.colorado.gov/pacific/sites/default/files/14-10_IndustryBulletin-Attachments.pdf.



Fw: Medical Marijuana Dispensary

Debbie Arnold to: cr_board_clerk Clerk Recorder
Sent by: **Jennifer Caffee**

11/02/2015 09:26 AM

Debbie Arnold

Supervisor, 5th District
San Luis Obispo County
(805) 781-4339

----- Forwarded by Jennifer Caffee/BOS/COSLO on 11/02/2015 09:26 AM -----

From: David Gaskill <agdaveandanita@msn.com>
To: "fmecham@co.slo.ca.us" <fmecham@co.slo.ca.us>, "bgibson@co.slo.ca.us" <bgibson@co.slo.ca.us>, "ahill@co.slo.ca.us" <ahill@co.slo.ca.us>, <lcompton@co.slo.ca.us>, "darnold@co.slo.ca.us" <darnold@co.slo.ca.us>
Date: 11/01/2015 11:39 AM
Subject: Medical Marijuana Dispensary

The county has rules in place to allow for this. The Planning Commission and County Staff have recommended approval. There is no reason not to approve this medical marijuana dispensary. Please think of the many people who benefit from the use of medical marijuana and approve this dispensary.

Thank you
Anita and David Gaskill
Pismo Beach, CA



Fw: Medical Marijuana Dispensary

Bruce Gibson to: cr_board_clerk Clerk Recorder

11/02/2015 09:34 AM

Sent by: **Cherie McKee**

Cc: Jennifer Caffee, Hannah Miller, Vicki Shelby, Jocelyn Brennan,
Adam Hill, Frank Mecham, Bruce Gibson, Debbie Arnold, Lynn
Compton

fyi

----- Forwarded by Cherie McKee/BOS/COSLO on 11/02/2015 09:34 AM -----

From: Bonita Zisla <bonitazis@gmail.com>
To: bgibson@co.slo.ca.us,
Date: 11/01/2015 02:37 PM
Subject: Medical Marijuana Dispensary

Please support the dispensary in Nipomo. It is time to assist our local residents who need this service. Thank you!

Bonita Zisla
bonitazis@gmail.com



Fw: Ethnobotanica DRC2014-00070

Bruce Gibson to: cr_board_clerk Clerk Recorder

11/02/2015 09:47 AM

Sent by: **Cherie McKee**

Cc: Adam Hill, Frank Mecham, Bruce Gibson, Debbie Arnold, Lynn Compton, Jennifer Caffee, Hannah Miller, Vicki Shelby, Jocelyn Brennan

fyi

----- Forwarded by Cherie McKee/BOS/COSLO on 11/02/2015 09:47 AM -----

From: zwrights229@aol.com
To: bgibson@co.slo.ca.us,
Date: 10/30/2015 02:43 PM
Subject: Ethnobotanica DRC2014-00070

Dear Supervisor Gibson -

Please see the attached letter regarding the appeal of the Planning Commission's decision on the medical marijuana dispensary in Nipomo scheduled for your Board meeting on November 3, 2015.

Your consideration of this matter is appreciated.

Dick Wright
Nipomo resident



MMD Supervisor lettr.docx

San Luis Obispo County Board of Supervisors
1055 Monterey St. #D430
San Luis Obispo, CA 93401

Dear Supervisor –

The proposal to establish a Medical Marijuana Dispensary in Nipomo is a serious “Public Safety” issue.

Some Considerations:

- The South County Advisory Council examined the issue, with public comment, and voted to recommend “Denial” of Ethnobotanica’s application for an MUP.

- Availability of medical marijuana in our County is not an issue. The current 30 home delivery medical marijuana companies operating in SLO County adequately and more safely provide the product to legitimate patients.

- Retail marijuana dispensaries have a significant history of being targets for criminal attacks in California and other states. In a number of instances, violence has occurred.
 - o For example, just this year:
 - A security officer at a dispensary in San Bernardino was shot and killed during a robbery.
 - In Upland, a police SWAT unit arrested four armed suspects following a dispensary robbery in which the suspects pistol-whipped an employee and shot another in the leg.
 - In Bakersfield, a defendant who shot and killed two individuals during a robbery at a dispensary pled guilty to murder.

- The SLO Sheriff’s Department has publicly stated that due to the remote location of the proposed dispensary the estimated response time for deputies to a felonious situation there would be from 10 to 30 minutes.

- This would be the only retail medical marijuana dispensary on the Central Coast and would draw the attention of the active criminal street gangs from across the river in Santa Maria.

- From a criminal’s perspective this location is perfect: easy access and egress via the freeway and the driveway that circles around the building, no armed security, and no realistic threat of being interrupted by local law enforcement.

- In August, the Sheriff in Spokane, Washington made three significant points following a marijuana dispensary robbery there. He said, this was the second dispensary robbery in six months (frequency of incidents), there was a top-rate surveillance system in place (no deterrent) and the robbers really didn’t go after the cash, they went after the marijuana (target).

A retail medical marijuana dispensary in the proposed location is a serious and unnecessary exposure of our citizens to potential violence. You have the ability to prevent this criminal threat. I urge you to deny this application for a medical marijuana dispensary in Nipomo.

Respectfully,

Dick Wright
Nipomo resident



Fw: Opposition to medical marijuana dispensary in Nipomo

Lynn Compton to: cr_board_clerk Clerk Recorder
Sent by: **Jocelyn Brennan**

11/02/2015 09:49 AM

----- Forwarded by Jocelyn Brennan/BOS/COSLO on 11/02/2015 09:49 AM -----

From: Nipomo Resident <nipomoresident@gmail.com>
To: fmecham@co.slo.ca.us, vshelby@co.slo.ca.us, bgibson@co.slo.ca.us, cmckee@co.slo.ca.us, ahill@co.slo.ca.us, hmiller@co.slo.ca.us, lcompton@co.slo.ca.us, jbrennan@co.slo.ca.us, darnold@co.slo.ca.us, Jen Caffee <jcaffee@co.slo.ca.us>
Date: 10/30/2015 05:04 PM
Subject: Opposition to medical marijuana dispensary in Nipomo

Dear San Luis Obispo County Board of Supervisors:

I am a resident of Nipomo. I oppose the application for a minor use permit for a medical marijuana dispensary located at 2122 Hutton Road, Nipomo, CA 93444. The minor use permit file number is DRC2014-00070. The name of the applicant in Ethnobotanica. On April 27, 2015, I submitted a 16 page letter to the San Luis Obispo County Planning Commission in opposition to a medical marijuana dispensary in Nipomo. Please take the time to read my 16 page letter and documents attached to this email.

In September, the Department of Justice released a Memorandum to the public regarding Section 538 of the Appropriations Act of 2015. The Department of Justice states they will continue to prosecute medical marijuana cases against individuals and organizations. Airlin Singewald, SLO Senior Planner, stated to the contrary on page 3 of the Staff Report to the Planning Commission. Mr. Singerwald stated "However, in December 2014 U.S. Congress passed a spending bill, which included a provision limiting the Justice Department's ability to take criminal action against state licensed individuals or operations that are acting in full compliance with medical marijuana laws of their states". Mr. Singerwald's statement is not correct. See attached Department of Justice Memorandum. See page 3 of attached Staff Report to Planning Commission.

In September, California State Legislature passed 3 bills for the regulation of medical marijuana: Assembly Bill 243, Assembly Bill 266, Senate Bill 643. The bills are referred to as the Medical Marijuana Regulation and Safety Act. On October 9, 2015, the California Governor signed the bills into law. The bills require both a state license and a local permit for a medical marijuana dispensary. In addition, the bills have many more requirements for a medical marijuana dispensary. The San Luis Obispo County medical marijuana dispensary ordinance should be rewritten or rescinded to comply with the new medical marijuana laws. See attached medical marijuana bills. Medical marijuana bills online at www.legislature.ca.gov

Attached is update on medical marijuana edible death report in Colorado.

Sincerely,




Resident of Nipomo Dept of Justice Memo on Section 538.pdf Staff Report for Planning Commission.pdf






Assembly Bill No. 243.pdf Assembly Bill No. 266.pdf Senate Bill No. 643.pdf Marijuana Edible Death Report.docx



U.S. Department of Justice

Criminal Division

Washington, D.C. 20530

February 27, 2015

MEMORANDUM

TO: All Federal Prosecutors

FROM: Patty Merkamp Stemler /s/ PMS
Chief, Appellate Section

SUBJECT: Guidance Regarding the Effect of Section 538 of the Consolidated and Further Continuing Appropriations Act of 2015 on Prosecutions and Civil Enforcement and Forfeiture Actions Under the Controlled Substances Act

THE MATERIAL IN THIS DOCUMENT CONSISTS OF ATTORNEY WORK PRODUCT AND SHOULD NOT BE DISSEMINATED OUTSIDE THE DEPARTMENT OF JUSTICE.

On December 16, 2014, President Obama signed the Consolidated and Further Continuing Appropriations Act of 2015, which funds the federal government through September 30, 2015. The legislation includes a rider stating that no funding allocated to the Department of Justice under the Act can be used to prevent certain states from implementing their laws related to medical marijuana. See Consolidated and Further Continuing Appropriations Act of 2015, Pub. L. No. 113-235, tit. V, div. B, § 538 (2014). Section 538 provides that:

None of the funds made available in this Act to the Department of Justice may be used, with respect to the States of Alabama, Alaska, Arizona, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Hawaii, Illinois, Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan,

Minnesota, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, Oregon, Rhode Island, South Carolina, Tennessee, Utah, Vermont, Washington, and Wisconsin, to prevent such States from implementing their own State laws that authorize the use, distribution, possession, or cultivation of medical marijuana.

Defendants charged with violations of the Controlled Substances Act ("CSA"), 21 U.S.C. § 801 *et seq.*, have begun filing motions challenging their prosecutions on the ground that the government's expenditure of funds in enforcing the CSA against them violates Section 538.

As explained more fully below, the Department's position is that Section 538 does not bar the use of funds to enforce the CSA's criminal prohibitions or to take civil enforcement and forfeiture actions against private individuals or entities consistent with the Department's guidance regarding marijuana enforcement. See Memorandum of Deputy Attorney General James M. Cole, *Guidance Regarding Marijuana Enforcement* (August 29, 2013) ("2013 Cole Memorandum"); Memorandum of Deputy Attorney General James M. Cole, *Guidance Regarding the Ogden Memo in Jurisdictions Seeking to Authorize Marijuana for Medical Use* (June 29, 2011) ("2011 Cole Memorandum"); Memorandum of Deputy Attorney General David Ogden, *Investigations and Prosecutions in States Authorizing the Medical Use of Marijuana* (October 19, 2009) ("2009 Ogden Memorandum").¹ Section 538 also does not provide a legal defense in enforcement or forfeiture actions against individuals or entities brought consistent with these guidance memoranda.

U.S. Attorney's Offices should, however, consult with Jody Hunt, Director, Federal Programs Branch, before proceeding with any civil litigation regarding state laws authorizing the medical use of marijuana where the State or State officials are a party, or where the status of State law is challenged. This includes litigation regarding whether State law is preempted by the CSA. Attorneys should follow the guidance in the three Deputy Attorney General memoranda before initiating or pursuing criminal charges or civil enforcement or forfeiture actions in States that permit the use, distribution, possession, or cultivation of medical

These guidance memoranda can be found at <http://dojnet.doj.gov/usao/eousa/ole/usabook/memo/mj082913.pdf> (2013 Cole Memorandum); <http://dojnet.doj.gov/usao/eousa/ole/usabook/memo/2011mj.pdf> (2011 Cole Memorandum); and <http://www.justice.gov/sites/default/files/opa/legacy/2009/10/19/medical-marijuana.pdf> (2009 Ogden Memorandum). Please note that the memoranda apply prospectively to the exercise of prosecutorial discretion, do not provide a defendant or subject of an enforcement action with a basis for reconsideration of pending prosecutions or actions, and more generally create no rights, substantive or procedural, enforceable at law by any party in any matter civil or criminal.

marijuana.

I. Section 538 Does Not Apply to Criminal Prosecutions or Civil Enforcement or Forfeiture Actions that are Consistent with Department Guidance.

A. The Controlled Substances Act

Enforcement of the federal drug laws is governed by the Controlled Substances Act, 21 U.S.C. § 801 *et seq.* “Enacted in 1970 with the main objectives of combating drug abuse and controlling the legitimate and illegitimate traffic in controlled substances, the CSA creates a comprehensive, closed regulatory regime criminalizing the unauthorized manufacture, distribution, dispensing, and possession of substances classified in any of the Act’s five schedules.” *Gonzales v. Oregon*, 546 U.S. 243, 250 (2006). The purpose of the CSA was to “consolidate various drug laws on the books into a comprehensive statute, provide meaningful regulation over legitimate sources of drugs to prevent diversion into illegal channels, and strengthen law enforcement tools against the traffic in illicit drugs.” *Gonzales v. Raich*, 545 U.S. 1, 10 (2005); *see also id.* at 12-13 (noting that “Congress was particularly concerned with the need to prevent the diversion of drugs from legitimate to illicit channels”). “To effectuate these goals, Congress devised a closed regulatory system making it unlawful to manufacture, distribute, dispense, or possess any controlled substance except in a manner authorized by the CSA.” *Id.* at 13.

In *Raich*, the Supreme Court held that the application of the CSA provisions criminalizing the manufacture, distribution, or possession of marijuana to intrastate growers and users of medical marijuana did not violate the Commerce Clause. The Court had “no difficulty concluding that Congress had a rational basis for believing that failure to regulate the intrastate manufacture and possession of marijuana would leave a gaping hole in the CSA.” 545 U.S. at 22. The Court rejected the argument that states could displace federal regulation of marijuana by approving cultivation and possession of the drug in certain circumstances; to the contrary, “[t]he Supremacy Clause unambiguously provides that if there is any conflict between federal and state law, federal law shall prevail.” *Id.* at 29. *Nor do the drug’s medical properties exempt it from the CSA’s scope.* *Id.* at 28 (“[T]he mere fact that marijuana—like virtually every other controlled substance regulated by the CSA—is used for medicinal purposes cannot possibly serve to distinguish it from the core activities regulated by the CSA.”); *see also United States v. Oakland Cannabis Buyers’ Cooperative*, 532 U.S. 483, 491 (2001) (“In the case of the Controlled Substances Act, the statute reflects a determination that marijuana has no medical benefits worthy of an exception (outside the confines of a Government-approved research project).”).

B. The 2013 Cole Memorandum

In recent years, several states have enacted laws relating to the use of marijuana for medical purposes. Although state medical marijuana laws vary, they typically eliminate state criminal penalties for using marijuana and derivative products for medical purposes and provide for access to medical marijuana through licensed dispensaries or regulated home cultivation. See <http://www.ncsl.org/research/health/state-medical-marijuana-laws.aspx>. The Department has responded to these laws by focusing its efforts on certain, forceful priorities that are particularly important to the federal government. The 2013 Cole Memorandum outlined these priorities:

- Preventing the distribution of marijuana to minors;
- Preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels;
- Preventing the diversion of marijuana from states where it is legal under state law in some form to other states;
- Preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity;
- Preventing violence and the use of firearms in the cultivation, distribution, or marijuana use;
- Preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use;
- Preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and
- Preventing marijuana possession or use on federal property.

These priorities will continue to guide the Department's enforcement of the CSA against marijuana-related conduct. The 2011 Cole Memorandum and the 2009 Ogden Memorandum specifically addressed the exercise of prosecutorial discretion in states with laws authorizing marijuana cultivation, distribution, for medical use. While the 2009 Ogden Memorandum advised that it likely was not an efficient use of federal resources to focus enforcement efforts on seriously ill individuals or on their individual caregivers, the 2011 Cole Memorandum emphasized that U.S. Attorney's Offices have discretion to prosecute larger-scale marijuana cultivation centers because "[p]ersons who are in the business of cultivating, selling or distributing marijuana, and those who

Four states—Colorado, Washington, Alaska, and Oregon—and the District of Columbia also permit recreational use of marijuana. By its terms, Section 538 does not prohibit the use of appropriated funds to prevent the implementation of those laws.

knowingly facilitate such activities, are in violation of the Controlled Substances Act, regardless of state law.” The 2013 Cole Memorandum added, however, that “both the existence of a strong and effective state regulatory system, and an operation’s compliance with such a system,” are significant factors in the exercise of prosecutorial discretion.

C. Section 538

In the Department’s view, Section 538 is best read not to prohibit federal criminal prosecutions, civil enforcement actions, or civil forfeiture actions against individuals or entities who are in violation of the CSA, provided such actions are consistent with the Department’s recent enforcement guidance. In our view, that reading best conforms with the statute’s text, and contrary floor statements in the House are insufficient to overcome the plain text.

1. Statutory Text

In construing Section 538, “[w]e begin with the statutory text.” *DePierre v. United States*, 131 S. Ct. 2225, 2231 (2011). Section 538 prohibits expenditure of the Department’s 2015 appropriations “to prevent [the listed] States from implementing their own State laws.” Several features of this text suggest that it does not bar the Department from prosecuting or pursuing civil enforcement or forfeiture actions against individuals or entities that violate the CSA. The text addresses actions directed against *States*, not individuals. It prohibits the Department from *preventing the implementation of State laws—that is, from impeding the ability of States to carry out their medical marijuana laws, not from taking actions against particular individuals or entities, even if they are acting compliant with State law. And the text does not expressly address federal law, including the CSA or federal enforcement actions; by contrast, when Congress seeks to withhold funding for the enforcement of federal law or regulations it disfavors, it typically uses much more direct language. See, e.g., Pub. L. 100-404, Title I, Aug. 19, 1988, 102 Stat. 1021.*³

We therefore think the text of section 538 is best read not to prohibit the Department from prosecuting, or pursuing civil enforcement or civil forfeiture actions against, individuals or entities who are in violation of Federal law (with one narrow exception set forth in footnote 4, *infra*). It is a closer question

³ Indeed, contemporaneous with its passage of Section 538, Congress considered but did not enact a statute that would have clearly barred the enforcement of the CSA against individuals who acted in compliance with State medical marijuana laws. See H.R. 1523, 113th Cong.

whether the statute would bar a wide-ranging, categorical policy of enforcement against individuals and entities that comply with State law. But this question would not be presented by prosecutions and enforcement actions that are taken consistent with the Department's recent guidance, under which actions against seriously ill individuals, their individual caregivers, or dispensaries that adhere to a strong and effective State regulatory system will generally be considered unwarranted. In the Department's view, the text of Section 538 is best read to prohibit the expenditure of the Department's 2015 appropriations on civil litigation regarding State laws authorizing the medical use of marijuana where the State or State officials are a party, or where the status of a State law is challenged, or where the claim is that a State law or regulatory regime is preempted by the CSA⁴; we note, however, that we have not had occasion to consider whether there may be constitutional limits to such a prohibition. U.S. Attorney's Offices should consult with Mr. Hunt before proceeding with such litigation, or even with litigation that comes close to this line.

In light of this reading, Section 538 would also appear to bar criminal actions against individual State or local officials who violate the CSA through activities taken to implement their State's medical marijuana laws, such as issuing licenses, accepting fees according to their State regimes, and testing marijuana.

2. *Legislative History*⁵

Section 538's legislative history is sparse. The joint explanatory statement accompanying the conference report for the appropriations bill parrots the language of the amendment itself: "Section 538 prohibits the Department of Justice from preventing certain States from implementing State laws regarding the use of medical marijuana." U.S. Congress Joint Explanatory Statement (to Accompany H.R. 83), Consolidated and Further Continuing Appropriations Act 2015, <http://docs.house.gov/billsthisweek/20141208/113-HR83sa-ES-B.pdf>; also available at 160 Cong. Rec. H9307, H9351 (daily ed. Dec. 11, 2014), <https://www.congress.gov/congressional-record/2014/12/11/house-section/article/H9307-1>. Nothing in the statement addresses the CSA or suggests that appropriated funds may not be used to enforce its criminal prohibitions or bring civil enforcement or forfeiture actions. There is no language about the provision in the reports accompanying the bill. See *Garcia v. United States*, 469 U.S. 70, 76 (1984) ("In surveying legislative history we have repeatedly stated that the authoritative source for finding the Legislature's intent lies in the Committee Reports on the bill * * * .").

Several lawmakers, including amendment sponsors, made floor statements supporting and opposing the amendment, but only in the House. There are no floor statements related to the amendment in the Senate. Some of the House floor statements did address criminal prosecutions. For example, Rep. Sam Farr (D-Calif.), a co-sponsor of the amendment, said that "if you are following State law, you are a legal resident doing your business under State law, the Feds just can't come in and bust you and bust the doctors and bust the patient." 160 Cong. Rec. at H4984 (statement of Rep. Sam Farr), <http://www.gpo.gov/fdsys/pkg/CREC-2014-05-29/pdf/CREC-2014-05-29.pdf>. Rep. Dana Titus (D-Nev.), another co-sponsor, stated: "Physicians in those States will not be prosecuted for prescribing the substance, and local businesses will not be shut down for dispensing the same." 160 Cong. Rec. at H4984 (statement of Rep. Dana Titus), <http://www.gpo.gov/fdsys/pkg/CREC-2014-05-29/pdf/CREC-2014-05-29.pdf>. And Rep. Barbara Lee (D-Calif.), also a co-sponsor, said: "It is past time for the Justice Department to stop its unwarranted persecution of medical marijuana and put its resources where they are needed." 160 Cong. Rec. at H4984 (statement of Rep. Barbara Lee), <http://www.gpo.gov/fdsys/pkg/CREC-2014-05-29/pdf/CREC-2014-05-29.pdf>. Some opponents of Section 538 observed that it could impede the Department's efforts to enforce the CSA. See, e.g., 160 Cong. Rec. H4914, H4983 (daily ed.

A fuller compilation of Section 538's legislative history is set forth in an addendum to this memorandum.

May 29, 2014) (statement of Rep. Andy Harris) (“There are two problems with medical marijuana. First, it is the camel’s nose under the tent; and second, the amendment as written would tie the DEA’s hands beyond medical marijuana.”), available at <http://www.gpo.gov/fdsys/pkg/CREC-2014-05-29/pdf/CREC-2014-05-29.pdf>; [id. \(statement of Rep. John Fleming\) \(arguing that although the amendment “wouldn’t change the law, it would just make it difficult, if not impossible, for the DEA and the Department of Justice to enforce the law”\)](#).

These floor statements are inconsistent with the text of Section 538 and with the Department’s position on the construction and scope of Section 538.⁶ We should argue that the floor statements of a handful of legislators in a single House of Congress are not sufficiently authoritative to overcome the best reading of the text. We should also argue that the isolated statements of the two House members who opposed the bill do not shed light on the meaning of the provision. See *Shell Oil Co. v. Iowa Dept. of Revenue*, 488 U.S. 19, 29 (1988) (“This Court does not usually accord much weight to the statements of a bill’s opponents. ‘[T]he fears and doubts of the opposition are no authoritative guide to the construction of legislation.’”) (quoting *Gulf Offshore Co. v. Mobil Oil Corp.*, 453 U.S. 473, 483 (1981)); *NLRB v. Fruit & Vegetable Packers & Warehousemen, Local 760*, 377 U.S. 58, 66 (1964) (“[W]e have often cautioned against the danger, when interpreting a statute, of reliance upon the views of its legislative opponents. In their zeal to defeat a bill, they understandably tend to overstate its reach. The fears and doubts of the opposition are no authoritative guide to the construction of legislation.”) (internal quotation marks omitted); *NRDC v. EPA*, 526 F.3d 591, 604-605 (9th Cir. 2008) (same).

Prior to passage of the appropriations bill, the Department provided Congress with informal talking points addressing the amendment introduced by Rep. Rohrabacher (which became Section 538). The talking points were consistent with the approach taken in this memorandum, with the exception that they warned that in states that permitted recreational marijuana, Rep. Rohrabacher’s amendment could, “in effect, limit or possibly eliminate the Department’s ability to enforce federal law in recreational marijuana cases as well.” This suggestion, which was intended to discourage passage of the rider, does not reflect our current thinking. We do not read Section 538 as placing any limitations on our ability to investigate and prosecute crimes involving recreational marijuana.

3. No Repeal of the CSA

Defendants may argue that Section 538 repeals the CSA's prohibitions on the manufacture, distribution, or possession of marijuana for medicinal purposes. It does not.

Congress did not explicitly repeal any provision of the CSA in Section 538. In *Posadas v. National City Bank*, the Supreme Court held that "the intention of the legislature to repeal must be clear and manifest." 296 U.S. 497, 503 (1936). Congress does not mention the CSA in Section 538, and lawmakers did not mention the CSA in their floor statements. See *United States v. Batchelder*, 442 U.S. 114, 120 (1979) (legislative history demonstrated no intention to alter the terms of another statute).

If it is not clear that Congress intended to repeal a statute, it may be impliedly repealed only if the two statutes are irreconcilable. *Morton v. Mancari*, 417 U.S. 535, 550 (1974) ("In the absence of some affirmative showing of an intention to repeal, the only permissible justification for a repeal by implication is when the earlier and later statutes are irreconcilable."). Legislative intent to repeal must be manifest in the "positive repugnancy between the provisions." *United States v. Borden Co.*, 308 U.S. 188, 199 (1939) (quoting *Posadas*, 296 U.S. at 504); see also *Posadas*, 296 U.S. at 503 ("repeals by implication are not favored"). Section 538 and the CSA are not irreconcilable. Whatever Section 538 means, it does not bar criminal prosecutions in non-medical marijuana states, and in the listed states, it does not bar prosecutions of individuals whose activities are not expressly authorized by state law. Moreover, Section 538 expires at the end of the fiscal year. The CSA and Section 538 are thus "fully capable of coexisting." *Batchelder*, 442 U.S. at 122.

4. Rule of Lenity

The rule of lenity does not apply in construing Section 538. Lenity applies only to statutes that create criminal liability. See *United States v. Santos*, 553 U.S. 507, 514 (2008) ("The rule of lenity requires ambiguous *criminal laws* to be interpreted in favor of the defendants subjected to them.") (emphasis added); *Skilling v. United States*, 561 U.S. 358, 410 (2010) ("ambiguity concerning the ambit of *criminal statutes* should be resolved in favor of lenity") (internal quotation marks omitted) (emphasis added). Section 538 is an appropriations provision, not a criminal statute. Even on the broadest reading, it would not make conduct in violation of the CSA lawful; rather, it would at most bar the federal government from prosecuting certain offenses. Thus the principles animating the rule of lenity are inapposite. See *United States v. Gradwell*, 243

U.S. 476, 485 (1917) (lenity is based on principle that "before a man can be punished as a criminal under the federal law his case must be plainly and unmistakably within the provisions of some statute") (internal quotation marks omitted).

II. Prosecutors Should Not Argue That Criminal Defendants Lack Standing to Challenge a Prosecution Based on Section 538.

A party's standing to raise a claim is a threshold jurisdictional question applicable to both civil and criminal cases. *See, e.g., Bond v. United States*, 131 S. Ct. 2355, 2366 (2011); *Whitmore v. Arkansas*, 495 U.S. 149, 155 (1990). "[T]he gist of the question of standing" is whether a litigant has "such a personal stake in the outcome of [a] controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination." *Baker v. Carr*, 369 U.S. 186, 204 (1962). Although prosecutors should argue that Section 538 does not affect criminal prosecutions or civil enforcement or forfeiture actions, they should not argue that defendants lack standing to raise a Section 538 claim.

The question of standing involves constitutional and prudential considerations. Article III's limitation of judicial power to cases and controversies requires that a litigant have suffered "a concrete and particularized injury" that is "fairly traceable" to the defendant's action and that is likely to be redressed by a decision in her favor. *Massachusetts v. EPA*, 549 U.S. 497, 517 (2007); *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-561 (1992). The defendant in a criminal prosecution or a civil enforcement or forfeiture action will almost always satisfy these constitutional requirements. Once the government has initiated a prosecution or enforcement action, "Article III does not restrict the [defendant's] ability to object to relief being sought at [his] expense" and has "no bearing" on the defendant's "capacity to assert defenses" to his conviction or sentence. *Bond v. United States*, 131 S. Ct. 2355, 2361-2362 (2011); *cf. Spencer v. Kemna*, 523 U.S. 1, 7 (1998) (noting that a criminal conviction "always satisfies the case-or-controversy requirement"). A criminal prosecution or enforcement or forfeiture action under the CSA satisfies Article III's injury and traceability requirements, and a decision in defendants' favor (*i.e.*, that Section 538 precludes the government from continuing to prosecute certain CSA offenses) would afford them relief.

There are also several "prudential" standing requirements: (1) the litigant must assert his own rights and interests and not those of a third party; (2) federal courts should "refrain[] from adjudicating abstract questions of wide public significance" and "generalized grievances," which are "most appropriately

addressed in the representative branches” of government; and (3) the litigant must “fall within the zone of interests to be protected or regulated by the statute *** in question.” *Valley Forge Christian College v. Am. United for Separation of Church and State, Inc.*, 454 U.S. 464, 474-475 (1982) (internal quotation marks omitted); see *Bond*, 131 S. Ct. at 2362 (criminal defendants must satisfy prudential standing requirements). None of the prudential limits on standing appear to apply here.

This inquiry, however, is inextricably intertwined with the merits of a defendant’s claim under Section 538. *Cf. Bond*, 131 S. Ct. at 2362 (noting that questions of prudential standing and statutory causes of action may be “closely connected” and “sometimes identical”) (quoting *Steel Co. v. Citizens for Better Env’t*, 523 U.S. 83, 96-97 & n.2 (1998)). The government would gain no advantage from framing the statutory interpretation issue as a threshold jurisdictional question rather than one that requires a determination on the merits. Federal courts are generally reluctant to deny standing to criminal defendants who seek to challenge their prosecutions as *ultra vires*. See, e.g., *Bond*, 131 S. Ct. at 2366-2367 (defendant has standing to argue that conviction violated principles of federalism under Tenth Amendment); *United States v. Munoz-Flores*, 495 U.S. 385, 394-396 (1990) (defendant has standing to raise separation-of-powers challenge to special assessment under Constitution’s Origination Clause). Courts have also recognized that individuals have standing to seek redress under statutory appropriations provisions that would likely inure to their benefit. See, e.g., *Clinton v. City of New York*, 524 U.S. 417, 430-431 (1998) (approving municipal and private-party standing to challenge President’s exercise of line-item veto to cancel appropriations provision); *cf. Train v. City of New York*, 420 U.S. 35, 43-49 (1975) (rejecting President’s authority to refuse to spend appropriated funds in context of suit brought by private parties, without questioning standing). Prosecutors may, and should, avoid litigating these questions by focusing on the merits of defendants’ challenges under Section 538.⁷

III. Prosecutors Should Argue In the Alternative That, Even Assuming Section 538 Applies to Criminal Prosecutions, a Particular Defendant Has Not Carried His Burden of Showing That the Prosecution Will Prevent the State from Implementing Its Medical Marijuana Laws.

By its terms, Section 538 does not bar federal prosecution where a defendant’s conduct is not authorized by State law, because the conduct would

⁷ Different standing and justiciability concerns may arise in civil cases, particularly if individuals who have not been indicted seek declaratory or injunctive relief from possible prosecution under the CSA in light of Section 538. U.S. Attorney’s Offices should consult with Jody Hunt, Director, Federal Programs Branch, if such issues arise.

not be consistent with the State's efforts to implement its medical marijuana laws. This should be our primary argument where applicable. Moreover, prosecutors should argue that the defendant bears the burden of showing that his conduct was authorized by State law and that his prosecution will prevent the State from implementing its medical marijuana laws.

Section 538 does not alter the elements of a CSA offense or provide for an affirmative defense that negates any particular element. Accordingly, the defendant should bear the burden of proving that he is entitled to relief under Section 538. See, e.g., *Smith v. United States*, 133 S. Ct. 714, 719 (2013) (defendant bears burden of establishing date of his withdrawal from conspiracy, because date goes to statute of limitations and does not negate element of the offense); *id.* at 720 ("A statute-of-limitations defense does not call the criminality of the defendant's conduct into question, but rather reflects a policy judgment by the legislature that the lapse of time may render criminal acts ill suited for prosecution."). Moreover, whether the defendant has satisfied his burden is a question to be addressed pretrial by the judge because it pertains to the government's authority to proceed, and is not properly a question for the jury because it does not go to guilt or innocence. Indeed, because Section 538 limits funding but does not prohibit or authorize conduct, it presents no triable issue for the jury. At most, the statute bars the government prospectively from spending appropriated funds on actions that would prevent the State from implementing its medical marijuana laws. Notably, it provides no remedy for the defendant in the criminal case if funds are spent in violation of Section 538 (although a violation of the section would constitute a violation of the Antideficiency Act, which carries administrative and sometimes criminal penalties). Accordingly, if the indictment was returned prior to December 16, 2014, the only remedy a defendant should be able to seek is a stay until the funding bar expires.⁸ on the ground that the indictment was *ultra vires* and thus void *ab initio*.

Our conclusion that the defendant bears the burden of proof rests on the plain language of the statute, which does not place the burden on the Department of Justice. Compare *Gonzales v. O Centro Espirita Beneficente Uniao Do Vegetal*, 546 U.S. 418, 424 (2006) (Religious Freedom Restoration Act explicitly places burden on government of demonstrating that prohibiting use of controlled substance in religious ceremony represents the least restrictive means of advancing a compelling government interest); 42 U.S.C. § 2000bb-1. Moreover, the defendant is in the best position to explain why his conduct is authorized by State law, and why his federal prosecution will prevent the

⁸ A lengthy stay could lead to violations of the Speedy Trial Act and the Sixth Amendment right to a speedy trial.

implementation of State law. For example, the defendant can produce proof, if any, that he has complied with State licensing requirements, and he can best explain how his cultivation or distribution of marijuana is integral to the State's implementation of its medical marijuana laws. In addition, because the defendant is attempting to thwart a lawful CSA prosecution on a ground unrelated to his guilt or innocence, as the moving party, he should bear the burden of proof. *United States v. Villareal*, 707 F.3d 942, 953 (8th Cir. 2013) (defendant bears burden on motion to dismiss for speedy trial violation); *cf. INS v. Abudu*, 485 U.S. 94 (1988) (movant bears burden on motion to reopen deportation proceeding, just as movant bears burden on new trial motion). Testimony or evidence offered by a defendant in attempting to meet this burden will not be available for use against the defendant at trial on the question of guilt or innocence. *Cf. Simmons v. United States*, 390 U.S. 377, 389-394 (1968) ("when a defendant testifies in support of a motion to suppress evidence on Fourth Amendment grounds, his testimony may not thereafter be admitted against him at trial on the issue of guilt unless he makes no objection"). Note that because Section 538 refers only to State law, it should not be sufficient that the defendant has complied with a local ordinance unless that compliance, in turn, makes him compliant with State law.

Even under its broadest reading, Section 538 should not bar the government from participating in post-conviction appeals or collateral review of a conviction and sentence that have already been memorialized in a judgment. By its terms, Section 538 bars the prospective expenditure of funds to prevent implementation of State medical marijuana laws. It does not purport to unwind past enforcement actions.

IV. The Department Cannot Avoid Section 538's Funding Prohibition by Using Funds from Another Source or Personnel from Another Department or Agency.

Assuming that Section 538 prohibits the use of the Department's 2015 appropriations to fund federal prosecutions and civil enforcement and forfeiture proceedings, the question remains whether we can avoid Section 538's effects by using funds from another source or staffing the case with attorneys from another Department or Agency. The short answer is no. There is no other funding source that can cover the salaries incurred by Department attorneys prosecuting federal offenses or civil enforcement of forfeiture actions and only Department of Justice attorneys may conduct such litigation.

Article II, Section 3 of the Constitution "imposes on the President the duty to 'take Care that the laws be faithfully executed.'" *United States v.*

Valenzuela-Bernal, 458 U.S. 858, 863 (1982). The Take Care Clause places in the Executive Branch “the exclusive authority and absolute discretion whether to prosecute a case.” *United States v. Nixon*, 418 U.S. 683, 693 (1974). See also *Batchelder*, 442 U.S. at 124 (“Whether to prosecute and what charge to file or bring before a grand jury are decisions that generally rest with the prosecutor’s discretion.”); *Bordenkircher v. Hayes*, 434 U.S. 357, 364 (1978) (same).

Congress, in turn, has directed that, “[e]xcept as otherwise authorized by law, the conduct of litigation in which the United States, an agency, or officer thereof is a party, or is interested, and securing evidence therefor, is reserved to the officers of the Department of Justice, under the direction of the Attorney General.” 28 U.S.C. § 516. Although Congress has given a few specialized agencies limited authority to litigate civil matters within their sphere,⁹ it has not done so with respect to our criminal laws. And even when non-DOJ attorneys appear as “special attorneys” “to assist in prosecuting Federal offenses,” they are there only “to assist United States attorneys”; they do not supplant them. See 28 U.S.C. § 543. See also *The Confiscation Cases*, 74 U.S. 454, 458-459 (1869) (“public prosecutions” and civil suits “for the benefit of the United States” are “subject to the direction, and within the control of, Attorney-General”). Because the special attorney would be supervised by an attorney paid by the Department of Justice’s 2015 appropriation, the use of a special attorney will not move the case outside the coverage of Section 538.

Nor can the President transfer funds appropriated to another Department or agency to the Department of Justice for use in prosecuting marijuana offenses. The Appropriations Clause, U.S. Const., Art. 1, § 9, cl. 7, provides that “[n]o money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law.” The President would violate the Appropriations Clause by moving funds in the United States Treasury without congressional authority. See *Office of Personnel Management v. Richmond*, 496 U.S. 414, 416 (1990) (“payments of funds from the Federal Treasury are limited to those authorized by statute”).

Under current policies, the Department will not use the Assets Forfeiture Fund to pay the salaries of our prosecuting attorneys. To be sure, the Assets Forfeiture Fund is available to the Attorney General “without fiscal year limitation” for specified “law enforcement purposes.” 28 U.S.C. § 524(c)(1). Those specified services do not explicitly include personnel expenses of a government employee, and, as a matter of policy, the Attorney General will not pay salary and

⁹ See, e.g., 15 U.S.C. § 78u (Securities and Exchange Commission); 15 U.S.C. § 717t-1 (Federal Energy Regulatory Commission); 29 U.S.C. § 1132 (Department of Labor); 52 U.S.C. § 30106(b)(1) (Federal Election Commission).

benefits from the fund without an affirmative waiver. Moreover, the Attorney General will not use the fund to pay “[e]xpenses that are expressly limited by statute.” See The Attorney General’s Guidelines on Seized and Forfeited Property (July 1990), https://cats.doj.gov/sites/afmlo/policies/Policies/AG_Guidelines.pdf; see also, e.g., (9-118.725, VII.B.5 (the Fund may be used to pay for training related to the asset forfeiture program); 9-118.725, VII.B.6 (the Fund may be used for certain investigative expenses); 9-118.740, VII.D (the Fund may not be used for personnel expenses or other listed expenses); 9-118.742, VII.D.2 (the Fund generally may not be used to pay claims of unsecured creditors)).

V. A Case Should Not Proceed Without Department of Justice Representation.

At least one court has asked whether it may sentence an already-convicted defendant without participation by the Department of Justice. We should respond no. The Department represents the interests of the United States at sentencing, and advocates for a just punishment that takes into account the need to protect the public and to deter future wrongdoing. See Rule 32(4)(A)(iii) (before imposing sentence, court must “provide an attorney for the government an opportunity to speak equivalent to that of the defendant’s attorney”). The Department also has a right to object to findings and conclusions in the presentence report. See *Fed. R. Crim. P. 32(i)* (court must “give to the defendant and an attorney for the government a written summary of *** any information excluded from the presentence report *** and give them a reasonable opportunity to comment on that information”). The government’s adversarial role cannot be replicated by the probation officer or a judicial law clerk. Moreover, if the government is dissatisfied with the sentence, it will not be able to vindicate its interests on appeal unless it has participated in the district court and preserved its claims.

The government also has strong participatory interests on direct appeal, or later on a collateral attack. The government has an interest in advocating for a particular legal position, and in identifying the appropriate facts from the record that best support its position. Even where the government elects to concede error and aligns itself with the defendant, it has a right to present that view to the court. The government does not lose its stake in the proceeding by conceding error. Instead, a court troubled by the lack of an adversary can appoint counsel to defend the judgment as an *amicus*; the *amicus*, however, does not displace the Executive Branch. See, e.g., *Dorsey v. United States*, 132 S. Ct. 2321 (2012) (appointing private counsel to defend the judgment as *amicus curiae* where government conceded application of Fair Sentencing Act). If the appeal

proceeds without the government, there will be no opportunity to reassess prosecutorial policies, or to ask a court to vacate a conviction and dismiss an indictment where the Department determines in retrospect that a particular prosecution should not have been brought. See *Rinaldi v. United States*, 434 U.S. 22 (1977) (court of appeals abused its discretion in denying government's motion to vacate conviction and dismiss indictment as violative of DOJ's successive-prosecution policy); Fed. R. Crim. P. 48(a) (government may dismiss an indictment "with leave of court").

Section 538 also should not be read to bar the Department from defending a conviction obtained prior to its enactment. Section 538's terms prohibit prospective interference with State medical marijuana laws: "None of the funds made available in this Act to the Department of Justice may be used * * * to prevent [the listed] States from implementing their own State laws that authorize the use, distribution, possession, or cultivation of medical marijuana." The statute does not purport to reach back and nullify past investigations and prosecutions. If, however, an indictment was returned prior to December 16, 2014, and the district court finds that prosecution of the pending charges would prevent the State from implementing its medical marijuana laws, prosecutors should report the adverse decision to the Criminal Division's Appellate Section so that the Solicitor General can determine whether to seek appellate review, or, alternatively, whether the government should move to dismiss the indictment or ask the court to stay proceedings until Section 538's funding restriction expires.

Finally, the Department is permitted to use appropriated funds to pay for attorneys to litigate the meaning and effect of Section 538, even if a court ultimately rules that the Department cannot continue to prosecute a case. The Department's litigation efforts in opposition to a Section 538 motion do not prevent implementation of a State law but relate to the meaning of a federal statute. The situation is analogous to the principle that a federal court always has jurisdiction to decide whether it has jurisdiction. See *United States v. Ruiz*, 536 U.S. 622, 628 (2002) (citing *United States v. United Mine Workers of America*, 330 U.S. 258, 291 (1947)); *Armstrong v. Armstrong*, 350 U.S. 568, 574 (1956).

ADDENDUM

Floor Debate Related to Section 538

Rep. Dana Rohrabacher offered the amendment on May 28, 2014. H.R. 4660, Amendment No. 25, <https://www.congress.gov/crec/2014/05/28/CREC-2014-05-28.pdf> (p. 74 of pdf). The amendment was co-sponsored by Democratic Reps. Sam Farr, Earl Blumenauer, Steve Cohen, Jared Polis, Dina Titus, and Barbara Lee, and Republican Reps. Don Young, Tom McClintock, Paul Broun, Steve Stockman, and Justin Amash. *Id.*

1. House Floor Statement by Amendment Co-Sponsor, Made on May 9, 2014
On May 9, 2014, Rep. Dana Rohrabacher said on the House floor:

Mr. Speaker, I rise today to discuss an issue that currently affects more than half the States in our Nation, and that is the inconsistency between Federal and State laws pertaining medical marijuana. Yes, Mr. Speaker, a majority of our Nation's States-Alabama, Alaska, Arizona, California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Kentucky, Maine, Maryland, Massachusetts, Michigan, Mississippi, Montana, Nevada, New Hampshire, New Jersey, New Mexico, Oregon, Rhode Island, Utah, Vermont, Wisconsin, and Washington, as well as the District of Columbia-all have some form of medical marijuana law on the books. Of course this means that these States allow their residents to engage in activities that are expressly prohibited by the Federal Government. To be exact, there are already 26 States that allow doctors to recommend the medical use of marijuana or its derivatives, and many more States are expected to take the step and do the same thing in the near future.

Importantly, the States listed are not dominated by conservatives or liberals. This isn't a Republican or a Democrat issue. Massachusetts, Alaska, Mississippi, and Oregon are hardly the same, politically speaking, in their legislature. Politically speaking, they are not the same. But their legislators and their residents all have recognized the same reality, and that is the potential medical benefits of marijuana and marijuana's derivatives, and they believe that these derivatives and the benefits of marijuana should not be denied to their people.

Unfortunately, however, the Federal Government continues to list marijuana and its derivatives as a schedule I substance, putting it in the same category as heroin, LSD, and other hard drugs.

I have long supported rescheduling marijuana so that it can be researched, prescribed, and used by legitimate health care professionals.

But multi-administrations, both Republican and Democrat alike, have refused to seriously talk about this topic. Instead, a heavy-handed, emotion-based policy continues.

Evidence suggesting that the Federal Government ought to allow the use of marijuana for medical purposes has never had the serious discussion that it deserves. Many desperate patients have defied the Federal Government's blanket ban on the use of marijuana as a remedy for numerous ailments.

The absurdity of this ban was brought home to me over a decade ago when my mother, depressed after undergoing surgery, lost her appetite and was requiring me to spoon-feed her. When I learned that medical marijuana might give her the appetite she needed and, yes, raise her spirits, the illegality of this herb was abundantly clear to me as I was there seeing my mother in the hospital bed, seeing how my mother had lost her appetite and seeing how her spirits were so low, knowing that perhaps marijuana, if the doctor had so ordered, would have been something that could have helped her and helped other people's mothers and children who were suffering the same situation.

The significance of changing-or at least altering-this prohibition could no longer be ignored by me when I was confronted by this over a decade ago. Since that time, the public's interest and support for medical marijuana has increased dramatically. As I mentioned, over half the States allow people with serious illnesses to use marijuana and/or its derivatives for medical purposes.

Recent polls show that the vast majority of the American people support the medical efficacy and use of marijuana for medical purposes: 77 percent according to Pew, 81 percent according to the ABC News poll, and a whopping 85 percent according to a FOX News poll last year. Just as interesting, 60 percent of the American people believe that the Federal Government should not prosecute people who are acting in accordance with State medical marijuana laws, and 72 percent think government efforts to enforce marijuana laws cost more than they are worth. Surprise, surprise, almost three-quarters of Americans believe that the cost of enforcing marijuana laws is far heavier than the benefits of having those laws enforced or having those laws on the books. All those numbers include majorities of both Republicans, Democrats, and, yes, it includes a majority of Independents, as well.

What is the driving force behind this surge of support for a change in Federal policy? It is the realization by patients, researchers, and

physicians that marijuana and its derivatives may offer enormous relief to numerous patients. For example, last year, the famous physician, Sanjay Gupta, released—who is a very prominent physician—released a documentary film in which he explored many of the benefits of medical marijuana. Like so many Americans, he is a relatively new convert to this position. I quote:

We have been terribly and systematically misled for nearly 70 years in the United States, and I apologize for my own role in that.

This is what the doctor said in his documentary.

His documentary explores a number of cases in which patients who have various environmental neurological disabilities were helped by marijuana. Anyone who watches this documentary will see the positive effect that marijuana and its derivatives can have on ailing patients. Dr. Gupta is not alone in his belief that it may prove beneficial to some patients.

The New England Journal of Medicine recently found that a majority of clinicians—a majority of the clinicians surveyed responded that they “would recommend the use of medicinal marijuana in certain situations.”

We have all heard anecdotes of the ability of marijuana to improve patients’ appetites, calm those with anxiety, and reduce the nausea for those who are extremely sick. Most recently, there has been an increased attention on the potential impacts of marijuana on patients who suffer from seizures, as well as those with PTSD.

Some particularly conservative States in our country—Utah, Alabama, Kentucky, and Mississippi, for instance—have recently passed laws allowing patients to access medical marijuana products such as oils that are rich in what they call the Cannabis oil, which is CBD, which has been very helpful with so many patients who are looking for relief for children with seizure disorders. They have found that the CBD helps these children meet this challenge in the families that are suffering across the country watching their children go through this suffering with this type of seizures and disorders.

These laws vary somewhat as to how patients are able to gain access to these products in various States, they differ, the laws differ, but they generally show that patients to be treated with this CBD-rich marijuana product, when administered by a physician and in the course of a State-approved medical study, have proved to be helpful to many people’s health. Under current law, however, CBD, because it is derived from marijuana, is considered a Schedule I drug, and therefore it is prohibited to

do the kind of research that is necessary to put that into the service for our people and to make sure that they have this available for their children and for other people who are suffering.

We can't even do the fundamental research as long as the Federal Government continues to label it the same as heroin or the same as other types of drugs, cocaine and the rest.

Well, we know from what I have said so far that there are numerous people in our country who understand that there are people who can benefit medically, and the people who understand this are not just civilians but medical professionals, as well as scientists.

Also, of particular and growing interest are the benefits that marijuana has for those who suffer from posttraumatic stress disorder, that is PTSD. This is one of the most commonly diagnosed disorders for our military veterans who are returning from overseas duty. Those suffering from PTSD often experience debilitating nightmares, depression, and anxiety; and, according to many of these patients, marijuana is the only thing that helps them alleviate these awful, awful symptoms.

Yet, because of our decades-old policy of not allowing the legitimate use-or even research into the legitimate use-of the medical benefits of marijuana, many individuals that we are talking about, many of these veterans, feel they have no choice but to break the law. Our Nation's heroes who are trying to escape the hellish nightmares of the war that we sent them off to fight are forced into the compromising position of illegal activity just to receive some relief from the pain they are suffering.

Parents who want to treat their children with nonpsychoactive extracts of the marijuana plant are forced to engage in activities that, if caught and convicted under Federal law, would make these parents who are just trying to help their children, it makes them felons-felons.

I would submit that this scenario undermines every legal and moral institution that we want every citizen-we want every citizen-of the United States to respect. It puts our people in an impossible position. It requires them to choose between providing relief for a loved one or breaking the law. In many cases, that behavior is in compliance-we are talking about offering medical marijuana-it is in compliance with State law; but these people who need it, whose family may need it, whose veteran coming home from the war may need it, whose mother is in the hospital who has lost her appetite and is depressed may need it, well, even if it is in compliance with State law, what we have got now is they are still a violation of Federal law, so we end up condemning these people to a crisis

in which their loved ones must either suffer or they must break the law. It is cruel nonsense to put our people through this.

Patients and providers currently run the risk of having a Federal SWAT team-like police force raid their homes or their place of business because of the consumption of a plant which could be growing right in their backyard. The militarization of the police force in order to prevent Grandma from using a medical herb that will ease her pain during her last days on Earth is the type of thing that ought to make every person who believes in liberty and freedom-it should make them shudder, as well as, of course, responsible conservatives who understand we should be making every dollar our government spends count and be doing something that absolutely needs to be done.

The harassment from the Drug Enforcement Agency is something that should not be tolerated in the land of the free. Businesspeople who are licensed and certified to provide doctor-recommended medicine within their own States have seen their businesses locked down, their assets seized, their customers driven away, and their financial lives ruined by very, very aggressive and energetic Federal law enforcers enforcing a law in which we are preventing something that doctors would recommend for the health of their patients that now some way distributing that material would result in the total destruction of that medical professional and his life.

Instead of continuing to finance this repressive and expensive approach, we should be willing to allow patients and small businesses to follow their doctor's advice under the watchful eye of State law enforcement and regulators rather than treating it like something that ought to be eradicated from our society. And, yes, I am sure there are plenty of people around who would love to just continue building our police forces, spending the money; but having them target people who are engaged not in rape or murder or some type of aggressive action on the population but instead have them focus on a doctor who is trying to alleviate the pain of someone who has just gone through an operation or one of our veterans who is suffering some sort of posttrauma from his being overseas, no. To say it is a total waste of money is just an understatement.

The 26 States that I have named have gotten this message. They have been making great strides toward compassion and, yes, towards freedom and, yes, towards a responsible use of limited government money in our country.

Now, after the States have done their job, we need the Federal

Government to do its part. In the near future, I, along with several of my colleagues in both parties, will introduce an amendment to the Commerce-Justice-Science appropriations bill to bring an end to this disruptive, ill-advised, and wasteful policy that we have pushed on our people and oppressed our people with for far too long. Specifically, our amendment would prohibit the Department of Justice from using any of the funds in this bill to prevent States from implementing their own State medical marijuana laws.

I think my conservative friends could benefit from hearing what some of their idols have to say about this. Milton Friedman stated that it is "disgraceful to deny marijuana for medical purposes." Dr. Friedman, whom I knew personally, a personal friend of mine, spent a great deal of time talking about this very issue. He and George Schultz, former Secretary-Dr. Friedman, of course, advised Ronald Reagan when I worked with Ronald Reagan in the White House. As you know, I was a special assistant to President Reagan as well as a Presidential speechwriter for President Reagan for 7 years. There with us was, of course, Dr. Milton Friedman; and he advised us of the nonsense of making marijuana illegal, especially for medical purposes.

Then we have William F. Buckley-another man who advised conservatives like Ronald Reagan-who I read as a young person. In the pages of National Review, which he edited, he wrote:

The stodgy inertia most politicians feel is up against a creeping reality, and that is that marijuana for medical relief is a movement which is attracting voters who are pretty assertive on the subject.

Yes, William F. Buckley was a visionary. He saw what direction the will of the American people would be having, and he foresaw today that the vast majority of the American people do not want the Federal Government wasting limited dollars destroying doctors' lives, preventing research into medical marijuana, and getting in the way of the people of the States who have voted to make this substance legal in their State for medical purposes.

Conservatives in this body-in this body, in this House-who regularly call for a decrease in the size and scope of the Federal Government ought to seriously consider voting for my amendment. Likewise, conservatives in this body who routinely talk about the need for the Federal Government to respect the 10th Amendment of the Constitution and those who believe that Washington should not interfere with the doctor-patient relationship, which we have heard so much about, these people, my conservative

colleagues, ought to seriously consider supporting my amendment, as well.

In fact, if you are on the wrong side of Milton Friedman and William F. Buckley and people like Grover Norquist and George Schultz on the medical marijuana issue, I would suggest to my colleagues that they ought to reconsider the position that they are taking, that it may not be the one that is consistent with the conservative belief in freedom, individual responsibility, and, of course, limited government.

This amendment has been introduced in the past, most recently in 2012, but the difference this time around is that the American people are now demanding the Federal Government respect the majority of the States in our country which have implemented various medical marijuana laws.

The question at this point is whether the American people's Representatives in this House will grant them the wish and accede to what their opinion is and understand that laws are made for these people and their opinions have a right to be heard. I would hope that my fellow Representatives hear the American people's cry, hear those people who are trying to take care of their elderly mother or a veteran coming home or their children who are suffering seizures and say it is a total waste, it is a travesty to use limited dollars, to have a Federal Government stopping a doctor in States that have declared it as legal, prevent that doctor from offering a treatment for these people, our loved ones, Americans throughout our country.

My hope and expectation is that truth and common sense will prevail. I have faith in the American people. And yes, I have faith in my colleagues. I believe that both the American people, given a choice in their lives, they will do the right thing for themselves and their family. I also believe they will do it without bureaucracy, without massive Federal intrusion into their lives. And I also have faith in my colleagues that they will begin to take a second look at this issue and see if what they are doing is consistent with our overall belief in American freedom and personal responsibility.

One final point I would like to make is that, as legislators who have the power of the purse, we have a responsibility to prioritize Federal tax dollars and how they are spent. Our debt has increased by trillions of dollars in just the last few years. This year's deficit is expected to add an additional \$500 billion to the debt, and the CBO estimates that the deficit will only slightly be lower next year before ballooning up again to unacceptable levels. What we are going through is already unacceptable to

most of us.

As we look for places to cut spending, why don't we begin by eliminating those expenditures which the vast majority of Americans believe to be an unjustified exercise of Federal powers. I ask my colleagues to join me in supporting a commonsense amendment that will be a step in the right direction in respecting State medical marijuana laws and will respect the individual liberties that our country believes in.

I would hope that the Federal Government also, finally, we in the Federal Government will understand prioritizing spending, so even if you have questions of how someone making a personal choice somewhere across the country as to whether to use medical marijuana to help a family member who is sick or to stop their own seizures or whatever, yes, even if you don't believe that individuals across our country or the State governments have a right to be able to make those decisions and local voters should be making those determinations, which is what our Founding Fathers wanted, even if you don't believe in that, we should, at the very least, understand that we do not have resources at the Federal level to do everything for everybody.

While showing compassion for thousands of ailing patients across our country, we can also do the right thing, that is the right thing for us to do in terms of balancing our budget and having responsible spending patterns and taxing patterns here in Washington. Here is where it crosses. Here is where the waste of taxpayer dollars and enforcing laws that they have already said they don't want at the State level, forcing this upon them, declaring that someone is not going to have the personal responsibility in his own life to make these decisions, even in States where our people have voted to make this legal in terms of decisionmaking for using medical marijuana, well, even in those States, and all of this in one formula, you still have to understand that we have to deal with a budget; and it is totally inconsistent with a responsible spending pattern to use such limited resources as we have, going into debt in order to fence in doctors and other people who are trying to use medical marijuana around the country and even prevent the research into medical marijuana to show that it might have some benefit. No, that is a travesty and a total waste of our limited resources.

I would call on my conservative colleagues and my liberal colleagues, my Democrat and Republican friends and the people across the country of the United States to look at this issue with an open mind, intelligently look at the issue, look at it with your heart and your brain, and we will come to the conclusion that medical marijuana, especially in those

States in which the people have decided to make medical use of marijuana legal, that it is a total waste of limited Federal funds for us to be focusing the use of those Federal funds on that activity at the State and local levels by people who are being given the choice by doctors as to what medicine they will use.

Let's get the Federal Government out of the areas that it shouldn't be in. That should be something conservatives really support. And so today, I would call on my colleagues to support the amendment that I will be offering, along with Congressman

Blumenauer and others here in the body, to make sure that we get back to the 10th Amendment of the Constitution and put into law that, when it comes to the medical use of marijuana, the Federal Government will not waste its money trying to thwart the will of people throughout our country and the various State legislatures throughout our country.

With that said, Mr. Speaker, I yield back the balance of my time.

160 Cong. Rec. 70, H4020, H4053–55 (daily ed. May 9, 2014) (statement of Rep. Dana Rohrabacher),

<https://www.congress.gov/crec/2014/05/09/CREC-2014-05-09.pdf>.

2. House Floor Statement by Amendment Co-Sponsor, Made on May 28, 2014

During debate over the amendment to the House version of the spending bill, Rep. Dana Rohrabacher, the amendment's co-sponsor, made the following statement:

Tomorrow, I will be offering an amendment to the CJS appropriations bill, along with my colleagues Sam Farr, Don Young, Earl Blumenauer, Tom McClintock, Steve Cohen, Paul Broun, Jared Polis, Steve Stockman, Barbara Lee, Justin Amash, and Dana Titus.

Very simply, our amendment would prohibit the Department of Justice from using funds in the bill from preventing States from implementing their State medical marijuana laws.

Importantly, this amendment gives us an opportunity to show our support and what we really believe about the 10th Amendment to the Constitution, and it gives us an opportunity to support the intentions of our Founding Fathers and Mothers. They never meant for the Federal Government to play the preeminent role in criminal justice.

It should be disturbing to any constitutionalist that the Federal Government insists on the supremacy of laws that allow for the medical use of marijuana.

So far, 28 States and the District of Columbia—that is a majority of the States of the Union—have enacted laws to allow access to medical marijuana or its chemical derivatives. They obviously believe enforcing such restrictions on the medical use of marijuana is a waste of extremely limited resources.

This amendment has solid bipartisan support, and we have the opportunity now, with this amendment, to tell the Department of Justice that they are not permitted to waste limited Federal dollars interfering with the duly-enacted laws of our States concerning medical marijuana.

I urge my colleagues, Democrats and Republicans alike, liberals and conservatives, to support my amendment. Respect State medical marijuana laws.

160 Cong. Rec. 82, H4839, H4878–879 (daily ed. May 28, 2014) (statement of Rep. Dana Rohrabacher), <https://www.congress.gov/crec/2014/05/28/CREC-2014-05-28.pdf>.

3. House Floor Statements in Support of the Amendment, Made on May 29, 2014

Several co-sponsors and supporters of the amendment made statements on the House floor on May 29, 2014, prior to the amendment's passage in the House. 160 Cong. Rec. 82, H4914, H4982–H4985 (daily ed. May 29, 2014), <http://www.gpo.gov/fdsys/pkg/CREC-2014-05-29/pdf/CREC-2014-05-29.pdf>.

Rep. Dana Rohrabacher said:

Mr. Chairman, I rise to speak in favor of my amendment, which would prohibit the Department of Justice from using any of the funds appropriated in this bill to prevent States from implementing their own medical marijuana laws. Twenty-nine States have enacted laws that allow patients access to medical marijuana and its derivatives, such as CBD oils.

It is no surprise then that public opinion is shifting, too. A recent Pew Research Center survey found that 61 percent of Republicans and a

[whopping] 76 percent of Independents favor making medical marijuana legal and available to their patients who need it.

As I have said, 29 States have already enacted laws that will permit patients access to medical marijuana and their derivatives. By the way, 80 percent of Democrats feel the same way.

Despite this overwhelming shift in public opinion, the Federal Government continues its hard-line oppression against medical marijuana. For those of us who routinely talk about the 10^h Amendment, which we do in conservative ranks, and respect for State laws, this amendment should be a no-brainer.

Our amendment gives all of us an opportunity to show our constituents that we are truly constitutionalists and that we mean what we say when we talk about the importance of the 10th Amendment.

In addition, this also gives us the opportunity to prove that we really do believe in respecting the doctor-patient relationship.

I proudly offer this amendment that has the support of my colleagues on both sides of the aisle. I am joined by Republican cosponsors Don Young, Tom McClintock, Dr. Paul Broun, Steve Stockman, and Justin Amash, as well as Democrat cosponsors Sam Farr, Earl Blumenauer, Steve Cohen, Jared Polis, Barbara Lee, and Dana Titus.

I urge my colleagues to support our commonsense, states' rights, compassionate, fiscally responsible amendment.

160 Cong. Rec. 82, H4914, H4982–83 (daily ed. May 29, 2014) (statement of Rep. Dana Rohrabacher), <http://www.gpo.gov/fdsys/pkg/CREC-2014-05-29/pdf/CREC-2014-05-29.pdf>.

Rep. Thomas Massie said:

Mr. Chair, I am not here to talk about brownies and biscuits. I am here to talk about a serious medical issue, cannabidiol, the CBD oil that comes from the cannabis plant. It is very low in THC and is nonpsychoactive. Research has shown very promising results in children with epilepsy, autism, and other neurological disorders. CBD oil is also showing promising results in adults with Alzheimer's, Parkinson's, and PTSD.

We need to remove the roadblocks to these potential medical breakthroughs. This amendment would do that. The Federal Government should not countermand State law. In this case, the absurd result of that is that medical discoveries are being blocked.

I encourage my colleagues to support this amendment.

160 Cong. Rec. 82, H4914, H4983 (daily ed. May 29, 2014) (statement of Rep. Thomas Massie), <http://www.gpo.gov/fdsys/pkg/CREC-2014-05-29/pdf/CREC-2014-05-29.pdf>.

Rep. Dana Rohrabacher said:

Mr. Chair, I yield 1 minute to the gentleman from Georgia [Rep. Paul Broun], our doctor in the House. We do believe in the doctor-patient relationship and that the government shouldn't interfere.

160 Cong. Rec. 82, H4914, H4984 (daily ed. May 29, 2014) (statement of Rep. Dana Rohrabacher), <http://www.gpo.gov/fdsys/pkg/CREC-2014-05-29/pdf/CREC-2014-05-29.pdf>.

Rep. Paul Broun said:

Mr. Chair, I am a family physician and an addictionologist. Marijuana is addicting if it is used improperly. But used medically, and there are very valid medical reasons to utilize extracts or products from marijuana in medical procedures, it is a very valid medical use under the direction of a doctor. It is actually less dangerous than some narcotics that doctors prescribe all over this country.

Also, this is a states' rights, states' power issue, because many States across the country—in fact, my own State of Georgia is considering allowing the medical use under the direction of a physician. This is a states' rights, Tenth Amendment issue. We need to reserve the states' powers under the Constitution.

Please support this amendment.

160 Cong. Rec. 82, H4914, H4984 (daily ed. May 29, 2014) (statement of Rep. Paul Broun), <http://www.gpo.gov/fdsys/pkg/CREC-2014-05-29/pdf/CREC-2014-05-29.pdf>.

Rep. Earl Blumenauer said:

Mr. Chair, I am listening to our friends on the other side of the aisle in opposition here and the notion about camel's nose, this train has already left the station. Eighteen years ago, the State of California voters approved medical marijuana. We now have 22 States that are doing so.

My good friend from Georgia is right. I mean, there are a million Americans now with the legal right to medical marijuana as prescribed by a physician. The problem is that the Federal Government is getting in the way. The Federal Government makes it harder for doctors and researchers to be able to do what I think my friend from Louisiana wants than it is for parents to self-medicate with buying marijuana for a child with violent epilepsy.

This amendment is important to get the Federal Government out of the way. Let this process work going forward where we can have respect for states' rights and something that makes a huge difference to hundreds of thousands of people around the country now and more in the future.

160 Cong. Rec. 82, H4914, H4984 (daily ed. May 29, 2014) (statement of Rep. Earl Blumenauer), <http://www.gpo.gov/fdsys/pkg/CREC-2014-05-29/pdf/CREC-2014-05-29.pdf>.

Rep. Sam Farr said:

Mr. Chair, I rise in support of this amendment as a coauthor of it and to point out this is six Democrats and six Republicans that are authoring this. There are 33 States, three of which have just passed laws and the Governors have indicated they will sign them.

This is essentially saying, look, if you are following State law, you are a legal resident doing your business under State law, the Feds just can't come in and bust you and bust the doctors and bust the patient. It is more than half the States. So you don't have to have any opinion about the value of marijuana. This doesn't change any laws. This doesn't affect one law, just lists the States that have already legalized it only for medical purposes, only medical purposes, and says, Federal Government, in those States, in those places, you can't bust people. It seems to me a practical, reasonable amendment in this time and age.

160 Cong. Rec. 82, H4914, H4984 (daily ed. May 29, 2014) (statement of Rep. Sam Farr), <http://www.gpo.gov/fdsys/pkg/CREC-2014-05-29/pdf/CREC-2014-05-29.pdf>.

Rep. Dana Titus said:

Mr. Chair, for the District of Columbia and 22 States, including Nevada, with laws in place allowing the legal use of some form of marijuana for medical purposes, this commonsense amendment simply ensures that patients do not have to live in fear when following the laws of their States and the recommendations of their doctors. Physicians in those States will not be prosecuted for prescribing the substance, and local businesses will not be shut down for dispensing the same.

I urge you vote in favor.

160 Cong. Rec. 82, H4914, H4984 (daily ed. May 29, 2014) (statement of Rep. Dana Titus), <http://www.gpo.gov/fdsys/pkg/CREC-2014-05-29/pdf/CREC-2014-05-29.pdf>.

Rep. Barbara Lee said:

I rise in strong support of this bipartisan amendment, which I am proud to cosponsor along with my colleagues. This amendment will provide much needed clarity to patients and businesses in my home State of California and 31 other jurisdictions that provide safe and legal access to medicine. We should allow for the implementation of the will of the voters to comply with State laws rather than undermining our democracy.

In States with medical marijuana laws, patients face uncertainty regarding their treatment, and small business owners who have invested millions creating jobs and revenue have no assurances for the future. It is past time for the Justice Department to stop its unwarranted persecution of medical marijuana and put its resources where they are needed.

In States with medical marijuana laws, people with multiple sclerosis, glaucoma, cancer, HIV, and AIDS and other medical issues continue to face uncertainty when it comes to accessing the medicine that they need to provide some relief. So it is time to pass this. It is time to give these patients the relief that they need.

This is the humanitarian thing to do, it is the democratic thing to do,

and I hope this body will vote for it and pass it on a bipartisan basis. It is long overdue. Enough is enough.

160 Cong. Rec. 82, H4914, H4984 (daily ed. May 29, 2014) (statement of Rep. Barbara Lee), <http://www.gpo.gov/fdsys/pkg/CREC-2014-05-29/pdf/CREC-2014-05-29.pdf>.

Later in the floor debate, Rep. Dana Rohrabacher said:

Mr. Chairman, this is the most incredible debate we have had. Over half the States have already gone through every argument that was presented and decided against what you just heard. There are doctors at every one of those States that participated in a long debate over this and found exactly the opposite of what we have heard today.

Some people are suffering and if a doctor feels that he needs to prescribe something to alleviate that suffering, it is immoral for this government to get in the way, and that is what is happening. The State governments have recognized that a doctor has a right to treat his patient any way he sees fit, and so did our Founding Fathers.

I ask for support of my amendment, and I yield back the balance of my time.

160 Cong. Rec. 82, H4914, H4985 (daily ed. May 29, 2014) (statement of Rep. Dana Rohrabacher), <http://www.gpo.gov/fdsys/pkg/CREC-2014-05-29/pdf/CREC-2014-05-29.pdf>.

4. House Floor Statements in Opposition to the Amendment, Made on May 29, 2014

Rep. Frank Wolf, speaking in opposition to the amendment, said:

The following national medical organizations are currently opposed to medical marijuana: American Medical Association, American Cancer Society, American Glaucoma Society, Glaucoma Research Foundation, American Academy of Pediatrics, American Academy of Child and Adolescent Psychiatry, and American Psychiatric Association.

Also, recent research has demonstrated that marijuana use during teen years decreases IQ rates by an average of eight points.

160 Cong. Rec. 82, H4914, H4983 (daily ed. May 29, 2014) (statement of Rep. Frank Wolf), <http://www.gpo.gov/fdsys/pkg/CREC-2014-05-29/pdf/CREC-2014-05-29.pdf>.

Rep. Andy Harris said:

Mr. Chair, I rise to oppose the amendment. My State is named in the amendment.

Look, everyone supports compassionate, effective medical care for patients with cancer, epilepsy, chronic pain. You will probably hear anecdotal reports, maybe even during the testimony this evening, about how medical marijuana can solve some of these problems.

There are two problems with medical marijuana. First, it is the camel's nose under the tent; and second, the amendment as written would tie the DEA's hands beyond medical marijuana.

With regard to the camel's nose under the tent, let me just quote from the DEA report just published this month: Organizers behind the medical marijuana movement did not really concern themselves with marijuana as a medicine. They just saw it as a means to an end, which is the legalization of marijuana for recreational purposes. They did not deal with ensuring that the product meets the standards of modern medicine: quality, safety, and efficacy.

Because, Mr. Chairman, the term "medical marijuana" is generally used to refer—and this is from the NIH. We respect the NIH. This is the National Institute on Drug Abuse: The term "medical marijuana" is generally used to refer to the whole, unprocessed marijuana plant or its crude extracts.

Mr. Chairman, that is not what medicine is about. Medicine is about refining the components THC and CBD, actually making sure they are efficacious, giving the exact dose, not two joints a day, not a brownie here, a biscuit there. That is not modern medicine. In fact, the DEA supports those studies, looking at the safety and efficacy and dosing regimens for these, THC, CBD. They have licensed some of the drugs.

Mr. Chairman, according to the National Institute on Drug Abuse, medical and street marijuana are not different. Most marijuana sold in dispensaries as medicine, again reading from the National Institute on

Drug Abuse, is the same quality and carries the same health risks as marijuana sold on the street.

Mr. Chairman, we know there are health problems. The problem is that the way the amendment is drafted, in a State like Maryland which has medical marijuana, if we ever legalized it, the amendment would stop the DEA from going after more than medical marijuana.

160 Cong. Rec. 82, H4914, H4983 (daily ed. May 29, 2014) (statement of Rep. Andy Harris), <http://www.gpo.gov/fdsys/pkg/CREC-2014-05-29/pdf/CREC-2014-05-29.pdf>.

Later in the floor debate, Rep. Andy Harris said:

Mr. Chair, marijuana is neither safe nor legal. Let's get it straight. The Controlled Substances Act makes marijuana in the United States illegal because it is not safe.

Mr. Chairman, there is more and more evidence every day that it is not safe. The effect on the brains, developing brains of teenagers and young adults, is becoming more and more clear, as the doctor from Louisiana has talked about, the effect on affect, the effect on mood; it is not safe.

Mr. Chairman, this is not a medicine. This would be like me as a physician saying: You know, I think you need penicillin, go chew on some mold. Of course I wouldn't do that. I write: for 250 milligrams of penicillin q.6 hours times 10 days. I don't write: chew on a mold a couple of times a day.

Mr. Chairman, why don't we have therapeutic tobacco? Nicotine, one of the substances in tobacco, purified is actually useful as a drug to treat autosomal dominant nocturnal frontal lobe epilepsy. Nobody writes a prescription: smoke a couple of cigarettes and cure your epilepsy. But that is what we are being asked to do.

Mr. Chairman, worse than that, this blurs the line in those States that have gone beyond medical marijuana. For instance, in Colorado, under Amendment 64, a person can grow six plants under the new law for general use, but if it is medical marijuana you can grow as many plants as you want as long you can prove you have a medicinal use.

So how is the DEA going to enforce anything when, under this amendment, they are prohibited from going into that person's house growing as many plants as they want, because that is legal under the medical marijuana part of the law, not under the new law?

Mr. Chairman, this is not the right place for this. The Ogden memorandum from this administration clearly states that the Department of Justice does not prioritize prosecution for medical marijuana—clearly states it. They don't do it. This is a solution in search of a problem that opens many other doors to the dangers of marijuana.

60 Cong. Rec. 82, H4914, H4984 (daily ed. May 29, 2014) (statement of Rep. Andy Harris), <http://www.gpo.gov/fdsys/pkg/CREC-2014-05-29/pdf/CREC-2014-05-29.pdf>.

Rep. John Fleming said:

Mr. Chairman, let me say that in this discussion you may have heard reference to the 10th Amendment and the Commerce Clause. Let me address that. I want to get that out of the way, because I have talked tremendously over the past few days and weeks about the dangers of marijuana.

This controversy came before the U.S. Supreme Court in 2005 in *Gonzales v. Raich*. The Supreme Court reviewed the Federal Government's authority to enforce the Controlled Substances Act. In a 6–3 decision, Justice Scalia, a strong states' rights advocate, concurred with the majority ruling that the CSA does not violate the Commerce Clause or the principles of State sovereignty.

Just to read what he said:

Not only is it impossible to distinguish controlled substances manufactured and distributed intrastate from controlled substances manufactured and distributed interstate, but it hardly makes sense to speak in such terms.

Drugs like marijuana are fungible commodities, as the Court explains marijuana that is grown at home and possessed for personal use is never more than an instant from the interstate market, and this is so whether or not the possession is for medicinal use or lawful use under the laws of a particular State.

Again, if we want to make a statement principle on the Tenth Amendment, fine, but don't do it on the backs of our kids and our grandkids. This is dangerous for them. How do we know this? The health risks: brain development, schizophrenia, increased risk of stroke. A study at Northwestern University recently showed profound changes in the brain just in casual marijuana users. Heart complications, three times normal in such use. Recent studies shows, as I said, not only damage in certain structures in the brain, but the same structures that attend to motivation, which again underlines the amotivational syndrome that we have all heard about.

So again, it is settled law. The Supreme Court has already spoken on the constitutionality of this. It is settled when it comes to medicine. We hear anecdotal stories, but there is no widespread accepted use of marijuana, medicinal marijuana and so forth. There is no acceptance of this by the medical community. It is not evidence-based. Fine, if you want to do research on it, but this will take away the ability of the Department of Justice to protect our young people.

160 Cong. Rec. 82, H4914, H4983–84 (daily ed. May 29, 2014) (statement of Rep. John Fleming), <http://www.gpo.gov/fdsys/pkg/CREC-2014-05-29/pdf/CREC-2014-05-29.pdf>.

Later in the floor debate, Rep. John Fleming said:

Look, first of all, let's be clear, marijuana is an addicting substance. It is schedule I, it is against Federal law, it was passed that way into the CSA in 1970.

What this amendment would do is, it wouldn't change the law, it would just make it difficult, if not impossible, for the DEA and the Department of Justice to enforce the law.

Members on my side have been criticizing President Obama for selective enforcement of ObamaCare and for immigration and other laws like that. So now we are going to start going down the road of selective enforcement for our drug policy.

Medicinal marijuana, what is it exactly? Folks, I can tell you it is nothing more than the end run around the laws against the legalization of marijuana. There is nothing medical or medicinal about it. It is not

accepted by physicians. Oh, somebody claims it may do something for glaucoma, perhaps. Well, maybe it will, maybe it won't. But there are a lot more drugs that do a much better job than that and they are much safer.

But the most important thing I want everybody to know, Mr. Chairman, today is the fact that marijuana is highly addicting. It is the most common diagnosis for addiction in admissions to rehab centers for young people. Why in the world do we want to take away drug enforcement and leave our young people out there vulnerable? Yes, you say it can only be used by adults. Well, if it is sitting around on shelves at home the kids are going to get into it. We are already hearing about Colorado fourth-graders dealing with it. We hear about more poisonings in the emergency room.

If you look at other places that have gone down this road like Alaska, they retracted from their legalization. So I don't think we should accept at all that this is history in the making and that we are never going to go back. You look at Amsterdam, they put a lot more restrictions back in the control even in that very, very liberal nation.

So for that and many reasons I would just say tonight from a legal standpoint this amendment would not be constitutional. Our laws are currently constitutional, as found so in 2005 by the Supreme Court. And this is an extremely dangerous drug for our children and future adults and future generations.

160 Cong. Rec. 82, H4914, H4984–85 (daily ed. May 29, 2014) (statement of Rep. John Fleming), <http://www.gpo.gov/fdsys/pkg/CREC-2014-05-29/pdf/CREC-2014-05-29.pdf>.

5. House Floor Statement in Support of the Amendment, Made on June 19, 2014

On June 19, 2014, Rep. Alcee Hastings said:

Mr. Speaker, I rise today to express my support for the medical marijuana provision that came before the House of Representatives for a vote on May 30, 2014-H. Amdt. 748 to H.R. 4460-an amendment to prohibit the use of funds to prevent certain States from implementing their own State laws that authorize the use, distribution, possession, or cultivation of medical marijuana.

Had I voted on May 30, 2014, I would have voted in favor of H. Amdt. 748 to H.R. 4460, which was offered by Rep. Dana Rohrabacher to the FY

2015 Commerce, Justice, and Science (CSJ) Appropriations bill. The amendment was agreed to by recorded vote: 219-189.

Specifically, the bill is a bipartisan appropriations measure that looks to prohibit the Drug Enforcement Agency (DEA) from spending funds to arrest state-licensed medical marijuana patients and providers. Many of my colleagues and their constituencies agree that patients who are allowed to purchase and consume medical marijuana in their respective states should not be punished by the federal government.

I believe that we must modernize our federal laws to reflect the updated approaches to medical marijuana use, and allow states to determine the parameters, practices, and effects of legalization. Mr. Speaker, 22 states and the District of Columbia have legalized marijuana for medical use. In my home state of Florida, the majority of voters support the legalization of marijuana for medical use, and I stand behind them.

Mr. Speaker, I support the legalization of marijuana for medical use, and remain committed to protecting citizens nationwide that are the subject to detainment for use despite their medical needs.

160 Cong. Rec. 97, H5562, E1034 (daily ed. June 20, 2014) (statement of Rep. Alcee Hastings),
<https://www.congress.gov/crec/2014/05/09/CREC-2014-05-09.pdf>.

**COUNTY OF SAN LUIS OBISPO
DEPARTMENT OF PLANNING AND BUILDING
STAFF REPORT**

Planning Commission



Promoting the wise use of land
Helping build great communities

MEETING DATE July 9, 2015	CONTACT/PHONE Airlin M. Singewald (805) 781-5198 asingewald@co.slo.ca.us	APPLICANT Ethnobotanica	FILE NO. DRC2014-00070
EFFECTIVE DATE July 23, 2015			
SUBJECT Hearing to consider a request by ETHNOBOTANICA for a Minor Use Permit to establish a medical marijuana dispensary and construct related tenant improvements in an existing 2,636 square-foot commercial/office suite, which is part of an existing 11,675 square-foot building. The 2.72-acre parcel is in the Commercial Service land use category and is located at 2122 Hutton Road, approximately 450 feet north of the Highway 101/Highway 166 off-ramp, approximately 3 miles south of the community of Nipomo. The site is in the South County planning area.			
RECOMMENDED ACTION Approve Minor Use Permit DRC2014-00070 based on the findings listed in Exhibit A and the conditions listed in Exhibit B.			
ENVIRONMENTAL DETERMINATION A Class 3 categorical exemption was issued on June 2, 2015 (ED14-252).			
LAND USE CATEGORY Commercial Service	COMBINING DESIGNATION None	ASSESSOR PARCEL NUMBER 090-301-064	SUPERVISOR DISTRICT(S) 4
PLANNING AREA STANDARDS: Limitation on Use for Commercial Service (CS) Land Use Category Does the project meet applicable Planning Area Standards: Yes – see discussion			
LAND USE ORDINANCE STANDARDS: Medical Marijuana Dispensaries Does the project conform to the Land Use Ordinance Standards: Yes – see discussion			
EXISTING USES: Metal building with tenants including a sanitation company and security contractor			
SURROUNDING LAND USE CATEGORIES AND USES: <i>North:</i> Commercial Service / vacant <i>South:</i> Commercial Service / RV storage		<i>East:</i> Agriculture / Highway 101 <i>West:</i> Residential Suburban / residence, Nipomo Creek	
OTHER AGENCY / ADVISORY GROUP INVOLVEMENT: The project was referred to: Public Works, Environmental Health, Building Division, Sheriff, Cal Fire, Santa Barbara County, City of Santa Maria, and South County Advisory Council			
TOPOGRAPHY: Gently sloping to moderately sloping		VEGETATION: Ornamental trees and turf grass	
PROPOSED SERVICES: Water supply: On-site well Sewage Disposal: Individual septic Fire Protection: Cal Fire		ACCEPTANCE DATE: March 7, 2015	
ADDITIONAL INFORMATION MAY BE OBTAINED BY CONTACTING THE DEPARTMENT OF PLANNING & BUILDING AT: COUNTY GOVERNMENT CENTER γ SAN LUIS OBISPO γ CALIFORNIA 93408 γ (805) 781-5600 γ FAX: (805) 781-1242			

Agenda Item No: 16 • Meeting Date: November 3, 2015
Presented By: Resident of Nipomo
Rec'd prior to the meeting & posted on: November 2, 2015

DISCUSSION

The proposed project is a request to establish a medical marijuana dispensary in an existing commercial building. According to Land Use Ordinance Section 22.30.225, minor use permit approval is required to establish a medical marijuana dispensary. Minor use permits are normally reviewed by a Planning Department Hearing Officer; however, the Planning Director may elevate minor use permits to the Planning Commission for projects that may generate substantial public controversy or involve significant land use policy decisions. The Planning Director has elevated this project to the Planning Commission based on the controversial nature of medical marijuana and concerns raised by the community, the South County Advisory Council, and the Sheriff's Department.

Background

In 1996, California voters approved Proposition 215, the Compassionate Use Act (CUA) exempting certain patients and their primary caregivers from criminal liability under state law for the possession and cultivation of marijuana. In 2004, Senate Bill 420 became law and enacted the Medical Marijuana Program Act (MMP). The MMP requires the California Department of Public Health to establish and maintain a program for the voluntary registration of qualified medical marijuana patients and their primary caregivers through a statewide identification card system.

On August 1, 2006 the Board of Supervisors authorized the San Luis Obispo County Public Health Department (PHD) to implement the State Medical Marijuana Identification Card (MMIC) program. The proposed fee ordinance was introduced on October 24, 2006. The Board of Supervisors adopted the fee schedule on November 14, 2006 and the program commenced on December 14, 2006.

On February 6, 2007, the Board of Supervisors adopted Ordinance Number 3114 relating to the establishment of medical marijuana dispensaries, which amended the Inland Land Use Ordinance by adding a new Section 22.30.225 to govern dispensary applications.

Past proposals are summarized below:

- **Connella Minor Use Permit DRC2006-00159.** This project was proposed on Ramada Drive in Templeton and requested a waiver of the ordinance requirement for 1,000 feet of separation between the dispensary and a playground. The dispensary was located between 925 and 1,004 feet from the playground depending on the measurement technique and was separated from the playground by Highway 101. It was approved by the Planning Commission and denied on appeal to the Board of Supervisors on April 8, 2008.
- **Gross/Brody Minor Use Permit DRC2009-00044.** This project was proposed on North Frontage Road in Nipomo. Although the proposed dispensary met the 1,000 foot separation requirement for the uses described in the ordinance (schools, libraries, parks, playgrounds, and recreation or youth centers), it was located within 94 feet of a private gymnastics studio that primarily served children. It was denied by the Planning Commission and the denial was upheld by the Board of Supervisors on appeal on August 24, 2010.
- **Murray Minor Use Permit DRC2010-00070.** This project was proposed on South 4th Street in Oceano and requested a waiver of the ordinance requirement for 1,000 feet of separation between the dispensary and a park (the dispensary was proposed within 922 feet of Oceano Park). It was approved by the Planning Commission and denied on appeal to the Board of Supervisors on March 12, 2012.

Updated California Case Law, and State Attorney General and Federal Government Involvement

The California Supreme Court recently confirmed that local jurisdictions may regulate medical marijuana dispensaries pursuant to their inherent police powers and land use authority. (See *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal.4th 729.) In its opinion, the Court concluded:

“We thus conclude that neither the CUA nor the MMP expressly or impliedly preempts the authority of California cities and counties, under their traditional land use and police powers, to allow, restrict, limit, or entirely exclude facilities that distribute medical marijuana, and to enforce such policies by nuisance actions.”

In 2008, the California Attorney General issued “Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use,” which are attached to this staff report as Attachment 9. Those Guidelines are intended, in part, to “help patients and primary caregivers understand how they may cultivate, transport, possess and use medical marijuana under California law.”

For its part, the federal government has continued to list marijuana as a Schedule 1 controlled substance under the Federal Controlled Substances Act, meaning that it is still a crime to manufacture, distribute, or possess marijuana pursuant to federal law. However, in December 2014 U.S. Congress passed a spending bill, which included a provision limiting the Justice Department’s ability to take criminal action against state-licensed individuals or operations that are acting in full compliance with the medical marijuana laws of their states. Specifically, the bill states, “None of the funds made available in this act to the Department of Justice may be used...to prevent...states...from implementing their own state laws that authorize the use, distribution, possession, or cultivation of medical marijuana.”

LAND USE ORDINANCE STANDARDS

Section 22.30.225 – General Retail

Land Use Ordinance Section 22.30.225 (attached) establishes special use standards for medical marijuana dispensaries. The project’s compliance with these standards is described below.

Location

Medical Marijuana Dispensaries shall be located outside of the CBD, a minimum of 1,000 feet from any pre-school, elementary school, high school, library, park, playground, recreation or youth center. Distance shall be measured from the building which contains the Medical Marijuana Dispensary to the property line of the enumerated use using a direct straight line measurement.

This section uses similar criteria as the California Attorney General’s August 2008 guidelines¹ which prohibit the smoking of medical marijuana within 1,000 feet of a school, recreation center, or youth center; however, it applies to the location of dispensaries (not just smoking marijuana) and adds libraries, parks, and playgrounds to the list.

Staff has measured the 1,000 foot distance requirement using GeoView, an up-to-date software application used to obtain accurate measurements of distance. This software allows staff to apply a specific radius around a property. Using this software application, staff has determined that the building where the dispensary is proposed is not located within 1,000 feet of any pre-school, elementary school, high school, library, park, playground, recreation or youth center. The nearest sensitive use is Preisker

¹ See Attachment 9 to this staff report, page 6; B. Enforcement Guidelines (1.) Location of Use

Park located about 4,300 feet to the south in the City of Santa Maria. The proposed project therefore complies with the location requirement of the ordinance.

Table 1: Distance to Sensitive Uses

Sensitive Use	Address	Distance from Dispensary
Preisker Park	330 Hidden Pines Way, Santa Maria	4,300 feet to the south
Tommie Kunst Junior High School	930 Hidden Pines Way, Santa Maria	5,300 feet to the southwest
All About Kids Preschool	613 N. Elizabeth Street, Santa Maria	14,400 feet to the south
Santa Maria Public Library	421 S. McClelland Street, Santa Maria	18,000 feet to the south
Nipomo Public Library	918 W. Tefft Street, Nipomo	21,000 feet to the northwest
Boys and Girls Club	901 N. Railroad Avenue, Santa Maria	13,000 feet to the southwest

Limitation on use

The following use limitations apply to proposed medical marijuana dispensaries:

- a. *Hours of operation are limited to 11:00 a.m. to 6 p.m. seven days per week.*
- b. *No person under age of 18 shall be permitted in the dispensary at any time except in the presence of his/her parent or guardian.*
- c. *No retail sales of paraphernalia as defined in Health and Safety Code section 11364.5 are permitted at the dispensary.*
- d. *No cultivation of medical marijuana is permitted at the dispensary or on dispensary property.*

The proposed project complies with these use limitations.

Employees

All staff/employees employed by the Medical Marijuana Dispensary must be 21 years of age or older.

The applicant's proposal meets this requirement.

Security Plan

A security plan shall be submitted with the Minor Use Permit Application that includes lighting, security video cameras, alarm systems, and secure area for medical marijuana storage. The security plan shall include a requirement that there be at least 30 business days of surveillance video (that captures both inside and outside images) stored on an ongoing basis. The video system for the security cameras must be located in a locked, tamper-proof compartment.

In addition to this ordinance standard, the Attorney General's guidelines also require that, "Collectives and cooperatives should provide adequate security to ensure that patients are safe and that the surrounding homes or businesses are not negatively impacted by nuisance activity such as loitering or crime."

The applicant has provided a detailed operations plan, floor plan, and security plan (see Attachment 6), which meet the criteria of the ordinance. The security plan includes indoor/outdoor video surveillance and alarm system by Sentinel Security and an onsite guard by Bomar Security for 10 hours per day, 7 days per week. Security will assist in opening and closing of the facility, including escorting employees

to their vehicles after closing. Security will also be responsible for verifying that each person entering the facility is a medical marijuana patient, caregiver, employee, or other allowed person.

The proposed project was referred to the Sheriff's Office for review and comment. In a response, dated January 20, 2014, Chief Deputy Rob Reid stated "Based on a historical need for increased measures at locations involving medical marijuana dispensaries to protect against burglary and/or robbery, we anticipate an increased workload due to calls for service and reported crimes if this project is approved." This response concludes that the Sheriff's Office has limited resources and may not be able to meet the need for increased patrol efforts that could result from the project.

The purpose of the security plan is to minimize demands on law enforcement resources.

Displayed notice

Each dispensary, inside of the dispensary itself, shall display in a manner legible and visible to its clientele:

- a. *Notice that persons under the age of 18 are not allowed in the dispensary except in the presence of his/her parent or guardian;*
- b. *Notice that there is no consumption of medical marijuana in the vicinity of the dispensary.*

The proposed project is conditioned to comply with this requirement.

Sheriff notification

A condition to establishment of a Medical Marijuana Dispensary shall be notification to the Sheriff's Department informing it of the name, location, and contact information for the owner/operator of the dispensary.

The proposed project is conditioned to comply with this requirement.

Section 22.18.050 – Required Number of Parking Spaces

The parking requirement for retail uses is 1 space for every 300 square feet of sales area plus 1 space per 600 square feet of storage area. Based on the site plan and space usage of the tenant space, approximately 50 percent of the 2,136 square-foot space is dedicated to sales uses with the remainder dedicated to storage or non-sales areas. Based on these use areas and the corresponding parking requirements, the project is required to provide six on-site parking spaces. With 11 dedicated on-site parking spaces, the project meets this requirement.

Use Area	Square Footage	Requirement	Spaces Required
Sales Area	1,068	1 space / 300 SF	4
Storage Area	1,068	1 space / 600 SF	2
Total Area	2,136		6

PLANNING AREA STANDARDS

Section 22.98.072(C)(1) – Commercial Service (CS) Land Use Category Limitation on Use

This standard prohibits certain allowable CS uses (e.g. agricultural processing, broadcasting studios, etc.) in the South County planning area. The list of prohibited uses does not include Medical Marijuana

Dispensaries or General Retail establishments. Therefore, dispensaries are allowable on the project site per Section 22.30.030.

COMMUNITY ADVISORY GROUP COMMENTS

The proposed project was reviewed by the South County Advisory Council (SCAC) on February 23, 2015. On an 8-2 vote, SCAC recommended denial of the proposed dispensary based on public safety concerns due to "...very limited availability of Sheriff's deputies deployed in the South County, and potential crime problems associated with medical marijuana dispensaries."

AGENCY REVIEW

County Sheriff	In a response, dated January 20, 2014, Chief Deputy Rob Reid stated "Based on a historical need for increased measures at locations involving medical marijuana dispensaries to protect against burglary and/or robbery, we anticipate an increased workload due to calls for service and reported crimes if this project approved." This response concludes that the Sheriff's Office has limited resources and may not be able to meet the need for increased patrol efforts that could result from the project.
Public Works	In a response, dated April 22, 2015, Glenn Marshall indicated that based on review of the project's traffic study (see Attachment 8), Public Works has no traffic concerns. Road improvement fees would be required. Most northerly driveway to be limited to egress only.
Cal Trans	Reviewed the traffic study and has no concerns regarding impacts to Highway 101 / Highway 166 interchange.

ATTACHMENTS

1. Exhibit A – Findings
2. Exhibit B – Conditions of Approval
3. CEQA Notice of Exemption
4. Referral Responses
5. Graphics – Vicinity map, land use category map, and floor plans
6. Ethnobotanica Security and Operations Plan
7. Applicable Land Use Ordinance Section – 22.30.225
8. Traffic Study (Orosz Engineering Group; April 13, 2015)
9. Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use (State of California Attorney General; August 2008)

Staff report prepared by Airlin M. Singewald, Senior Planner, and reviewed by Bill Robeson, Deputy Director – Permitting.

Assembly Bill No. 243

CHAPTER 688

An act to add Article 6 (commencing with Section 19331), Article 13 (commencing with Section 19350), and Article 17 (commencing with Section 19360) to Chapter 3.5 of Division 8 of the Business and Professions Code, to add Section 12029 to the Fish and Game Code, to add Sections 11362.769 and 11362.777 to the Health and Safety Code, and to add Section 13276 to the Water Code, relating to medical marijuana, and making an appropriation therefor.

[Approved by Governor October 9, 2015. Filed with
Secretary of State October 9, 2015.]

LEGISLATIVE COUNSEL'S DIGEST

AB 243, Wood. Medical marijuana.

Existing law, the Compassionate Use Act of 1996, an initiative measure enacted by the approval of Proposition 215 at the November 5, 1996, statewide general election, authorizes the use of marijuana for medical purposes. Existing law enacted by the Legislature requires the establishment of a program for the issuance of identification cards to qualified patients so that they may lawfully use marijuana for medical purposes, and requires the establishment of guidelines for the lawful cultivation of marijuana grown for medical use. Existing law provides for the licensure of various professions by boards or bureaus within the Department of Consumer Affairs. Existing law, the Sherman Food, Drug, and Cosmetic Law, provides for the regulation of food, drugs, devices, and cosmetics, as specified. A violation of that law is a crime.

This bill would require the Department of Food and Agriculture, the Department of Pesticide Regulation, the State Department of Public Health, the Department of Fish and Wildlife, and the State Water Resources Control Board to promulgate regulations or standards relating to medical marijuana and its cultivation, as specified. The bill would also require various state agencies to take specified actions to mitigate the impact that marijuana cultivation has on the environment. By requiring cities, counties, and their local law enforcement agencies to coordinate with state agencies to enforce laws addressing the environmental impacts of medical marijuana cultivation, and by including medical marijuana within the Sherman Act, the bill would impose a state-mandated local program.

This bill would require a state licensing authority to charge each licensee under the act a licensure and renewal fee, as applicable, and would further require the deposit of those collected fees into an account specific to that licensing authority in the Medical Marijuana Regulation and Safety Act Fund, which this bill would establish. This bill would impose certain fines

and civil penalties for specified violations of the Medical Marijuana Regulation and Safety Act, and would require moneys collected as a result of these fines and civil penalties to be deposited into the Medical Cannabis Fines and Penalties Account, which this bill would establish within the fund. Moneys in the fund and each account of the fund would be available upon appropriation of the Legislature.

This bill would authorize the Director of Finance to provide an initial operating loan from the General Fund to the Medical Marijuana Regulation and Safety Act Fund of up to \$10,000,000, and would appropriate \$10,000,000 from the Medical Marijuana Regulation and Safety Act Fund to the Department of Consumer Affairs to begin the activities of the bureau.

This bill would provide that its provisions are severable.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

This bill would become operative only if AB 266 and SB 643 of the 2015–16 Regular Session are enacted and take effect on or before January 1, 2016.

Appropriation: yes.

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

SECTION 1. Article 6 (commencing with Section 19331) is added to Chapter 3.5 of Division 8 of the Business and Professions Code, to read:

Article 6. Licensed Cultivation Sites

19331. The Legislature finds and declares all of the following:

(a) The United States Environmental Protection Agency has not established appropriate pesticide tolerances for, or permitted the registration and lawful use of, pesticides on cannabis crops intended for human consumption pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.).

(b) The use of pesticides is not adequately regulated due to the omissions in federal law, and cannabis cultivated in California for California patients can and often does contain pesticide residues.

(c) Lawful California medical cannabis growers and caregivers urge the Department of Pesticide Regulation to provide guidance, in absence of federal guidance, on whether the pesticides currently used at most cannabis

cultivation sites are actually safe for use on cannabis intended for human consumption.

19332. (a) The Department of Food and Agriculture shall promulgate regulations governing the licensing of indoor and outdoor cultivation sites.

(b) The Department of Pesticide Regulation, in consultation with the Department of Food and Agriculture, shall develop standards for the use of pesticides in cultivation, and maximum tolerances for pesticides and other foreign object residue in harvested cannabis.

(c) The State Department of Public Health shall develop standards for the production and labeling of all edible medical cannabis products.

(d) The Department of Food and Agriculture, in consultation with the Department of Fish and Wildlife and the State Water Resources Control Board, shall ensure that individual and cumulative effects of water diversion and discharge associated with cultivation do not affect the instream flows needed for fish spawning, migration, and rearing, and the flows needed to maintain natural flow variability.

(e) The Department of Food and Agriculture shall have the authority necessary for the implementation of the regulations it adopts pursuant to this chapter. The regulations shall do all of the following:

(1) Provide that weighing or measuring devices used in connection with the sale or distribution of medical cannabis are required to meet standards equivalent to Division 5 (commencing with Section 12001).

(2) Require that cannabis cultivation by licensees is conducted in accordance with state and local laws related to land conversion, grading, electricity usage, water usage, agricultural discharges, and similar matters. Nothing in this chapter, and no regulation adopted by the department, shall be construed to supersede or limit the authority of the State Water Resources Control Board, regional water quality control boards, or the Department of Fish and Wildlife to implement and enforce their statutory obligations or to adopt regulations to protect water quality, water supply, and natural resources.

(3) Establish procedures for the issuance and revocation of unique identifiers for activities associated with a cannabis cultivation license, pursuant to Article 8 (commencing with Section 19337). All cannabis shall be labeled with the unique identifier issued by the Department of Food and Agriculture.

(4) Prescribe standards, in consultation with the bureau, for the reporting of information as necessary related to unique identifiers, pursuant to Article 8 (commencing with Section 19337).

(f) The Department of Pesticide Regulation, in consultation with the State Water Resources Control Board, shall promulgate regulations that require that the application of pesticides or other pest control in connection with the indoor or outdoor cultivation of medical cannabis meets standards equivalent to Division 6 (commencing with Section 11401) of the Food and Agricultural Code and its implementing regulations.

(g) State cultivator license types issued by the Department of Food and Agriculture include:

(1) Type 1, or “specialty outdoor,” for outdoor cultivation using no artificial lighting of less than or equal to 5,000 square feet of total canopy size on one premises, or up to 50 mature plants on noncontiguous plots.

(2) Type 1A, or “specialty indoor,” for indoor cultivation using exclusively artificial lighting of less than or equal to 5,000 square feet of total canopy size on one premises.

(3) Type 1B, or “specialty mixed-light,” for cultivation using a combination of natural and supplemental artificial lighting at a maximum threshold to be determined by the licensing authority, of less than or equal to 5,000 square feet of total canopy size on one premises.

(4) Type 2, or “small outdoor,” for outdoor cultivation using no artificial lighting between 5,001 and 10,000 square feet, inclusive, of total canopy size on one premises.

(5) Type 2A, or “small indoor,” for indoor cultivation using exclusively artificial lighting between 5,001 and 10,000 square feet, inclusive, of total canopy size on one premises.

(6) Type 2B, or “small mixed-light,” for cultivation using a combination of natural and supplemental artificial lighting at a maximum threshold to be determined by the licensing authority, between 5,001 and 10,000 square feet, inclusive, of total canopy size on one premises.

(7) Type 3, or “outdoor,” for outdoor cultivation using no artificial lighting from 10,001 square feet to one acre, inclusive, of total canopy size on one premises. The Department of Food and Agriculture shall limit the number of licenses allowed of this type.

(8) Type 3A, or “indoor,” for indoor cultivation using exclusively artificial lighting between 10,001 and 22,000 square feet, inclusive, of total canopy size on one premises. The Department of Food and Agriculture shall limit the number of licenses allowed of this type.

(9) Type 3B, or “mixed-light,” for cultivation using a combination of natural and supplemental artificial lighting at a maximum threshold to be determined by the licensing authority, between 10,001 and 22,000 square feet, inclusive, of total canopy size on one premises. The Department of Food and Agriculture shall limit the number of licenses allowed of this type.

(10) Type 4, or “nursery,” for cultivation of medical cannabis solely as a nursery. Type 4 licensees may transport live plants.

19333. An employee engaged in commercial cannabis cultivation activity shall be subject to Wage Order 4-2001 of the Industrial Welfare Commission.

SEC. 2. Article 13 (commencing with Section 19350) is added to Chapter 3.5 of Division 8 of the Business and Professions Code, to read:

Article 13. Funding

19350. Each licensing authority shall establish a scale of application, licensing, and renewal fees, based upon the cost of enforcing this chapter, as follows:

(a) Each licensing authority shall charge each licensee a licensure and renewal fee, as applicable. The licensure and renewal fee shall be calculated to cover the costs of administering this chapter. The licensure fee may vary depending upon the varying costs associated with administering the various regulatory requirements of this chapter as they relate to the nature and scope of the different licensure activities, including, but not limited to, the track and trace program required pursuant to Section 19335, but shall not exceed the reasonable regulatory costs to the licensing authority.

(b) The total fees assessed pursuant to this chapter shall be set at an amount that will fairly and proportionately generate sufficient total revenue to fully cover the total costs of administering this chapter.

(c) All license fees shall be set on a scaled basis by the licensing authority, dependent on the size of the business.

(d) The licensing authority shall deposit all fees collected in a fee account specific to that licensing authority, to be established in the Medical Marijuana Regulation and Safety Act Fund. Moneys in the licensing authority fee accounts shall be used, upon appropriation of the Legislature, by the designated licensing authority for the administration of this chapter.

19351. (a) The Medical Marijuana Regulation and Safety Act Fund is hereby established within the State Treasury. Moneys in the fund shall be available upon appropriation by the Legislature. Notwithstanding Section 16305.7 of the Government Code, the fund shall include any interest and dividends earned on the moneys in the fund.

(b) (1) Funds for the establishment and support of the regulatory activities pursuant to this chapter shall be advanced as a General Fund or special fund loan, and shall be repaid by the initial proceeds from fees collected pursuant to this chapter or any rule or regulation adopted pursuant to this chapter, by January 1, 2022. Should the initial proceeds from fees not be sufficient to repay the loan, moneys from the Medical Cannabis Fines and Penalties Account shall be made available to the bureau, by appropriation of the Legislature, to repay the loan.

(2) Funds advanced pursuant to this subdivision shall be appropriated to the bureau, which shall distribute the moneys to the appropriate licensing authorities, as necessary to implement the provisions of this chapter.

(3) The Director of Finance may provide an initial operating loan from the General Fund to the Medical Marijuana Regulation and Safety Act Fund that does not exceed ten million dollars (\$10,000,000).

(c) Except as otherwise provided, all moneys collected pursuant to this chapter as a result of fines or penalties imposed under this chapter shall be deposited directly into the Medical Marijuana Fines and Penalties Account, which is hereby established within the fund, and shall be available, upon appropriation by the Legislature to the bureau, for the purposes of funding the enforcement grant program pursuant to subdivision (d).

(d) (1) The bureau shall establish a grant program to allocate moneys from the Medical Cannabis Fines and Penalties Account to state and local entities for the following purposes:

(A) To assist with medical cannabis regulation and the enforcement of this chapter and other state and local laws applicable to cannabis activities.

(B) For allocation to state and local agencies and law enforcement to remedy the environmental impacts of cannabis cultivation.

(2) The costs of the grant program under this subdivision shall, upon appropriation by the Legislature, be paid for with moneys in the Medical Cannabis Fines and Penalties Account.

(3) The grant program established by this subdivision shall only be implemented after the loan specified in this section is repaid.

19352. The sum of ten million dollars (\$10,000,000) is hereby appropriated from the Medical Marijuana Regulation and Safety Act Fund to the Department of Consumer Affairs to begin the activities of the Bureau of Medical Marijuana Regulation. Funds appropriated pursuant to this section shall not include moneys received from fines or penalties.

SEC. 3. Article 17 (commencing with Section 19360) is added to Chapter 3.5 of Division 8 of the Business and Professions Code, to read:

Article 17. Penalties and Violations

19360. (a) A person engaging in cannabis activity without a license and associated unique identifiers required by this chapter shall be subject to civil penalties of up to twice the amount of the license fee for each violation, and the department, state or local authority, or court may order the destruction of medical cannabis associated with that violation. Each day of operation shall constitute a separate violation of this section. All civil penalties imposed and collected pursuant to this section shall be deposited into the Marijuana Production and Environment Mitigation Fund established pursuant to Section 31013 of the Revenue and Taxation Code.

(b) If an action for civil penalties is brought against a licensee pursuant to this chapter by the Attorney General, the penalty collected shall be deposited into the General Fund. If the action is brought by a district attorney or county counsel, the penalty collected shall be paid to the treasurer of the county in which the judgment was entered. If the action is brought by a city attorney or city prosecutor, the penalty collected shall be paid to the treasurer of the city or city and county in which the judgment was entered. If the action is brought by a city attorney and is adjudicated in a superior court located in the unincorporated area or another city in the same county, the penalty shall be paid one-half to the treasurer of the city in which the complaining attorney has jurisdiction and one-half to the treasurer of the county in which the judgment is entered.

(c) Notwithstanding subdivision (a), criminal penalties shall continue to apply to an unlicensed person or entity engaging in cannabis activity in violation of this chapter, including, but not limited to, those individuals covered under Section 11362.7 of the Health and Safety Code.

SEC. 4. Section 12029 is added to the Fish and Game Code, to read:

12029. (a) The Legislature finds and declares all of the following:

(1) The environmental impacts associated with marijuana cultivation have increased, and unlawful water diversions for marijuana irrigation have a detrimental effect on fish and wildlife and their habitat, which are held in trust by the state for the benefit of the people of the state.

(2) The remediation of existing marijuana cultivation sites is often complex and the permitting of these sites requires greater department staff time and personnel expenditures. The potential for marijuana cultivation sites to significantly impact the state's fish and wildlife resources requires immediate action on the part of the department's lake and streambed alteration permitting staff.

(b) In order to address unlawful water diversions and other violations of the Fish and Game Code associated with marijuana cultivation, the department shall establish the watershed enforcement program to facilitate the investigation, enforcement, and prosecution of these offenses.

(c) The department, in coordination with the State Water Resources Control Board, shall establish a permanent multiagency task force to address the environmental impacts of marijuana cultivation. The multiagency task force, to the extent feasible and subject to available Resources, shall expand its enforcement efforts on a statewide level to ensure the reduction of adverse impacts of marijuana cultivation on fish and wildlife and their habitats throughout the state.

(d) In order to facilitate the remediation and permitting of marijuana cultivation sites, the department shall adopt regulations to enhance the fees on any entity subject to Section 1602 for marijuana cultivation sites that require remediation. The fee schedule established pursuant to this subdivision shall not exceed the fee limits in Section 1609.

SEC. 5. Section 11362.769 is added to the Health and Safety Code, to read:

11362.769. Indoor and outdoor medical marijuana cultivation shall be conducted in accordance with state and local laws related to land conversion, grading, electricity usage, water usage, water quality, woodland and riparian habitat protection, agricultural discharges, and similar matters. State agencies, including, but not limited to, the State Board of Forestry and Fire Protection, the Department of Fish and Wildlife, the State Water Resources Control Board, the California regional water quality control boards, and traditional state law enforcement agencies shall address environmental impacts of medical marijuana cultivation and shall coordinate, when appropriate, with cities and counties and their law enforcement agencies in enforcement efforts.

SEC. 6. Section 11362.777 is added to the Health and Safety Code, to read:

11362.777. (a) The Department of Food and Agriculture shall establish a Medical Cannabis Cultivation Program to be administered by the secretary, except as specified in subdivision (c), shall administer this section as it pertains to the cultivation of medical marijuana. For purposes of this section and Chapter 3.5 (commencing with Section 19300) of the Business and Professions Code, medical cannabis is an agricultural product.

(b) (1) A person or entity shall not cultivate medical marijuana without first obtaining both of the following:

(A) A license, permit, or other entitlement, specifically permitting cultivation pursuant to these provisions, from the city, county, or city and county in which the cultivation will occur.

(B) A state license issued by the department pursuant to this section.

(2) A person or entity shall not submit an application for a state license issued by the department pursuant to this section unless that person or entity has received a license, permit, or other entitlement, specifically permitting cultivation pursuant to these provisions, from the city, county, or city and county in which the cultivation will occur.

(3) A person or entity shall not submit an application for a state license issued by the department pursuant to this section if the proposed cultivation of marijuana will violate the provisions of any local ordinance or regulation, or if medical marijuana is prohibited by the city, county, or city and county in which the cultivation is proposed to occur, either expressly or otherwise under principles of permissive zoning.

(c) (1) Except as otherwise specified in this subdivision, and without limiting any other local regulation, a city, county, or city and county, through its current or future land use regulations or ordinance, may issue or deny a permit to cultivate medical marijuana pursuant to this section. A city, county, or city and county may inspect the intended cultivation site for suitability prior to issuing a permit. After the city, county, or city and county has approved a permit, the applicant shall apply for a state medical marijuana cultivation license from the department. A locally issued cultivation permit shall only become active upon licensing by the department and receiving final local approval. A person shall not cultivate medical marijuana prior to obtaining both a permit from the city, county, or city and county and a state medical marijuana cultivation license from the department.

(2) A city, county, or city and county that issues or denies conditional licenses to cultivate medical marijuana pursuant to this section shall notify the department in a manner prescribed by the secretary.

(3) A city, county, or city and county's locally issued conditional permit requirements must be at least as stringent as the department's state licensing requirements.

(4) If a city, county, or city and county does not have land use regulations or ordinances regulating or prohibiting the cultivation of marijuana, either expressly or otherwise under principles of permissive zoning, or chooses not to administer a conditional permit program pursuant to this section, then commencing March 1, 2016, the division shall be the sole licensing authority for medical marijuana cultivation applicants in that city, county, or city and county.

(d) (1) The secretary may prescribe, adopt, and enforce regulations relating to the implementation, administration, and enforcement of this part, including, but not limited to, applicant requirements, collections, reporting, refunds, and appeals.

(2) The secretary may prescribe, adopt, and enforce any emergency regulations as necessary to implement this part. Any emergency regulation prescribed, adopted, or enforced pursuant to this section shall be adopted in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and, for purposes of that chapter, including Section 11349.6 of the Government Code, the adoption of the regulation is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health and safety, and general welfare.

(3) The secretary may enter into a cooperative agreement with a county agricultural commissioner to carry out the provisions of this chapter, including, but not limited to, administration, investigations, inspections, licensing and assistance pertaining to the cultivation of medical marijuana. Compensation under the cooperative agreement shall be paid from assessments and fees collected and deposited pursuant to this chapter and shall provide reimbursement to the county agricultural commissioner for associated costs.

(e) (1) The department, in consultation with, but not limited to, the Bureau of Medical Marijuana Regulation, the State Water Resources Control Board, and the Department of Fish and Wildlife, shall implement a unique identification program for medical marijuana. In implementing the program, the department shall consider issues, including, but not limited to, water use and environmental impacts. In implementing the program, the department shall ensure that:

(A) Individual and cumulative effects of water diversion and discharge associated with cultivation do not affect the instream flows needed for fish spawning, migration, and rearing, and the flows needed to maintain natural flow variability.

(B) Cultivation will not negatively impact springs, riparian wetlands, and aquatic habitats.

(2) The department shall establish a program for the identification of permitted medical marijuana plants at a cultivation site during the cultivation period. The unique identifier shall be attached at the base of each plant. A unique identifier, such as, but not limited to, a zip tie, shall be issued for each medical marijuana plant.

(A) Unique identifiers will only be issued to those persons appropriately licensed by this section.

(B) Information associated with the assigned unique identifier and licensee shall be included in the trace and track program specified in Section 19335 of the Business and Professions Code.

(C) The department may charge a fee to cover the reasonable costs of issuing the unique identifier and monitoring, tracking, and inspecting each medical marijuana plant.

(D) The department may promulgate regulations to implement this section.

(3) The department shall take adequate steps to establish protections against fraudulent unique identifiers and limit illegal diversion of unique identifiers to unlicensed persons.

(f) (1) A city, county, or city and county that issues or denies licenses to cultivate medical marijuana pursuant to this section shall notify the department in a manner prescribed by the secretary.

(2) Unique identifiers and associated identifying information administered by a city or county shall adhere to the requirements set by the department and be the equivalent to those administered by the department.

(g) This section does not apply to a qualified patient cultivating marijuana pursuant to Section 11362.5 if the area he or she uses to cultivate marijuana does not exceed 100 square feet and he or she cultivates marijuana for his or her personal medical use and does not sell, distribute, donate, or provide marijuana to any other person or entity. This section does not apply to a primary caregiver cultivating marijuana pursuant to Section 11362.5 if the area he or she uses to cultivate marijuana does not exceed 500 square feet and he or she cultivates marijuana exclusively for the personal medical use of no more than five specified qualified patients for whom he or she is the primary caregiver within the meaning of Section 11362.7 and does not receive remuneration for these activities, except for compensation provided in full compliance with subdivision (c) of Section 11362.765. For purposes of this section, the area used to cultivate marijuana shall be measured by the aggregate area of vegetative growth of live marijuana plants on the premises. Exemption from the requirements of this section does not limit or prevent a city, county, or city and county from regulating or banning the cultivation, storage, manufacture, transport, provision, or other activity by the exempt person, or impair the enforcement of that regulation or ban.

SEC. 7. Section 13276 is added to the Water Code, to read:

13276. (a) The multiagency task force, the Department of Fish and Wildlife and State Water Resources Control Board pilot project to address the Environmental Impacts of Cannabis Cultivation, assigned to respond to the damages caused by marijuana cultivation on public and private lands in California, shall continue its enforcement efforts on a permanent basis and expand them to a statewide level to ensure the reduction of adverse impacts of marijuana cultivation on water quality and on fish and wildlife throughout the state.

(b) Each regional board shall, and the State Water Resources Control Board may, address discharges of waste resulting from medical marijuana cultivation and associated activities, including by adopting a general permit, establishing waste discharge requirements, or taking action pursuant to Section 13269. In addressing these discharges, each regional board shall include conditions to address items that include, but are not limited to, all of the following:

(1) Site development and maintenance, erosion control, and drainage features.

(2) Stream crossing installation and maintenance.

(3) Riparian and wetland protection and management.

- (4) Soil disposal.
- (5) Water storage and use.
- (6) Irrigation runoff.
- (7) Fertilizers and soil.
- (8) Pesticides and herbicides.
- (9) Petroleum products and other chemicals.
- (10) Cultivation-related waste.
- (11) Refuse and human waste.
- (12) Cleanup, restoration, and mitigation.

SEC. 8. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 9. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

SEC. 10. This measure shall become operative only if both Assembly Bill 266 and Senate Bill 643 of the 2015–16 Regular Session are enacted and become operative.

O

Assembly Bill No. 266

CHAPTER 689

An act to amend Sections 27 and 101 of, to add Section 205.1 to, and to add Chapter 3.5 (commencing with Section 19300) to Division 8 of, the Business and Professions Code, to amend Section 9147.7 of the Government Code, to amend Section 11362.775 of the Health and Safety Code, to add Section 147.5 to the Labor Code, and to add Section 31020 to the Revenue and Taxation Code, relating to medical marijuana.

[Approved by Governor October 9, 2015. Filed with
Secretary of State October 9, 2015.]

LEGISLATIVE COUNSEL'S DIGEST

AB 266, Bonta. Medical marijuana.

(1) Existing law, the Compassionate Use Act of 1996, an initiative measure enacted by the approval of Proposition 215 at the November 5, 1996, statewide general election, authorizes the use of marijuana for medical purposes. Existing law enacted by the Legislature requires the establishment of a program for the issuance of identification cards to qualified patients so that they may lawfully use marijuana for medical purposes, and requires the establishment of guidelines for the lawful cultivation of marijuana grown for medical use. Existing law provides for the licensure of various professions by boards or bureaus within the Department of Consumer Affairs. Existing law, the Sherman Food, Drug, and Cosmetic Law, provides for the regulation of food, drugs, devices, and cosmetics, as specified. A violation of that law is a crime.

This bill, among other things, would enact the Medical Marijuana Regulation and Safety Act for the licensure and regulation of medical marijuana and would establish within the Department of Consumer Affairs the Bureau of Medical Marijuana Regulation, under the supervision and control of the Director of Consumer Affairs. The bill would require the director to administer and enforce the provisions of the act.

This bill would also require the Board of Equalization, in consultation with the Department of Food and Agriculture, to adopt a system for reporting the movement of commercial cannabis and cannabis products.

This bill would impose certain fines and civil penalties for specified violations of the act, and would require moneys collected as a result of these fines and civil penalties to be deposited into the Medical Cannabis Fines and Penalties Account.

(2) Under existing law, certain persons with identification cards, who associate within the state in order collectively or cooperatively to cultivate marijuana for medical purposes, are not solely on the basis of that fact subject to specified state criminal sanctions.

This bill would repeal these provisions upon the issuance of licenses by licensing authorities pursuant to the Medical Marijuana Regulation and Safety Act, as specified, and would instead provide that actions of licensees with the relevant local permits, in accordance with the act and applicable local ordinances, are not offenses subject to arrest, prosecution, or other sanction under state law.

(3) This bill would provide that its provisions are severable.

(4) Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

(6) The bill would provide that it shall become operative only if SB 643 and AB 243 of the 2015–16 Regular Session are also enacted and become operative.

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

SECTION 1. Section 27 of the Business and Professions Code is amended to read:

27. (a) Each entity specified in subdivisions (c), (d), and (e) shall provide on the Internet information regarding the status of every license issued by that entity in accordance with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code). The public information to be provided on the Internet shall include information on suspensions and revocations of licenses issued by the entity and other related enforcement action, including accusations filed pursuant to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code) taken by the entity relative to persons, businesses, or facilities subject to licensure or regulation by the entity. The information may not include personal information, including home telephone number, date of birth, or social security number. Each entity shall disclose a licensee's address of record. However, each entity shall allow a licensee to provide a post office box number or other alternate address, instead of his or her home address, as the address of record. This section shall not preclude an entity from also requiring a licensee, who has provided a post office box number or other alternative mailing address as his or her address of record, to provide a

physical business address or residence address only for the entity's internal administrative use and not for disclosure as the licensee's address of record or disclosure on the Internet.

(b) In providing information on the Internet, each entity specified in subdivisions (c) and (d) shall comply with the Department of Consumer Affairs' guidelines for access to public records.

(c) Each of the following entities within the Department of Consumer Affairs shall comply with the requirements of this section:

(1) The Board for Professional Engineers, Land Surveyors, and Geologists shall disclose information on its registrants and licensees.

(2) The Bureau of Automotive Repair shall disclose information on its licensees, including auto repair dealers, smog stations, lamp and brake stations, smog check technicians, and smog inspection certification stations.

(3) The Bureau of Electronic and Appliance Repair, Home Furnishings, and Thermal Insulation shall disclose information on its licensees and registrants, including major appliance repair dealers, combination dealers (electronic and appliance), electronic repair dealers, service contract sellers, and service contract administrators.

(4) The Cemetery and Funeral Bureau shall disclose information on its licensees, including cemetery brokers, cemetery salespersons, cemetery managers, crematory managers, cemetery authorities, crematories, cremated remains disposers, embalmers, funeral establishments, and funeral directors.

(5) The Professional Fiduciaries Bureau shall disclose information on its licensees.

(6) The Contractors' State License Board shall disclose information on its licensees and registrants in accordance with Chapter 9 (commencing with Section 7000) of Division 3. In addition to information related to licenses as specified in subdivision (a), the board shall also disclose information provided to the board by the Labor Commissioner pursuant to Section 98.9 of the Labor Code.

(7) The Bureau for Private Postsecondary Education shall disclose information on private postsecondary institutions under its jurisdiction, including disclosure of notices to comply issued pursuant to Section 94935 of the Education Code.

(8) The California Board of Accountancy shall disclose information on its licensees and registrants.

(9) The California Architects Board shall disclose information on its licensees, including architects and landscape architects.

(10) The State Athletic Commission shall disclose information on its licensees and registrants.

(11) The State Board of Barbering and Cosmetology shall disclose information on its licensees.

(12) The State Board of Guide Dogs for the Blind shall disclose information on its licensees and registrants.

(13) The Acupuncture Board shall disclose information on its licensees.

(14) The Board of Behavioral Sciences shall disclose information on its licensees, including licensed marriage and family therapists, licensed clinical

social workers, licensed educational psychologists, and licensed professional clinical counselors.

(15) The Dental Board of California shall disclose information on its licensees.

(16) The State Board of Optometry shall disclose information regarding certificates of registration to practice optometry, statements of licensure, optometric corporation registrations, branch office licenses, and fictitious name permits of its licensees.

(17) The Board of Psychology shall disclose information on its licensees, including psychologists, psychological assistants, and registered psychologists.

(d) The State Board of Chiropractic Examiners shall disclose information on its licensees.

(e) The Structural Pest Control Board shall disclose information on its licensees, including applicators, field representatives, and operators in the areas of fumigation, general pest and wood destroying pests and organisms, and wood roof cleaning and treatment.

(f) The Bureau of Medical Marijuana Regulation shall disclose information on its licensees.

(g) "Internet" for the purposes of this section has the meaning set forth in paragraph (6) of subdivision (f) of Section 17538.

SEC. 2. Section 101 of the Business and Professions Code is amended to read:

101. The department is comprised of the following:

- (a) The Dental Board of California.
- (b) The Medical Board of California.
- (c) The State Board of Optometry.
- (d) The California State Board of Pharmacy.
- (e) The Veterinary Medical Board.
- (f) The California Board of Accountancy.
- (g) The California Architects Board.
- (h) The Bureau of Barbering and Cosmetology.
- (i) The Board for Professional Engineers and Land Surveyors.
- (j) The Contractors' State License Board.
- (k) The Bureau for Private Postsecondary Education.
- (l) The Bureau of Electronic and Appliance Repair, Home Furnishings, and Thermal Insulation.
- (m) The Board of Registered Nursing.
- (n) The Board of Behavioral Sciences.
- (o) The State Athletic Commission.
- (p) The Cemetery and Funeral Bureau.
- (q) The State Board of Guide Dogs for the Blind.
- (r) The Bureau of Security and Investigative Services.
- (s) The Court Reporters Board of California.
- (t) The Board of Vocational Nursing and Psychiatric Technicians.
- (u) The Landscape Architects Technical Committee.
- (v) The Division of Investigation.

- (w) The Bureau of Automotive Repair.
- (x) The Respiratory Care Board of California.
- (y) The Acupuncture Board.
- (z) The Board of Psychology.
- (aa) The California Board of Podiatric Medicine.
- (ab) The Physical Therapy Board of California.
- (ac) The Arbitration Review Program.
- (ad) The Physician Assistant Committee.
- (ae) The Speech-Language Pathology and Audiology Board.
- (af) The California Board of Occupational Therapy.
- (ag) The Osteopathic Medical Board of California.
- (ah) The Naturopathic Medicine Committee.
- (ai) The Dental Hygiene Committee of California.
- (aj) The Professional Fiduciaries Bureau.
- (ak) The State Board of Chiropractic Examiners.
- (al) The Bureau of Real Estate.
- (am) The Bureau of Real Estate Appraisers.
- (an) The Structural Pest Control Board.
- (ao) The Bureau of Medical Marijuana Regulation.
- (ap) Any other boards, offices, or officers subject to its jurisdiction by law.

SEC. 3. Section 205.1 is added to the Business and Professions Code, to read:

205.1. Notwithstanding subdivision (a) of Section 205, the Medical Marijuana Regulation and Safety Act Fund is a special fund within the Professions and Vocations Fund, and is subject to subdivision (b) of Section 205.

SEC. 4. Chapter 3.5 (commencing with Section 19300) is added to Division 8 of the Business and Professions Code, to read:

CHAPTER 3.5. MEDICAL MARIJUANA REGULATION AND SAFETY ACT

Article 1. Definitions

19300. This act shall be known and may be cited as the Medical Marijuana Regulation and Safety Act.

19300.5. For purposes of this chapter, the following definitions shall apply:

(a) "Accrediting body" means a nonprofit organization that requires conformance to ISO/IEC 17025 requirements and is a signatory to the International Laboratory Accreditation Cooperation Mutual Recognition Arrangement for Testing.

(b) "Applicant," for purposes of Article 4 (commencing with Section 19319), means the following:

(1) Owner or owners of a proposed facility, including all persons or entities having ownership interest other than a security interest, lien, or encumbrance on property that will be used by the facility.

(2) If the owner is an entity, "owner" includes within the entity each person participating in the direction, control, or management of, or having a financial interest in, the proposed facility.

(3) If the applicant is a publicly traded company, "owner" means the chief executive officer or any person or entity with an aggregate ownership interest of 5 percent or more.

(c) "Batch" means a specific quantity of medical cannabis or medical cannabis products that is intended to have uniform character and quality, within specified limits, and is produced according to a single manufacturing order during the same cycle of manufacture.

(d) "Bureau" means the Bureau of Medical Marijuana Regulation within the Department of Consumer Affairs.

(e) "Cannabinoid" or "phytocannabinoid" means a chemical compound that is unique to and derived from cannabis.

(f) "Cannabis" means all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. "Cannabis" also means the separated resin, whether crude or purified, obtained from marijuana. "Cannabis" also means marijuana as defined by Section 11018 of the Health and Safety Code as enacted by Chapter 1407 of the Statutes of 1972. "Cannabis" 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 which is incapable of germination. For the purpose of this chapter, "cannabis" does not mean "industrial hemp" as defined by Section 81000 of the Food and Agricultural Code or Section 11018.5 of the Health and Safety Code.

(g) "Cannabis concentrate" means manufactured cannabis that has undergone a process to concentrate the cannabinoid active ingredient, thereby increasing the product's potency. An edible medical cannabis product is not considered food, as defined by Section 109935 of the Health and Safety Code, or a drug, as defined by Section 109925 of the Health and Safety Code.

(h) "Caregiver" or "primary caregiver" has the same meaning as that term is defined in Section 11362.7 of the Health and Safety Code.

(i) "Certificate of accreditation" means a certificate issued by an accrediting body to a licensed testing laboratory, entity, or site to be registered in the state.

(j) "Chief" means Chief of the Bureau of Medical Marijuana Regulation within the Department of Consumer Affairs.

(k) “Commercial cannabis activity” includes cultivation, possession, manufacture, processing, storing, laboratory testing, labeling, transporting, distribution, or sale of medical cannabis or a medical cannabis product, except as set forth in Section 19319, related to qualifying patients and primary caregivers.

(l) “Cultivation” means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.

(m) “Delivery” means the commercial transfer of medical cannabis or medical cannabis products from a dispensary, up to an amount determined by the bureau to a primary caregiver or qualified patient as defined in Section 11362.7 of the Health and Safety Code, or a testing laboratory. “Delivery” also includes the use by a dispensary of any technology platform owned and controlled by the dispensary, or independently licensed under this chapter, that enables qualified patients or primary caregivers to arrange for or facilitate the commercial transfer by a licensed dispensary of medical cannabis or medical cannabis products.

(n) “Dispensary” means a facility where medical cannabis, medical cannabis products, or devices for the use of medical cannabis or medical cannabis products are offered, either individually or in any combination, for retail sale, including an establishment that delivers, pursuant to express authorization by local ordinance, medical cannabis and medical cannabis products as part of a retail sale.

(o) “Dispensing” means any activity involving the retail sale of medical cannabis or medical cannabis products from a dispensary.

(p) “Distribution” means the procurement, sale, and transport of medical cannabis and medical cannabis products between entities licensed pursuant to this chapter.

(q) “Distributor” means a person licensed under this chapter to engage in the business of purchasing medical cannabis from a licensed cultivator, or medical cannabis products from a licensed manufacturer, for sale to a licensed dispensary.

(r) “Dried flower” means all dead medical cannabis that has been harvested, dried, cured, or otherwise processed, excluding leaves and stems.

(s) “Edible cannabis product” means manufactured cannabis that is intended to be used, in whole or in part, for human consumption, including, but not limited to, chewing gum. An edible medical cannabis product is not considered food as defined by Section 109935 of the Health and Safety Code or a drug as defined by Section 109925 of the Health and Safety Code.

(t) “Fund” means the Medical Marijuana Regulation and Safety Act Fund established pursuant to Section 19351.

(u) “Identification program” means the universal identification certificate program for commercial medical cannabis activity authorized by this chapter.

(v) “Labor peace agreement” means an agreement between a licensee and a bona fide labor organization that, at a minimum, protects the state’s proprietary interests by prohibiting labor organizations and members from engaging in picketing, work stoppages, boycotts, and any other economic interference with the applicant’s business. This agreement means that the

applicant has agreed not to disrupt efforts by the bona fide labor organization to communicate with, and attempt to organize and represent, the applicant's employees. The agreement shall provide a bona fide labor organization access at reasonable times to areas in which the applicant's employees work, for the purpose of meeting with employees to discuss their right to representation, employment rights under state law, and terms and conditions of employment. This type of agreement shall not mandate a particular method of election or certification of the bona fide labor organization.

(w) "Licensing authority" means the state agency responsible for the issuance, renewal, or reinstatement of the license, or the state agency authorized to take disciplinary action against the license.

(x) "Cultivation site" means a facility where medical cannabis is planted, grown, harvested, dried, cured, graded, or trimmed, or that does all or any combination of those activities, that holds a valid state license pursuant to this chapter, and that holds a valid local license or permit.

(y) "Manufacturer" means a person that conducts the production, preparation, propagation, or compounding of manufactured medical cannabis, as described in subdivision (ae), or medical cannabis products either directly or indirectly or by extraction methods, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis at a fixed location that packages or repackages medical cannabis or medical cannabis products or labels or relabels its container, that holds a valid state license pursuant to this chapter, and that holds a valid local license or permit.

(z) "Testing laboratory" means a facility, entity, or site in the state that offers or performs tests of medical cannabis or medical cannabis products and that is both of the following:

(1) Accredited by an accrediting body that is independent from all other persons involved in the medical cannabis industry in the state.

(2) Registered with the State Department of Public Health.

(aa) "Transporter" means a person issued a state license by the bureau to transport medical cannabis or medical cannabis products in an amount above a threshold determined by the bureau between facilities that have been issued a state license pursuant to this chapter.

(ab) "Licensee" means a person issued a state license under this chapter to engage in commercial cannabis activity.

(ac) "Live plants" means living medical cannabis flowers and plants, including seeds, immature plants, and vegetative stage plants.

(ad) "Lot" means a batch, or a specifically identified portion of a batch, having uniform character and quality within specified limits. In the case of medical cannabis or a medical cannabis product produced by a continuous process, "lot" means a specifically identified amount produced in a unit of time or a quantity in a manner that ensures its having uniform character and quality within specified limits.

(ae) "Manufactured cannabis" means raw cannabis that has undergone a process whereby the raw agricultural product has been transformed into a concentrate, an edible product, or a topical product.

(af) "Manufacturing site" means a location that produces, prepares, propagates, or compounds manufactured medical cannabis or medical cannabis products, directly or indirectly, by extraction methods, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and is owned and operated by a licensee for these activities.

(ag) "Medical cannabis," "medical cannabis product," or "cannabis product" means a product containing cannabis, including, but not limited to, concentrates and extractions, intended to be sold for use by medical cannabis patients in California pursuant to the Compassionate Use Act of 1996 (Proposition 215), found at Section 11362.5 of the Health and Safety Code. For the purposes of this chapter, "medical cannabis" does not include "industrial hemp" as defined by Section 81000 of the Food and Agricultural Code or Section 11018.5 of the Health and Safety Code.

(ah) "Nursery" means a licensee that produces only clones, immature plants, seeds, and other agricultural products used specifically for the planting, propagation, and cultivation of medical cannabis.

(ai) "Permit," "local license," or "local permit" means an official document granted by a local jurisdiction that specifically authorizes a person to conduct commercial cannabis activity in the local jurisdiction.

(aj) "Person" means an individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit and includes the plural as well as the singular number.

(ak) "State license," "license," or "registration" means a state license issued pursuant to this chapter.

(al) "Topical cannabis" means a product intended for external use. A topical cannabis product is not considered a drug as defined by Section 109925 of the Health and Safety Code.

(am) "Transport" means the transfer of medical cannabis or medical cannabis products from the permitted business location of one licensee to the permitted business location of another licensee, for the purposes of conducting commercial cannabis activity authorized pursuant to this chapter.

19300.7. License classifications pursuant to this chapter are as follows:

- (a) Type 1 = Cultivation; Specialty outdoor; Small.
- (b) Type 1A = Cultivation; Specialty indoor; Small.
- (c) Type 1B = Cultivation; Specialty mixed-light; Small.
- (d) Type 2 = Cultivation; Outdoor; Small.
- (e) Type 2A = Cultivation; Indoor; Small.
- (f) Type 2B = Cultivation; Mixed-light; Small.
- (g) Type 3 = Cultivation; Outdoor; Medium.
- (h) Type 3A = Cultivation; Indoor; Medium.
- (i) Type 3B = Cultivation; Mixed-light; Medium.
- (j) Type 4 = Cultivation; Nursery.
- (k) Type 6 = Manufacturer 1.
- (l) Type 7 = Manufacturer 2.
- (m) Type 8 = Testing.

- (n) Type 10 = Dispensary; General.
- (o) Type 10A = Dispensary; No more than three retail sites.
- (p) Type 11 = Distribution.
- (q) Type 12 = Transporter.

Article 2. Administration

19302. There is in the Department of Consumer Affairs the Bureau of Medical Marijuana Regulation, under the supervision and control of the director. The director shall administer and enforce the provisions of this chapter.

19303. Protection of the public shall be the highest priority for the bureau in exercising its licensing, regulatory, and disciplinary functions under this chapter. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

19304. The bureau shall make and prescribe reasonable rules as may be necessary or proper to carry out the purposes and intent of this chapter and to enable it to exercise the powers and duties conferred upon it by this chapter, not inconsistent with any statute of this state, including particularly this chapter and Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. For the performance of its duties, the bureau has the power conferred by Sections 11180 to 11191, inclusive, of the Government Code.

19305. Notice of any action of the licensing authority required by this chapter to be given may be signed and given by the director or an authorized employee of the department and may be made personally or in the manner prescribed by Section 1013 of the Code of Civil Procedure.

19306. (a) The bureau may convene an advisory committee to advise the bureau and licensing authorities on the development of standards and regulations pursuant to this chapter, including best practices and guidelines to ensure qualified patients have adequate access to medical cannabis and medical cannabis products. The advisory committee members shall be determined by the chief.

(b) The advisory committee members may include, but not be limited to, representatives of the medical marijuana industry, representatives of medical marijuana cultivators, appropriate local and state agencies, appropriate local and state law enforcement, physicians, environmental and public health experts, and medical marijuana patient advocates.

19307. A licensing authority may make or cause to be made such investigation as it deems necessary to carry out its duties under this chapter.

19308. For any hearing held pursuant to this chapter, the director, or a licensing authority, may delegate the power to hear and decide to an administrative law judge. Any hearing before an administrative law judge shall be pursuant to the procedures, rules, and limitations prescribed in

Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

19309. In any hearing before a licensing authority pursuant to this chapter, the licensing authority may pay any person appearing as a witness at the hearing at the request of the licensing authority pursuant to a subpoena, his or her actual, necessary, and reasonable travel, food, and lodging expenses, not to exceed the amount authorized for state employees.

19310. The department may on its own motion at any time before a penalty assessment is placed into effect and without any further proceedings, review the penalty, but such review shall be limited to its reduction.

Article 3. Enforcement

19311. Grounds for disciplinary action include:

(a) Failure to comply with the provisions of this chapter or any rule or regulation adopted pursuant to this chapter.

(b) Conduct that constitutes grounds for denial of licensure pursuant to Chapter 3 (commencing with Section 490) of Division 1.5.

(c) Any other grounds contained in regulations adopted by a licensing authority pursuant to this chapter.

(d) Failure to comply with any state law, except as provided for in this chapter or other California law.

19312. Each licensing authority may suspend or revoke licenses, after proper notice and hearing to the licensee, if the licensee is found to have committed any of the acts or omissions constituting grounds for disciplinary action. The disciplinary proceedings under this chapter shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the director of each licensing authority shall have all the powers granted therein.

19313. Each licensing authority may take disciplinary action against a licensee for any violation of this chapter when the violation was committed by the licensee's agent or employee while acting on behalf of the licensee or engaged in commercial cannabis activity.

19313.5. Upon suspension or revocation of a license, the licensing authority shall inform the bureau. The bureau shall then inform all other licensing authorities and the Department of Food and Agriculture.

19314. All accusations against licensees shall be filed by the licensing authority within five years after the performance of the act or omission alleged as the ground for disciplinary action; provided, however, that the foregoing provision shall not constitute a defense to an accusation alleging fraud or misrepresentation as a ground for disciplinary action. The cause for disciplinary action in such case shall not be deemed to have accrued until discovery, by the licensing authority, of the facts constituting the fraud or misrepresentation, and, in such case, the accusation shall be filed within five years after such discovery.

19315. (a) Nothing in this chapter shall be interpreted to supersede or limit existing local authority for law enforcement activity, enforcement of local zoning requirements or local ordinances, or enforcement of local permit or licensing requirements.

(b) Nothing in this chapter shall be interpreted to require the Department of Consumer Affairs to undertake local law enforcement responsibilities, enforce local zoning requirements, or enforce local licensing requirements.

(c) Nothing in this chapter shall be interpreted to supersede or limit state agencies from exercising their existing enforcement authority under the Fish and Game Code, the Water Code, the Food and Agricultural Code, or the Health and Safety Code.

19316. (a) Pursuant to Section 7 of Article XI of the California Constitution, a city, county, or city and county may adopt ordinances that establish additional standards, requirements, and regulations for local licenses and permits for commercial cannabis activity. Any standards, requirements, and regulations regarding health and safety, testing, security, and worker protections established by the state shall be the minimum standards for all licensees statewide.

(b) For facilities issued a state license that are located within the incorporated area of a city, the city shall have full power and authority to enforce this chapter and the regulations promulgated by the bureau or any licensing authority, if delegated by the state. Notwithstanding Sections 101375, 101400, and 101405 of the Health and Safety Code or any contract entered into pursuant thereto, or any other law, the city shall further assume complete responsibility for any regulatory function relating to those licensees within the city limits that would otherwise be performed by the county or any county officer or employee, including a county health officer, without liability, cost, or expense to the county.

(c) Nothing in this chapter, or any regulations promulgated thereunder, shall be deemed to limit the authority or remedies of a city, county, or city and county under any provision of law, including, but not limited to, Section 7 of Article XI of the California Constitution.

19317. (a) The actions of a licensee, its employees, and its agents that are (1) permitted pursuant to both a state license and a license or permit issued by the local jurisdiction following the requirements of the applicable local ordinances, and (2) conducted in accordance with the requirements of this chapter and regulations adopted pursuant to this chapter, are not unlawful under state law and shall not be an offense subject to arrest, prosecution, or other sanction under state law, or be subject to a civil fine or be a basis for seizure or forfeiture of assets under state law.

(b) The actions of a person who, in good faith, allows his or her property to be used by a licensee, its employees, and its agents, as permitted pursuant to both a state license and a local license or permit following the requirements of the applicable local ordinances, are not unlawful under state law and shall not be an offense subject to arrest, prosecution, or other sanction under state law, or be subject to a civil fine or be a basis for seizure or forfeiture of assets under state law.

19318. (a) A person engaging in commercial cannabis activity without a license required by this chapter shall be subject to civil penalties of up to twice the amount of the license fee for each violation, and the court may order the destruction of medical cannabis associated with that violation in accordance with Section 11479 of the Health and Safety Code. Each day of operation shall constitute a separate violation of this section. All civil penalties imposed and collected pursuant to this section by a licensing authority shall be deposited into the Medical Cannabis Fines and Penalties Account established pursuant to Section 19351.

(b) If an action for civil penalties is brought against a licensee pursuant to this chapter by the Attorney General on behalf of the people, the penalty collected shall be deposited into the Medical Cannabis Fines and Penalties Account established pursuant to Section 19351. If the action is brought by a district attorney or county counsel, the penalty collected shall be paid to the treasurer of the county in which the judgment was entered. If the action is brought by a city attorney or city prosecutor, the penalty collected shall be paid to the treasurer of the city or city and county in which the judgment was entered. If the action is brought by a city attorney and is adjudicated in a superior court located in the unincorporated area or another city in the same county, the penalty shall be paid one-half to the treasurer of the city in which the complaining attorney has jurisdiction and one-half to the treasurer of the county in which the judgment is entered.

(c) Notwithstanding subdivision (a), criminal penalties shall continue to apply to an unlicensed person engaging in commercial cannabis activity in violation of this chapter, including, but not limited to, those individuals covered under Section 11362.7 of the Health and Safety Code.

Article 4. Licensing

19320. (a) Licensing authorities administering this chapter may issue state licenses only to qualified applicants engaging in commercial cannabis activity pursuant to this chapter. Upon the date of implementation of regulations by the licensing authority, no person shall engage in commercial cannabis activity without possessing both a state license and a local permit, license, or other authorization. A licensee shall not commence activity under the authority of a state license until the applicant has obtained, in addition to the state license, a license or permit from the local jurisdiction in which he or she proposes to operate, following the requirements of the applicable local ordinance.

(b) Revocation of a local license, permit, or other authorization shall terminate the ability of a medical cannabis business to operate within that local jurisdiction until the local jurisdiction reinstates or reissues the local license, permit, or other required authorization. Local authorities shall notify the bureau upon revocation of a local license. The bureau shall inform relevant licensing authorities.

(c) Revocation of a state license shall terminate the ability of a medical cannabis licensee to operate within California until the licensing authority reinstates or reissues the state license. Each licensee shall obtain a separate license for each location where it engages in commercial medical cannabis activity. However, transporters only need to obtain licenses for each physical location where the licensee conducts business while not in transport, or any equipment that is not currently transporting medical cannabis or medical cannabis products, permanently resides.

(d) In addition to the provisions of this chapter, local jurisdictions retain the power to assess fees and taxes, as applicable, on facilities that are licensed pursuant to this chapter and the business activities of those licensees.

(e) Nothing in this chapter shall be construed to supersede or limit state agencies, including the State Water Resources Control Board and Department of Fish and Wildlife, from establishing fees to support their medical cannabis regulatory programs.

19321. (a) The Department of Consumer Affairs, the Department of Food and Agriculture, and the State Department of Public Health shall promulgate regulations for implementation of their respective responsibilities in the administration of this chapter.

(b) A license issued pursuant to this section shall be valid for 12 months from the date of issuance. The license shall be renewed annually. Each licensing authority shall establish procedures for the renewal of a license.

(c) Notwithstanding subdivision (a) of Section 19320, a facility or entity that is operating in compliance with local zoning ordinances and other state and local requirements on or before January 1, 2018, may continue its operations until its application for licensure is approved or denied pursuant to this chapter. In issuing licenses, the licensing authority shall prioritize any facility or entity that can demonstrate to the authority's satisfaction that it was in operation and in good standing with the local jurisdiction by January 1, 2016.

(d) Issuance of a state license or a determination of compliance with local law by the licensing authority shall in no way limit the ability of the City of Los Angeles to prosecute any person or entity for a violation of, or otherwise enforce, Proposition D, approved by the voters of the City of Los Angeles on the May 21, 2013, ballot for the city, or the city's zoning laws. Nor may issuance of a license or determination of compliance with local law by the licensing authority be deemed to establish, or be relied upon, in determining satisfaction with the immunity requirements of Proposition D or local zoning law, in court or in any other context or forum.

Article 5. Medical Marijuana Regulation

19326. (a) A person other than a licensed transporter shall not transport medical cannabis or medical cannabis products from one licensee to another licensee, unless otherwise specified in this chapter.

(b) All licensees holding cultivation or manufacturing licenses shall send all medical cannabis and medical cannabis products cultivated or manufactured to a distributor, as defined in Section 19300.5, for quality assurance and inspection by the Type 11 licensee and for a batch testing by a Type 8 licensee prior to distribution to a dispensary. Those licensees holding a Type 10A license in addition to a cultivation license or a manufacturing license shall send all medical cannabis and medical cannabis products to a Type 11 licensee for presale inspection and for a batch testing by a Type 8 licensee prior to dispensing any product. The licensing authority shall fine a licensee who violates this subdivision in an amount determined by the licensing authority to be reasonable.

(c) (1) Upon receipt of medical cannabis or medical cannabis products by a holder of a cultivation or manufacturing license, the Type 11 licensee shall first inspect the product to ensure the identity and quantity of the product and then ensure a random sample of the medical cannabis or medical cannabis product is tested by a Type 8 licensee prior to distributing the batch of medical cannabis or medical cannabis products.

(2) Upon issuance of a certificate of analysis by the Type 8 licensee that the product is fit for manufacturing or retail, all medical cannabis and medical cannabis products shall undergo a quality assurance review by the Type 11 licensee prior to distribution to ensure the quantity and content of the medical cannabis or medical cannabis product, and for tracking and taxation purposes by the state. Licensed cultivators and manufacturers shall package or seal all medical cannabis and medical cannabis products in tamper-evident packaging and use a unique identifier, as prescribed by the Department of Food and Agriculture, for the purpose of identifying and tracking medical cannabis or medical cannabis products. Medical cannabis and medical cannabis products shall be labeled as required by Section 19347. All packaging and sealing shall be completed prior to medical cannabis or medical cannabis products being transported or delivered to a licensee, qualified patient, or caregiver.

(3) This section does not limit the ability of licensed cultivators, manufacturers, and dispensaries to directly enter into contracts with one another indicating the price and quantity of medical cannabis or medical cannabis products to be distributed. However, a Type 11 licensee responsible for executing the contract is authorized to collect a fee for the services rendered, including, but not limited to, costs incurred by a Type 8 licensee, as well as applicable state or local taxes and fees.

(d) Medical cannabis and medical cannabis products shall be tested by a registered testing laboratory, prior to retail sale or dispensing, as follows:

(1) Medical cannabis from dried flower shall, at a minimum, be tested for concentration, pesticides, mold, and other contaminants.

(2) Medical cannabis extracts shall, at a minimum, be tested for concentration and purity of the product.

(3) This chapter shall not prohibit a licensee from performing on-site testing for the purposes of quality assurance of the product in conjunction

with reasonable business operations. On-site testing by the licensee shall not be certified by the State Department of Public Health.

(e) All commercial cannabis activity shall be conducted between licensees, when these are available.

19327. (a) A licensee shall keep accurate records of commercial cannabis activity.

(b) All records related to commercial cannabis activity as defined by the licensing authorities shall be maintained for a minimum of seven years.

(c) The bureau may examine the books and records of a licensee and inspect the premises of a licensee as the licensing authority or a state or local agency deems necessary to perform its duties under this chapter. All inspections shall be conducted during standard business hours of the licensed facility or at any other reasonable time.

(d) Licensees shall keep records identified by the licensing authorities on the premises of the location licensed. The licensing authorities may make any examination of the records of any licensee. Licensees shall also provide and deliver copies of documents to the licensing agency upon request.

(e) A licensee or its agent, or employee, that refuses, impedes, obstructs, or interferes with an inspection of the premises or records of the licensee pursuant to this section has engaged in a violation of this chapter.

(f) If a licensee or an employee of a licensee fails to maintain or provide the records required pursuant to this section, the licensee shall be subject to a citation and fine of thirty thousand dollars (\$30,000) per individual violation.

19328. (a) A licensee may only hold a state license in up to two separate license categories, as follows:

(1) Type 1, 1A, 1B, 2, 2A, or 2B licensees may also hold either a Type 6 or 7 state license.

(2) Type 6 or 7 licensees, or a combination thereof, may also hold either a Type 1, 1A, 1B, 2, 2A, or 2B state license.

(3) Type 6 or 7 licensees, or a combination thereof, may also hold a Type 10A state license.

(4) Type 10A licensees may also hold either a Type 6 or 7 state license, or a combination thereof.

(5) Type 1, 1A, 1B, 2, 2A, or 2B licensees, or a combination thereof, may also hold a Type 10A state license.

(6) Type 10A licensees may apply for Type 1, 1A, 1B, 2, 2A, or 2B state license, or a combination thereof.

(7) Type 11 licensees shall apply for a Type 12 state license, but shall not apply for any other type of state license.

(8) Type 12 licensees may apply for a Type 11 state license.

(9) A Type 10A licensee may apply for a Type 6 or 7 state license and hold a 1, 1A, 1B, 2, 2A, 2B, 3, 3A, 3B, 4 or combination thereof if, under the 1, 1A, 1B, 2, 2A, 2B, 3, 3A, 3B, 4 or combination of licenses thereof, no more than four acres of total canopy size of cultivation by the licensee is occurring throughout the state during the period that the respective licenses

are valid. All cultivation pursuant to this section shall comply with local ordinances. This paragraph shall become inoperative on January 1, 2026.

(b) Except as provided in subdivision (a), a person or entity that holds a state license is prohibited from licensure for any other activity authorized under this chapter, and is prohibited from holding an ownership interest in real property, personal property, or other assets associated with or used in any other license category.

(c) (1) In a jurisdiction that adopted a local ordinance, prior to July 1, 2015, allowing or requiring qualified businesses to cultivate, manufacture, and dispense medical cannabis or medical cannabis products, with all commercial cannabis activity being conducted by a single qualified business, upon licensure that business shall not be subject to subdivision (a) if it meets all of the following conditions:

(A) The business was cultivating, manufacturing, and dispensing medical cannabis or medical cannabis products on July 1, 2015, and has continuously done so since that date.

(B) The business has been in full compliance with all applicable local ordinances at all times prior to licensure.

(C) The business is registered with the State Board of Equalization.

(2) A business licensed pursuant to paragraph (1) is not required to conduct all cultivation or manufacturing within the bounds of a local jurisdiction, but all cultivation and manufacturing shall have commenced prior to July 1, 2015, and have been in full compliance with applicable local ordinances.

(d) This section shall remain in effect only until January 1, 2026, and as of that date is repealed.

19329. A licensee shall not also be licensed as a retailer of alcoholic beverages pursuant to Division 9 (commencing with Section 23000).

19330. This chapter and 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 shall not interfere with an employer's rights and obligations to maintain a drug and alcohol free workplace or require an employer to permit or accommodate the use, consumption, possession, transfer, display, transportation, sale, or growth of cannabis in the workplace or affect the ability of employers to have policies prohibiting the use of cannabis by employees and prospective employees, or prevent employers from complying with state or federal law.

Article 7. Licensed Distributors, Dispensaries, and Transporters

19334. (a) State licenses to be issued by the Department of Consumer Affairs are as follows:

(1) "Dispensary," as defined in this chapter. This license shall allow for delivery pursuant to Section 19340.

(2) "Distributor," for the distribution of medical cannabis and medical cannabis products from manufacturer to dispensary. A Type 11 licensee

shall hold a Type 12, or transporter, license and register each location where product is stored for the purposes of distribution. A Type 11 licensee shall not hold a license in a cultivation, manufacturing, dispensing, or testing license category and shall not own, or have an ownership interest in, a facility licensed in those categories other than a security interest, lien, or encumbrance on property that is used by a licensee. A Type 11 licensee shall be bonded and insured at a minimum level established by the licensing authority.

(3) "Transport," for transporters of medical cannabis or medical cannabis products between licensees. A Type 12 licensee shall be bonded and insured at a minimum level established by the licensing authority.

(4) "Special dispensary status" for dispensers who have no more than three licensed dispensary facilities. This license shall allow for delivery where expressly authorized by local ordinance.

(b) The bureau shall establish minimum security requirements for the commercial transportation and delivery of medical cannabis and products.

(c) A licensed dispensary shall implement sufficient security measures to both deter and prevent unauthorized entrance into areas containing medical cannabis or medical cannabis products and theft of medical cannabis or medical cannabis products at the dispensary. These security measures shall include, but not be limited to, all of the following:

(1) Preventing individuals from remaining on the premises of the dispensary if they are not engaging in activity expressly related to the operations of the dispensary.

(2) Establishing limited access areas accessible only to authorized dispensary personnel.

(3) Storing all finished medical cannabis and medical cannabis products in a secured and locked room, safe, or vault, and in a manner as to prevent diversion, theft, and loss, except for limited amounts of cannabis used for display purposes, samples, or immediate sale.

(d) A dispensary shall notify the licensing authority and the appropriate law enforcement authorities within 24 hours after discovering any of the following:

(1) Significant discrepancies identified during inventory. The level of significance shall be determined by the bureau.

(2) Diversion, theft, loss, or any criminal activity involving the dispensary or any agent or employee of the dispensary.

(3) The loss or unauthorized alteration of records related to cannabis, registered qualifying patients, primary caregivers, or dispensary employees or agents.

(4) Any other breach of security.

Article 9. Delivery

19340. (a) Deliveries, as defined in this chapter, can only be made by a dispensary and in a city, county, or city and county that does not explicitly prohibit it by local ordinance.

(b) Upon approval of the licensing authority, a licensed dispensary that delivers medical cannabis or medical cannabis products shall comply with both of the following:

(1) The city, county, or city and county in which the licensed dispensary is located, and in which each delivery is made, do not explicitly by ordinance prohibit delivery, as defined in Section 19300.5.

(2) All employees of a dispensary delivering medical cannabis or medical cannabis products shall carry a copy of the dispensary's current license authorizing those services with them during deliveries and the employee's government-issued identification, and shall present that license and identification upon request to state and local law enforcement, employees of regulatory authorities, and other state and local agencies enforcing this chapter.

(c) A county shall have the authority to impose a tax, pursuant to Article 11 (commencing with Section 19348), on each delivery transaction completed by a licensee.

(d) During delivery, the licensee shall maintain a physical copy of the delivery request and shall make it available upon request of the licensing authority and law enforcement officers. The delivery request documentation shall comply with state and federal law regarding the protection of confidential medical information.

(e) The qualified patient or primary caregiver requesting the delivery shall maintain a copy of the delivery request and shall make it available, upon request, to the licensing authority and law enforcement officers.

(f) A local jurisdiction shall not prevent carriage of medical cannabis or medical cannabis products on public roads by a licensee acting in compliance with this chapter.

Article 10. Licensed Manufacturers and Licensed Laboratories

19341. The State Department of Public Health shall promulgate regulations governing the licensing of cannabis manufacturers and testing laboratories. Licenses to be issued are as follows:

(a) "Manufacturing level 1," for manufacturing sites that produce medical cannabis products using nonvolatile solvents.

(b) "Manufacturing level 2," for manufacturing sites that produce medical cannabis products using volatile solvents. The State Department of Public Health shall limit the number of licenses of this type.

(c) "Testing," for testing of medical cannabis and medical cannabis products. Testing licensees shall have their facilities licensed according to regulations set forth by the division. A testing licensee shall not hold a

license in another license category of this chapter and shall not own or have ownership interest in a facility licensed pursuant to this chapter.

19342. (a) For the purposes of testing medical cannabis or medical cannabis products, licensees shall use a licensed testing laboratory that has adopted a standard operating procedure using methods consistent with general requirements for the competence of testing and calibration activities, including sampling, using standard methods established by the International Organization for Standardization, specifically ISO/IEC 17020 and ISO/IEC 17025 to test medical cannabis and medical cannabis products that are approved by an accrediting body that is a signatory to the International Laboratory Accreditation Cooperation Mutual Recognition Arrangement.

(b) An agent of a licensed testing laboratory shall obtain samples according to a statistically valid sampling method for each lot.

(c) A licensed testing laboratory shall analyze samples according to either of the following:

(1) The most current version of the cannabis inflorescence monograph published by the American Herbal Pharmacopoeia.

(2) Scientifically valid methodology that is demonstrably equal or superior to paragraph (1), in the opinion of the accrediting body.

(d) If a test result falls outside the specifications authorized by law or regulation, the licensed testing laboratory shall follow a standard operating procedure to confirm or refute the original result.

(e) A licensed testing laboratory shall destroy the remains of the sample of medical cannabis or medical cannabis product upon completion of the analysis.

19343. A licensed testing laboratory shall not handle, test, or analyze medical cannabis or medical cannabis products unless the licensed testing laboratory meets all of the following:

(a) Is registered by the State Department of Public Health.

(b) Is independent from all other persons and entities involved in the medical cannabis industry.

(c) Follows the methodologies, ranges, and parameters that are contained in the scope of the accreditation for testing medical cannabis or medical cannabis products. The testing lab shall also comply with any other requirements specified by the State Department of Public Health.

(d) Notifies the State Department of Public Health within one business day after the receipt of notice of any kind that its accreditation has been denied, suspended, or revoked.

(e) Has established standard operating procedures that provide for adequate chain of custody controls for samples transferred to the licensed testing laboratory for testing.

19344. (a) A licensed testing laboratory shall issue a certificate of analysis for each lot, with supporting data, to report both of the following:

(1) Whether the chemical profile of the lot conforms to the specifications of the lot for compounds, including, but not limited to, all of the following:

(A) Tetrahydrocannabinol (THC).

(B) Tetrahydrocannabinolic Acid (THCA).

- (C) Cannabidiol (CBD).
- (D) Cannabidiolic Acid (CBDA).
- (E) The terpenes described in the most current version of the cannabis inflorescence monograph published by the American Herbal Pharmacopoeia.
- (F) Cannabigerol (CBG).
- (G) Cannabinol (CBN).
- (H) Any other compounds required by the State Department of Public Health.

(2) That the presence of contaminants does not exceed the levels that are the lesser of either the most current version of the American Herbal Pharmacopoeia monograph or the State Department of Public Health. For purposes of this paragraph, contaminants includes, but is not limited to, all of the following:

- (A) Residual solvent or processing chemicals.
- (B) Foreign material, including, but not limited to, hair, insects, or similar or related adulterant.
- (C) Microbiological impurity, including total aerobic microbial count, total yeast mold count, *P. aeruginosa*, *aspergillus* spp., *s. aureus*, aflatoxin B1, B2, G1, or G2, or ochratoxin A.

(D) Whether the batch is within specification for odor and appearance.

(b) Residual levels of volatile organic compounds shall be below the lesser of either the specifications set by the United States Pharmacopeia (U.S.P. Chapter 467) or those set by the State Department of Public Health.

19345. (a) Except as provided in this chapter, a licensed testing laboratory shall not acquire or receive medical cannabis or medical cannabis products except from a licensed facility in accordance with this chapter, and shall not distribute, sell, deliver, transfer, transport, or dispense medical cannabis or medical cannabis products, from which the medical cannabis or medical cannabis products were acquired or received. All transfer or transportation shall be performed pursuant to a specified chain of custody protocol.

(b) A licensed testing laboratory may receive and test samples of medical cannabis or medical cannabis products from a qualified patient or primary caregiver only if he or she presents his or her valid recommendation for cannabis for medical purposes from a physician. A licensed testing laboratory shall not certify samples from a qualified patient or caregiver for resale or transfer to another party or licensee. All tests performed by a licensed testing laboratory for a qualified patient or caregiver shall be recorded with the name of the qualified patient or caregiver and the amount of medical cannabis or medical cannabis product received.

(c) The State Department of Public Health shall develop procedures to ensure that testing of cannabis occurs prior to delivery to dispensaries or any other business, specify how often licensees shall test cannabis and that the cost of testing shall be borne by the licensed cultivators, and require destruction of harvested batches whose testing samples indicate noncompliance with health and safety standards promulgated by the State Department of Public Health, unless remedial measures can bring the

cannabis into compliance with quality assurance standards as promulgated by the State Department of Public Health.

(d) The State Department of Public Health shall establish a licensing fee, and laboratories shall pay a fee to be licensed. Licensing fees shall not exceed the reasonable regulatory cost of the licensing activities.

19347. (a) Prior to delivery or sale at a dispensary, medical cannabis products shall be labeled and in a tamper-evident package. Labels and packages of medical cannabis products shall meet the following requirements:

(1) Medical cannabis packages and labels shall not be made to be attractive to children.

(2) All medical cannabis product labels shall include the following information, prominently displayed and in a clear and legible font:

(A) Manufacture date and source.

(B) The statement "SCHEDULE I CONTROLLED SUBSTANCE."

(C) The statement "KEEP OUT OF REACH OF CHILDREN AND ANIMALS" in bold print.

(D) The statement "FOR MEDICAL USE ONLY."

(E) The statement "THE INTOXICATING EFFECTS OF THIS PRODUCT MAY BE DELAYED BY UP TO TWO HOURS."

(F) The statement "THIS PRODUCT MAY IMPAIR THE ABILITY TO DRIVE OR OPERATE MACHINERY. PLEASE USE EXTREME CAUTION."

(G) For packages containing only dried flower, the net weight of medical cannabis in the package.

(H) A warning if nuts or other known allergens are used.

(I) List of pharmacologically active ingredients, including, but not limited to, tetrahydrocannabinol (THC), cannabidiol (CBD), and other cannabinoid content, the THC and other cannabinoid amount in milligrams per serving, servings per package, and the THC and other cannabinoid amount in milligrams for the package total.

(J) Clear indication, in bold type, that the product contains medical cannabis.

(K) Identification of the source and date of cultivation and manufacture.

(L) Any other requirement set by the bureau.

(M) Information associated with the unique identifier issued by the Department of Food and Agriculture pursuant to Section 11362.777 of the Health and Safety Code.

(b) Only generic food names may be used to describe edible medical cannabis products.

Article 14. Reporting

19353. Beginning on March 1, 2023, and on or before March 1 of each following year, each licensing authority shall prepare and submit to the Legislature an annual report on the authority's activities and post the report

on the authority's Internet Web site. The report shall include, but not be limited to, the following information for the previous fiscal year:

(a) The amount of funds allocated and spent by the licensing authority for medical cannabis licensing, enforcement, and administration.

(b) The number of state licenses issued, renewed, denied, suspended, and revoked, by state license category.

(c) The average time for processing state license applications, by state license category.

(d) The number and type of enforcement activities conducted by the licensing authorities and by local law enforcement agencies in conjunction with the licensing authorities or the bureau.

(e) The number, type, and amount of penalties, fines, and other disciplinary actions taken by the licensing authorities.

19354. The bureau shall contract with the California Marijuana Research Program, known as the Center for Medicinal Cannabis Research, authorized pursuant to Section 11362.9 of the Health and Safety Code, to develop a study that identifies the impact that cannabis has on motor skills.

Article 15. Privacy

19355. (a) Information identifying the names of patients, their medical conditions, or the names of their primary caregivers received and contained in records kept by the office or licensing authorities for the purposes of administering this chapter are confidential and shall not be disclosed pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), except as necessary for authorized employees of the State of California or any city, county, or city and county to perform official duties pursuant to this chapter, or a local ordinance.

(b) Information identifying the names of patients, their medical conditions, or the names of their primary caregivers received and contained in records kept by the bureau for the purposes of administering this chapter shall be maintained in accordance with Chapter 1 (commencing with Section 123100) of Part 1 of Division 106 of the Health and Safety Code, Part 2.6 (commencing with Section 56) of Division 1 of the Civil Code, and other state and federal laws relating to confidential patient information.

(c) Nothing in this section precludes the following:

(1) Employees of the bureau or any licensing authorities notifying state or local agencies about information submitted to the agency that the employee suspects is falsified or fraudulent.

(2) Notifications from the bureau or any licensing authorities to state or local agencies about apparent violations of this chapter or applicable local ordinance.

(3) Verification of requests by state or local agencies to confirm licenses and certificates issued by the regulatory authorities or other state agency.

(4) Provision of information requested pursuant to a court order or subpoena issued by a court or an administrative agency or local governing body authorized by law to issue subpoenas.

(d) Information shall not be disclosed by any state or local agency beyond what is necessary to achieve the goals of a specific investigation, notification, or the parameters of a specific court order or subpoena.

SEC. 5. Section 9147.7 of the Government Code is amended to read:

9147.7. (a) For the purpose of this section, "eligible agency" means any agency, authority, board, bureau, commission, conservancy, council, department, division, or office of state government, however denominated, excluding an agency that is constitutionally created or an agency related to postsecondary education, for which a date for repeal has been established by statute on or after January 1, 2011.

(b) The Joint Sunset Review Committee is hereby created to identify and eliminate waste, duplication, and inefficiency in government agencies. The purpose of the committee is to conduct a comprehensive analysis over 15 years, and on a periodic basis thereafter, of every eligible agency to determine if the agency is still necessary and cost effective.

(c) Each eligible agency scheduled for repeal shall submit to the committee, on or before December 1 prior to the year it is set to be repealed, a complete agency report covering the entire period since last reviewed, including, but not limited to, the following:

(1) The purpose and necessity of the agency.

(2) A description of the agency budget, priorities, and job descriptions of employees of the agency.

(3) Any programs and projects under the direction of the agency.

(4) Measures of the success or failures of the agency and justifications for the metrics used to evaluate successes and failures.

(5) Any recommendations of the agency for changes or reorganization in order to better fulfill its purpose.

(d) The committee shall take public testimony and evaluate the eligible agency prior to the date the agency is scheduled to be repealed. An eligible agency shall be eliminated unless the Legislature enacts a law to extend, consolidate, or reorganize the eligible agency. No eligible agency shall be extended in perpetuity unless specifically exempted from the provisions of this section. The committee may recommend that the Legislature extend the statutory sunset date for no more than one year to allow the committee more time to evaluate the eligible agency.

(e) The committee shall be comprised of 10 members of the Legislature. The Senate Committee on Rules shall appoint five members of the Senate to the committee, not more than three of whom shall be members of the same political party. The Speaker of the Assembly shall appoint five members of the Assembly to the committee, not more than three of whom shall be members of the same political party. Members shall be appointed within 15 days after the commencement of the regular session. Each member of the committee who is appointed by the Senate Committee on Rules or the Speaker of the Assembly shall serve during that committee member's

term of office or until that committee member no longer is a Member of the Senate or the Assembly, whichever is applicable. A vacancy on the committee shall be filled in the same manner as the original appointment. Three Assembly Members and three Senators who are members of the committee shall constitute a quorum for the conduct of committee business. Members of the committee shall receive no compensation for their work with the committee.

(f) The committee shall meet not later than 30 days after the first day of the regular session to choose a chairperson and to establish the schedule for eligible agency review provided for in the statutes governing the eligible agencies. The chairperson of the committee shall alternate every two years between a Member of the Senate and a Member of the Assembly, and the vice chairperson of the committee shall be a member of the opposite house as the chairperson.

(g) This section shall not be construed to change the existing jurisdiction of the budget or policy committees of the Legislature.

(h) This section shall not apply to the Bureau of Medical Marijuana Regulation.

SEC. 6. Section 11362.775 of the Health and Safety Code is amended to read:

11362.775. (a) Subject to subdivision (b), 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 cannabis for medical purposes, shall not solely on the basis of that fact be subject to state criminal sanctions under Section 11357, 11358, 11359, 11360, 11366, 11366.5, or 11570.

(b) This section shall remain in effect only until one year after the Bureau of Medical Marijuana Regulation posts a notice on its Internet Web site that the licensing authorities have commenced issuing licenses pursuant to the Medical Marijuana Regulation and Safety Act (Chapter 3.5 (commencing with Section 19300) of Division 8 of the Business and Professions Code), and is repealed upon issuance of licenses.

SEC. 7. Section 147.5 is added to the Labor Code, to read:

147.5. (a) By January 1, 2017, the Division of Occupational Safety and Health shall convene an advisory committee to evaluate whether there is a need to develop industry-specific regulations related to the activities of facilities issued a license pursuant to Chapter 3.5 (commencing with Section 19300) of Division 8 of the Business and Professions Code.

(b) By July 1, 2017, the advisory committee shall present to the board its findings and recommendations for consideration by the board. By July 1, 2017, the board shall render a decision regarding the adoption of industry-specific regulations pursuant to this section.

SEC. 8. Section 31020 is added to the Revenue and Taxation Code, to read:

31020. The board, in consultation with the Department of Food and Agriculture, shall adopt a system for reporting the movement of commercial

cannabis and cannabis products throughout the distribution chain. The system shall not be duplicative of the electronic database administered by the Department of Food and Agriculture specified in Section 19335 of the Business and Professions Code. The system shall also employ secure packaging and be capable of providing information to the board. This system shall capture, at a minimum, all of the following:

- (a) The amount of tax due by the designated entity.
- (b) The name, address, and license number of the designated entity that remitted the tax.
- (c) The name, address, and license number of the succeeding entity receiving the product.
- (d) The transaction date.
- (e) Any other information deemed necessary by the board for the taxation and regulation of marijuana and marijuana products.

SEC. 9. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 10. The Legislature finds and declares that Section 4 of this act, which adds Section 19355 to the Business and Professions Code, thereby imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

The limitation imposed under this act is necessary for purposes of compliance with the federal Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. Sec. 1320d et seq.), the Confidentiality of Medical Information Act (Part 2.6 (commencing with Section 56) of Division 1 of the Civil Code), and the Insurance Information and Privacy Protection Act (Article 6.6 (commencing with Section 791) of Part 2 of Division 1 of the Insurance Code).

SEC. 11. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

SEC. 12. This act shall become operative only if Senate Bill 643 and Assembly Bill 243 of the 2015–16 Regular Session are also enacted and become operative.

O

Senate Bill No. 643

CHAPTER 719

An act to amend Sections 144, 2220.05, 2241.5, and 2242.1 of, to add Sections 19302.1, 19319, 19320, 19322, 19323, 19324, and 19325 to, to add Article 25 (commencing with Section 2525) to Chapter 5 of Division 2 of, and to add Article 6 (commencing with Section 19331), Article 7.5 (commencing with Section 19335), Article 8 (commencing with Section 19337), and Article 11 (commencing with Section 19348) to Chapter 3.5 of Division 8 of, the Business and Professions Code, relating to medical marijuana.

[Approved by Governor October 9, 2015. Filed with
Secretary of State October 9, 2015.]

LEGISLATIVE COUNSEL'S DIGEST

SB 643, McGuire. Medical marijuana.

(1) Existing law, the Compassionate Use Act of 1996, an initiative measure enacted by the approval of Proposition 215 at the November 6, 1996, statewide general election, authorizes the use of marijuana for medical purposes. Existing law enacted by the Legislature requires the establishment of a program for the issuance of identification cards to qualified patients so that they may lawfully use marijuana for medical purposes, and requires the establishment of guidelines for the lawful cultivation of marijuana grown for medical use. Existing law provides for the licensure of various professions by the Department of Consumer Affairs. Existing law, the Sherman Food, Drug, and Cosmetic Law, provides for the regulation of food, drugs, devices, and cosmetics, as specified. A violation of that law is a crime.

This bill would, among other things, set forth standards for a physician and surgeon prescribing medical cannabis and require the Medical Board of California to prioritize its investigative and prosecutorial resources to identify and discipline physicians and surgeons that have repeatedly recommended excessive cannabis to patients for medical purposes or repeatedly recommended cannabis to patients for medical purposes without a good faith examination, as specified. The bill would require the Bureau of Medical Marijuana to require an applicant to furnish a full set of fingerprints for the purposes of conducting criminal history record checks. The bill would prohibit a physician and surgeon who recommends cannabis to a patient for a medical purpose from accepting, soliciting, or offering any form of remuneration from a facility licensed under the Medical Marijuana Regulation and Safety Act. The bill would make a violation of this prohibition a misdemeanor, and by creating a new crime, this bill would impose a state-mandated local program.

This bill would require the Governor, under the Medical Marijuana Regulation and Safety Act, to appoint, subject to confirmation by the Senate, a chief of the Bureau of Medical Marijuana Regulation. The act would require the Department of Consumer Affairs to have the sole authority to create, issue, renew, discipline, suspend, or revoke licenses for the transportation and storage, unrelated to manufacturing, of medical marijuana, and would authorize the department to collect fees for its regulatory activities and impose specified duties on this department in this regard. The act would require the Department of Food and Agriculture to administer the provisions of the act related to, and associated with, the cultivation, and transportation of, medical cannabis and would impose specified duties on this department in this regard. The act would require the State Department of Public Health to administer the provisions of the act related to, and associated with, the manufacturing and testing of medical cannabis and would impose specified duties on this department in this regard.

This bill would authorize counties to impose a tax upon specified cannabis-related activity.

This bill would require an applicant for a state license pursuant to the act to provide a statement signed by the applicant under penalty of perjury, thereby changing the scope of a crime and imposing a state-mandated local program.

This bill would set forth standards for the licensed cultivation of medical cannabis, including, but not limited to, establishing duties relating to the environmental impact of cannabis and cannabis products. The bill would also establish state cultivator license types, as specified.

(2) This bill would provide that its provisions are severable.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

(4) Existing constitutional provisions require that a statute that limits the right of access to the meeting of public bodies or the writings of public bodies or the writings of public officials and agencies be adopted with finding demonstrating the interest protected by the limitation and the need for protecting that interest. The bill would make legislative findings to that effect.

(5) The bill would become operative only if AB 266 and AB 243 of the 2015–16 Regular Session are enacted and take effect on or before January 1, 2016.

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

SECTION 1. Section 144 of the Business and Professions Code is amended to read:

144. (a) Notwithstanding any other provision of law, an agency designated in subdivision (b) shall require an applicant to furnish to the agency a full set of fingerprints for purposes of conducting criminal history record checks. Any agency designated in subdivision (b) may obtain and receive, at its discretion, criminal history information from the Department of Justice and the United States Federal Bureau of Investigation.

(b) Subdivision (a) applies to the following:

- (1) California Board of Accountancy.
- (2) State Athletic Commission.
- (3) Board of Behavioral Sciences.
- (4) Court Reporters Board of California.
- (5) State Board of Guide Dogs for the Blind.
- (6) California State Board of Pharmacy.
- (7) Board of Registered Nursing.
- (8) Veterinary Medical Board.
- (9) Board of Vocational Nursing and Psychiatric Technicians.
- (10) Respiratory Care Board of California.
- (11) Physical Therapy Board of California.
- (12) Physician Assistant Committee of the Medical Board of California.
- (13) Speech-Language Pathology and Audiology and Hearing Aid Dispenser Board.
- (14) Medical Board of California.
- (15) State Board of Optometry.
- (16) Acupuncture Board.
- (17) Cemetery and Funeral Bureau.
- (18) Bureau of Security and Investigative Services.
- (19) Division of Investigation.
- (20) Board of Psychology.
- (21) California Board of Occupational Therapy.
- (22) Structural Pest Control Board.
- (23) Contractors' State License Board.
- (24) Naturopathic Medicine Committee.
- (25) Professional Fiduciaries Bureau.
- (26) Board for Professional Engineers, Land Surveyors, and Geologists.
- (27) Bureau of Medical Marijuana Regulation.

(c) For purposes of paragraph (26) of subdivision (b), the term "applicant" shall be limited to an initial applicant who has never been registered or licensed by the board or to an applicant for a new licensure or registration category.

SEC. 2. Section 2220.05 of the Business and Professions Code is amended to read:

2220.05. (a) In order to ensure that its resources are maximized for the protection of the public, the Medical Board of California shall prioritize its

investigative and prosecutorial resources to ensure that physicians and surgeons representing the greatest threat of harm are identified and disciplined expeditiously. Cases involving any of the following allegations shall be handled on a priority basis, as follows, with the highest priority being given to cases in the first paragraph:

(1) Gross negligence, incompetence, or repeated negligent acts that involve death or serious bodily injury to one or more patients, such that the physician and surgeon represents a danger to the public.

(2) Drug or alcohol abuse by a physician and surgeon involving death or serious bodily injury to a patient.

(3) Repeated acts of clearly excessive prescribing, furnishing, or administering of controlled substances, or repeated acts of prescribing, dispensing, or furnishing of controlled substances without a good faith prior examination of the patient and medical reason therefor. However, in no event shall a physician and surgeon prescribing, furnishing, or administering controlled substances for intractable pain consistent with lawful prescribing, including, but not limited to, Sections 725, 2241.5, and 2241.6 of this code and Sections 11159.2 and 124961 of the Health and Safety Code, be prosecuted for excessive prescribing and prompt review of the applicability of these provisions shall be made in any complaint that may implicate these provisions.

(4) Repeated acts of clearly excessive recommending of cannabis to patients for medical purposes, or repeated acts of recommending cannabis to patients for medical purposes without a good faith prior examination of the patient and a medical reason for the recommendation.

(5) Sexual misconduct with one or more patients during a course of treatment or an examination.

(6) Practicing medicine while under the influence of drugs or alcohol.

(b) The board may by regulation prioritize cases involving an allegation of conduct that is not described in subdivision (a). Those cases prioritized by regulation shall not be assigned a priority equal to or higher than the priorities established in subdivision (a).

(c) The Medical Board of California shall indicate in its annual report mandated by Section 2312 the number of temporary restraining orders, interim suspension orders, and disciplinary actions that are taken in each priority category specified in subdivisions (a) and (b).

SEC. 3. Section 2241.5 of the Business and Professions Code is amended to read:

2241.5. (a) A physician and surgeon may prescribe for, or dispense or administer to, a person under his or her treatment for a medical condition dangerous drugs or prescription controlled substances for the treatment of pain or a condition causing pain, including, but not limited to, intractable pain.

(b) No physician and surgeon shall be subject to disciplinary action for prescribing, dispensing, or administering dangerous drugs or prescription controlled substances in accordance with this section.

(c) This section shall not affect the power of the board to take any action described in Section 2227 against a physician and surgeon who does any of the following:

(1) Violates subdivision (b), (c), or (d) of Section 2234 regarding gross negligence, repeated negligent acts, or incompetence.

(2) Violates Section 2241 regarding treatment of an addict.

(3) Violates Section 2242 or 2525.3 regarding performing an appropriate prior examination and the existence of a medical indication for prescribing, dispensing, or furnishing dangerous drugs or recommending medical cannabis.

(4) Violates Section 2242.1 regarding prescribing on the Internet.

(5) Fails to keep complete and accurate records of purchases and disposals of substances listed in the California Uniform Controlled Substances Act (Division 10 (commencing with Section 11000) of the Health and Safety Code) or controlled substances scheduled in the federal Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. Sec. 801 et seq.), or pursuant to the federal Comprehensive Drug Abuse Prevention and Control Act of 1970. A physician and surgeon shall keep records of his or her purchases and disposals of these controlled substances or dangerous drugs, including the date of purchase, the date and records of the sale or disposal of the drugs by the physician and surgeon, the name and address of the person receiving the drugs, and the reason for the disposal or the dispensing of the drugs to the person, and shall otherwise comply with all state recordkeeping requirements for controlled substances.

(6) Writes false or fictitious prescriptions for controlled substances listed in the California Uniform Controlled Substances Act or scheduled in the federal Comprehensive Drug Abuse Prevention and Control Act of 1970.

(7) Prescribes, administers, or dispenses in violation of this chapter, or in violation of Chapter 4 (commencing with Section 11150) or Chapter 5 (commencing with Section 11210) of Division 10 of the Health and Safety Code.

(d) A physician and surgeon shall exercise reasonable care in determining whether a particular patient or condition, or the complexity of a patient's treatment, including, but not limited to, a current or recent pattern of drug abuse, requires consultation with, or referral to, a more qualified specialist.

(e) Nothing in this section shall prohibit the governing body of a hospital from taking disciplinary actions against a physician and surgeon pursuant to Sections 809.05, 809.4, and 809.5.

SEC. 4. Section 2242.1 of the Business and Professions Code is amended to read:

2242.1. (a) No person or entity may prescribe, dispense, or furnish, or cause to be prescribed, dispensed, or furnished, dangerous drugs or dangerous devices, as defined in Section 4022, on the Internet for delivery to any person in this state, without an appropriate prior examination and medical indication, except as authorized by Section 2242.

(b) Notwithstanding any other provision of law, a violation of this section may subject the person or entity that has committed the violation to either

a fine of up to twenty-five thousand dollars (\$25,000) per occurrence pursuant to a citation issued by the board or a civil penalty of twenty-five thousand dollars (\$25,000) per occurrence.

(c) The Attorney General may bring an action to enforce this section and to collect the fines or civil penalties authorized by subdivision (b).

(d) For notifications made on and after January 1, 2002, the Franchise Tax Board, upon notification by the Attorney General or the board of a final judgment in an action brought under this section, shall subtract the amount of the fine or awarded civil penalties from any tax refunds or lottery winnings due to the person who is a defendant in the action using the offset authority under Section 12419.5 of the Government Code, as delegated by the Controller, and the processes as established by the Franchise Tax Board for this purpose. That amount shall be forwarded to the board for deposit in the Contingent Fund of the Medical Board of California.

(e) If the person or entity that is the subject of an action brought pursuant to this section is not a resident of this state, a violation of this section shall, if applicable, be reported to the person's or entity's appropriate professional licensing authority.

(f) Nothing in this section shall prohibit the board from commencing a disciplinary action against a physician and surgeon pursuant to Section 2242 or 2525.3.

SEC. 5. Article 25 (commencing with Section 2525) is added to Chapter 5 of Division 2 of the Business and Professions Code, to read:

Article 25. Recommending Medical Cannabis

2525. (a) It is unlawful for a physician and surgeon who recommends cannabis to a patient for a medical purpose to accept, solicit, or offer any form of remuneration from or to a facility issued a state license pursuant to Chapter 3.5 (commencing with Section 19300) of Division 8, if the physician and surgeon or his or her immediate family have a financial interest in that facility.

(b) For the purposes of this section, "financial interest" shall have the same meaning as in Section 650.01.

(c) A violation of this section shall be a misdemeanor punishable by up to one year in county jail and a fine of up to five thousand dollars (\$5,000) or by civil penalties of up to five thousand dollars (\$5,000) and shall constitute unprofessional conduct.

2525.1. The Medical Board of California shall consult with the California Marijuana Research Program, known as the Center for Medicinal Cannabis Research, authorized pursuant to Section 11362.9 of the Health and Safety Code, on developing and adopting medical guidelines for the appropriate administration and use of medical cannabis.

2525.2. An individual who possesses a license in good standing to practice medicine or osteopathy issued by the Medical Board of California or the Osteopathic Medical Board of California shall not recommend medical

cannabis to a patient, unless that person is the patient's attending physician, as defined by subdivision (a) of Section 11362.7 of the Health and Safety Code.

2525.3. Recommending medical cannabis to a patient for a medical purpose without an appropriate prior examination and a medical indication constitutes unprofessional conduct.

2525.4. It is unprofessional conduct for any attending physician recommending medical cannabis to be employed by, or enter into any other agreement with, any person or entity dispensing medical cannabis.

2525.5. (a) A person shall not distribute any form of advertising for physician recommendations for medical cannabis in California unless the advertisement bears the following notice to consumers:

NOTICE TO CONSUMERS: The Compassionate Use Act of 1996 ensures that seriously ill Californians have the right to obtain and use cannabis for medical purposes where 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 medical cannabis. Recommendations must come from an attending physician as defined in Section 11362.7 of the Health and Safety Code. Cannabis is a Schedule I drug according to the federal Controlled Substances Act. Activity related to cannabis use is subject to federal prosecution, regardless of the protections provided by state law.

(b) Advertising for attending physician recommendations for medical cannabis shall meet all of the requirements in Section 651. Price advertising shall not be fraudulent, deceitful, or misleading, including statements or advertisements of bait, discounts, premiums, gifts, or statements of a similar nature.

SEC. 6. Section 19302.1 is added to the Business and Professions Code, to read:

19302.1. (a) The Governor shall appoint a chief of the bureau, subject to confirmation by the Senate, at a salary to be fixed and determined by the director with the approval of the Director of Finance. The chief shall serve under the direction and supervision of the director and at the pleasure of the Governor.

(b) Every power granted to or duty imposed upon the director under this chapter may be exercised or performed in the name of the director by a deputy or assistant director or by the chief, subject to conditions and limitations that the director may prescribe. In addition to every power granted or duty imposed with this chapter, the director shall have all other powers and duties generally applicable in relation to bureaus that are part of the Department of Consumer Affairs.

(c) The director may employ and appoint all employees necessary to properly administer the work of the bureau, in accordance with civil service laws and regulations.

(d) The Department of Consumer Affairs shall have the sole authority to create, issue, renew, discipline, suspend, or revoke licenses for the

transportation, storage unrelated to manufacturing activities, distribution, and sale of medical marijuana within the state and to collect fees in connection with activities the bureau regulates. The bureau may create licenses in addition to those identified in this chapter that the bureau deems necessary to effectuate its duties under this chapter.

(e) The Department of Food and Agriculture shall administer the provisions of this chapter related to and associated with the cultivation of medical cannabis. The Department of Food and Agriculture shall have the authority to create, issue, and suspend or revoke cultivation licenses for violations of this chapter. The State Department of Public Health shall administer the provisions of this chapter related to and associated with the manufacturing and testing of medical cannabis.

SEC. 7. Section 19319 is added to the Business and Professions Code, to read:

19319. (a) A qualified patient, as defined in Section 11362.7 of the Health and Safety Code, who cultivates, possesses, stores, manufactures, or transports cannabis exclusively for his or her personal medical use but who does not provide, donate, sell, or distribute cannabis to any other person is not thereby engaged in commercial cannabis activity and is therefore exempt from the licensure requirements of this chapter.

(b) A primary caregiver who cultivates, possesses, stores, manufactures, transports, donates, or provides cannabis exclusively for the personal medical purposes of no more than five specified qualified patients for whom he or she is the primary caregiver within the meaning of Section 11362.7 of the Health and Safety Code, but who does not receive remuneration for these activities except for compensation in full compliance with subdivision (c) of Section 11362.765 of the Health and Safety Code, is exempt from the licensure requirements of this chapter.

SEC. 8. Section 19320 is added to the Business and Professions Code, to read:

19320. (a) Licensing authorities administering this chapter may issue state licenses only to qualified applicants engaging in commercial cannabis activity pursuant to this chapter. Upon the date of implementation of regulations by the licensing authority, no person shall engage in commercial cannabis activity without possessing both a state license and a local permit, license, or other authorization. A licensee shall not commence activity under the authority of a state license until the applicant has obtained, in addition to the state license, a license or permit from the local jurisdiction in which he or she proposes to operate, following the requirements of the applicable local ordinance.

(b) Revocation of a local license, permit, or other authorization shall terminate the ability of a medical cannabis business to operate within that local jurisdiction until the local jurisdiction reinstates or reissues the local license, permit, or other required authorization. Local authorities shall notify the bureau upon revocation of a local license. The bureau shall inform relevant licensing authorities.

(c) Revocation of a state license shall terminate the ability of a medical cannabis licensee to operate within California until the licensing authority reinstates or reissues the state license. Each licensee shall obtain a separate license for each location where it engages in commercial medical cannabis activity. However, transporters only need to obtain licenses for each physical location where the licensee conducts business while not in transport, or any equipment that is not currently transporting medical cannabis or medical cannabis products, permanently resides.

(d) In addition to the provisions of this chapter, local jurisdictions retain the power to assess fees and taxes, as applicable, on facilities that are licensed pursuant to this chapter and the business activities of those licensees.

(e) Nothing in this chapter shall be construed to supersede or limit state agencies, including the State Water Resources Control Board and Department of Fish and Wildlife, from establishing fees to support their medical cannabis regulatory programs.

SEC. 9. Section 19322 is added to the Business and Professions Code, to read:

19322. (a) A person or entity shall not submit an application for a state license issued by the department pursuant to this chapter unless that person or entity has received a license, permit, or authorization by a local jurisdiction. An applicant for any type of state license issued pursuant to this chapter shall do all of the following:

(1) Electronically submit to the Department of Justice fingerprint images and related information required by the Department of Justice for the purpose of obtaining information as to the existence and content of a record of state or federal convictions and arrests, and information as to the existence and content of a record of state or federal convictions and arrests for which the Department of Justice establishes that the person is free on bail or on his or her own recognizance, pending trial or appeal.

(A) The Department of Justice shall provide a response to the licensing authority pursuant to paragraph (1) of subdivision (p) of Section 11105 of the Penal Code.

(B) The licensing authority shall request from the Department of Justice subsequent notification service, as provided pursuant to Section 11105.2 of the Penal Code, for applicants.

(C) The Department of Justice shall charge the applicant a fee sufficient to cover the reasonable cost of processing the requests described in this paragraph.

(2) Provide documentation issued by the local jurisdiction in which the proposed business is operating certifying that the applicant is or will be in compliance with all local ordinances and regulations.

(3) Provide evidence of the legal right to occupy and use the proposed location. For an applicant seeking a cultivator, distributor, manufacturing, or dispensary license, provide a statement from the owner of real property or their agent where the cultivation, distribution, manufacturing, or dispensing commercial medical cannabis activities will occur, as proof to demonstrate the landowner has acknowledged and consented to permit

cultivation, distribution, manufacturing, or dispensary activities to be conducted on the property by the tenant applicant.

(4) If the application is for a cultivator or a dispensary, provide evidence that the proposed location is located beyond at least a 600-foot radius from a school, as required by Section 11362.768 of the Health and Safety Code.

(5) Provide a statement, signed by the applicant under penalty of perjury, that the information provided is complete, true, and accurate.

(6) (A) For an applicant with 20 or more employees, provide a statement that the applicant will enter into, or demonstrate that it has already entered into, and abide by the terms of a labor peace agreement.

(B) For the purposes of this paragraph, "employee" does not include a supervisor.

(C) For purposes of this paragraph, "supervisor" means an individual having authority, in the interest of the licensee, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them or to adjust their grievances, or effectively to recommend such action, if, in connection with the foregoing, the exercise of that authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

(7) Provide the applicant's seller's permit number issued pursuant to Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code or indicate that the applicant is currently applying for a seller's permit.

(8) Provide any other information required by the licensing authority.

(9) For an applicant seeking a cultivation license, provide a statement declaring the applicant is an "agricultural employer," as defined in the Alatorre-Zenovich-Dunlap-Berman Agricultural Labor Relations Act of 1975 (Part 3.5 (commencing with Section 1140) of Division 2 of the Labor Code), to the extent not prohibited by law.

(10) For an applicant seeking licensure as a testing laboratory, register with the State Department of Public Health and provide any information required by the State Department of Public Health.

(11) Pay all applicable fees required for licensure by the licensing authority.

(b) For applicants seeking licensure to cultivate, distribute, or manufacture medical cannabis, the application shall also include a detailed description of the applicant's operating procedures for all of the following, as required by the licensing authority:

- (1) Cultivation.
- (2) Extraction and infusion methods.
- (3) The transportation process.
- (4) Inventory procedures.
- (5) Quality control procedures.

SEC. 10. Section 19323 is added to the Business and Professions Code, to read:

19323. (a) The licensing authority shall deny an application if either the applicant or the premises for which a state license is applied do not qualify for licensure under this chapter.

(b) The licensing authority may deny the application for licensure or renewal of a state license if any of the following conditions apply:

(1) Failure to comply with the provisions of this chapter or any rule or regulation adopted pursuant to this chapter, including but not limited to, any requirement imposed to protect natural resources, instream flow, and water quality pursuant to subdivision (a) of Section 19332.

(2) Conduct that constitutes grounds for denial of licensure pursuant to Chapter 2 (commencing with Section 480) of Division 1.5.

(3) A local agency has notified the licensing authority that a licensee or applicant within its jurisdiction is in violation of state rules and regulation relating to commercial cannabis activities, and the licensing authority, through an investigation, has determined that the violation is grounds for termination or revocation of the license. The licensing authority shall have the authority to collect reasonable costs, as determined by the licensing authority, for investigation from the licensee or applicant.

(4) The applicant has failed to provide information required by the licensing authority.

(5) The applicant or licensee has been convicted of an offense that is substantially related to the qualifications, functions, or duties of the business or profession for which the application is made, except that if the licensing authority determines that the applicant or licensee is otherwise suitable to be issued a license and granting the license would not compromise public safety, the licensing authority shall conduct a thorough review of the nature of the crime, conviction, circumstances, and evidence of rehabilitation of the applicant, and shall evaluate the suitability of the applicant or licensee to be issued a license based on the evidence found through the review. In determining which offenses are substantially related to the qualifications, functions, or duties of the business or profession for which the application is made, the licensing authority shall include, but not be limited to, the following:

(A) A felony conviction for the illegal possession for sale, sale, manufacture, transportation, or cultivation of a controlled substance.

(B) A violent felony conviction, as specified in subdivision (c) of Section 667.5 of the Penal Code.

(C) A serious felony conviction, as specified in subdivision (c) of Section 1192.7 of the Penal Code.

(D) A felony conviction involving fraud, deceit, or embezzlement.

(6) The applicant, or any of its officers, directors, or owners, is a licensed physician making patient recommendations for medical cannabis pursuant to Section 11362.7 of the Health and Safety Code.

(7) The applicant or any of its officers, directors, or owners has been subject to fines or penalties for cultivation or production of a controlled substance on public or private lands pursuant to Section 12025 or 12025.1 of the Fish and Game Code.

(8) The applicant, or any of its officers, directors, or owners, has been sanctioned by a licensing authority or a city, county, or city and county for unlicensed commercial medical cannabis activities or has had a license revoked under this chapter in the three years immediately preceding the date the application is filed with the licensing authority.

(9) Failure to obtain and maintain a valid seller's permit required pursuant to Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code.

SEC. 11. Section 19324 is added to the Business and Professions Code, to read:

19324. Upon the denial of any application for a license, the licensing authority shall notify the applicant in writing. Within 30 days of service of the notice, the applicant may file a written petition for a license with the licensing authority. Upon receipt of a timely filed petition, the licensing authority shall set the petition for hearing. The hearing shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the director of each licensing authority shall have all the powers granted therein.

SEC. 12. Section 19325 is added to the Business and Professions Code, to read:

19325. An applicant shall not be denied a state license if the denial is based solely on any of the following:

(a) A conviction or act that is substantially related to the qualifications, functions, or duties of the business or profession for which the application is made for which the applicant or licensee has obtained a certificate of rehabilitation pursuant to Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code.

(b) A conviction that was subsequently dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code.

SEC. 13. Article 6 (commencing with Section 19331) is added to Chapter 3.5 of Division 8 of the Business and Professions Code, to read:

Article 6. Licensed Cultivation Sites

19331. The Legislature finds and declares all of the following:

(a) The United States Environmental Protection Agency has not established appropriate pesticide tolerances for, or permitted the registration and lawful use of, pesticides on cannabis crops intended for human consumption pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.).

(b) The use of pesticides is not adequately regulated due to the omissions in federal law, and cannabis cultivated in California for California patients can and often does contain pesticide residues.

(c) Lawful California medical cannabis growers and caregivers urge the Department of Pesticide Regulation to provide guidance, in absence of federal guidance, on whether the pesticides currently used at most cannabis

cultivation sites are actually safe for use on cannabis intended for human consumption.

19332. (a) The Department of Food and Agriculture shall promulgate regulations governing the licensing of indoor and outdoor cultivation sites.

(b) The Department of Pesticide Regulation, in consultation with the Department of Food and Agriculture, shall develop standards for the use of pesticides in cultivation, and maximum tolerances for pesticides and other foreign object residue in harvested cannabis.

(c) The State Department of Public Health shall develop standards for the production and labeling of all edible medical cannabis products.

(d) The Department of Food and Agriculture, in consultation with the Department of Fish and Wildlife and the State Water Resources Control Board, shall ensure that individual and cumulative effects of water diversion and discharge associated with cultivation do not affect the instream flows needed for fish spawning, migration, and rearing, and the flows needed to maintain natural flow variability.

(e) The Department of Food and Agriculture shall have the authority necessary for the implementation of the regulations it adopts pursuant to this chapter. The regulations shall do all of the following:

(1) Provide that weighing or measuring devices used in connection with the sale or distribution of medical cannabis are required to meet standards equivalent to Division 5 (commencing with Section 12001).

(2) Require that cannabis cultivation by licensees is conducted in accordance with state and local laws related to land conversion, grading, electricity usage, water usage, agricultural discharges, and similar matters. Nothing in this chapter, and no regulation adopted by the department, shall be construed to supersede or limit the authority of the State Water Resources Control Board, regional water quality control boards, or the Department of Fish and Wildlife to implement and enforce their statutory obligations or to adopt regulations to protect water quality, water supply, and natural resources.

(3) Establish procedures for the issuance and revocation of unique identifiers for activities associated with a cannabis cultivation license, pursuant to Article 8 (commencing with Section 19337). All cannabis shall be labeled with the unique identifier issued by the Department of Food and Agriculture.

(4) Prescribe standards, in consultation with the bureau, for the reporting of information as necessary related to unique identifiers, pursuant to Article 8 (commencing with Section 19337).

(f) The Department of Pesticide Regulation, in consultation with the State Water Resources Control Board, shall promulgate regulations that require that the application of pesticides or other pest control in connection with the indoor or outdoor cultivation of medical cannabis meets standards equivalent to Division 6 (commencing with Section 11401) of the Food and Agricultural Code and its implementing regulations.

(g) State cultivator license types issued by the Department of Food and Agriculture include:

(1) Type 1, or “specialty outdoor,” for outdoor cultivation using no artificial lighting of less than or equal to 5,000 square feet of total canopy size on one premises, or up to 50 mature plants on noncontiguous plots.

(2) Type 1A, or “specialty indoor,” for indoor cultivation using exclusively artificial lighting of less than or equal to 5,000 square feet of total canopy size on one premises.

(3) Type 1B, or “specialty mixed-light,” for cultivation using a combination of natural and supplemental artificial lighting at a maximum threshold to be determined by the licensing authority, of less than or equal to 5,000 square feet of total canopy size on one premises.

(4) Type 2, or “small outdoor,” for outdoor cultivation using no artificial lighting between 5,001 and 10,000 square feet, inclusive, of total canopy size on one premises.

(5) Type 2A, or “small indoor,” for indoor cultivation using exclusively artificial lighting between 5,001 and 10,000 square feet, inclusive, of total canopy size on one premises.

(6) Type 2B, or “small mixed-light,” for cultivation using a combination of natural and supplemental artificial lighting at a maximum threshold to be determined by the licensing authority, between 5,001 and 10,000 square feet, inclusive, of total canopy size on one premises.

(7) Type 3, or “outdoor,” for outdoor cultivation using no artificial lighting from 10,001 square feet to one acre, inclusive, of total canopy size on one premises. The Department of Food and Agriculture shall limit the number of licenses allowed of this type.

(8) Type 3A, or “indoor,” for indoor cultivation using exclusively artificial lighting between 10,001 and 22,000 square feet, inclusive, of total canopy size on one premises. The Department of Food and Agriculture shall limit the number of licenses allowed of this type.

(9) Type 3B, or “mixed-light,” for cultivation using a combination of natural and supplemental artificial lighting at a maximum threshold to be determined by the licensing authority, between 10,001 and 22,000 square feet, inclusive, of total canopy size on one premises. The Department of Food and Agriculture shall limit the number of licenses allowed of this type.

(10) Type 4, or “nursery,” for cultivation of medical cannabis solely as a nursery. Type 4 licensees may transport live plants.

19332.5. (a) Not later than January 1, 2020, the Department of Food and Agriculture in conjunction with the bureau, shall make available a certified organic designation and organic certification program for medical marijuana, if permitted under federal law and the National Organic Program (Section 6517 of the federal Organic Foods Production Act of 1990 (7 U.S.C. Sec. 6501 et seq.)), and Article 7 (commencing with Section 110810) of Chapter 5 of Part 5 of Division 104 of the Health and Safety Code.

(b) The bureau may establish appellations of origin for marijuana grown in California.

(c) It is unlawful for medical marijuana to be marketed, labeled, or sold as grown in a California county when the medical marijuana was not grown in that county.

(d) It is unlawful to use the name of a California county in the labeling, marketing, or packaging of medical marijuana products unless the product was grown in that county.

19333. An employee engaged in commercial cannabis cultivation activity shall be subject to Wage Order 4-2001 of the Industrial Welfare Commission.

SEC. 14. Article 7.5 (commencing with Section 19335) is added to Chapter 3.5 of Division 8 of the Business and Professions Code, to read:

Article 7.5. Unique Identifier and Track and Trace Program

19335. (a) The Department of Food and Agriculture, in consultation with the bureau, shall establish a track and trace program for reporting the movement of medical marijuana items throughout the distribution chain that utilizes a unique identifier pursuant to Section 11362.777 of the Health and Safety Code and secure packaging and is capable of providing information that captures, at a minimum, all of the following:

(1) The licensee receiving the product.

(2) The transaction date.

(3) The cultivator from which the product originates, including the associated unique identifier, pursuant to Section 11362.777 of the Health and Safety Code.

(b) (1) The Department of Food and Agriculture shall create an electronic database containing the electronic shipping manifests which shall include, but not be limited to, the following information:

(A) The quantity, or weight, and variety of products shipped.

(B) The estimated times of departure and arrival.

(C) The quantity, or weight, and variety of products received.

(D) The actual time of departure and arrival.

(E) A categorization of the product.

(F) The license number and the unique identifier pursuant to Section 11362.777 of the Health and Safety Code issued by the licensing authority for all licensees involved in the shipping process, including cultivators, transporters, distributors, and dispensaries.

(2) (A) The database shall be designed to flag irregularities for all licensing authorities in this chapter to investigate. All licensing authorities pursuant to this chapter may access the database and share information related to licensees under this chapter, including social security and individual taxpayer identifications notwithstanding Section 30.

(B) The Department of Food and Agriculture shall immediately inform the bureau upon the finding of an irregularity or suspicious finding related to a licensee, applicant, or commercial cannabis activity for investigatory purposes.

(3) Licensing authorities and state and local agencies may, at any time, inspect shipments and request documentation for current inventory.

(4) The bureau shall have 24-hour access to the electronic database administered by the Department of Food and Agriculture.

(5) The Department of Food and Agriculture shall be authorized to enter into memoranda of understandings with licensing authorities for data sharing purposes, as deemed necessary by the Department of Food and Agriculture.

(6) Information received and contained in records kept by the Department of Food and Agriculture or licensing authorities for the purposes of administering this section are confidential and shall not be disclosed pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), except as necessary for authorized employees of the State of California or any city, county, or city and county to perform official duties pursuant to this chapter or a local ordinance.

(7) Upon the request of a state or local law enforcement agency, licensing authorities shall allow access to or provide information contained within the database to assist law enforcement in their duties and responsibilities pursuant to this chapter.

19336. (a) Chapter 4 (commencing with Section 55121) of Part 30 of Division 2 of the Revenue and Taxation Code shall apply with respect to the bureau's collection of the fees, civil fines, and penalties imposed pursuant to this chapter.

(b) Chapter 8 (commencing with Section 55381) of Part 30 of Division 2 of the Revenue and Taxation Code shall apply with respect to the disclosure of information under this chapter.

SEC. 15. Article 8 (commencing with Section 19337) is added to Chapter 3.5 of Division 8 of the Business and Professions Code, to read:

Article 8. Licensed Transporters

19337. (a) A licensee authorized to transport medical cannabis and medical cannabis products between licenses shall do so only as set forth in this chapter.

(b) Prior to transporting medical cannabis or medical cannabis products, a licensed transporter of medical cannabis or medical cannabis products shall do both of the following:

(1) Complete an electronic shipping manifest as prescribed by the licensing authority. The shipping manifest must include the unique identifier, pursuant to Section 11362.777 of the Health and Safety Code, issued by the Department of Food and Agriculture for the original cannabis product.

(2) Securely transmit the manifest to the bureau and the licensee that will receive the medical cannabis product. The bureau shall inform the Department of Food and Agriculture of information pertaining to commercial cannabis activity for the purpose of the track and trace program identified in Section 19335.

(c) During transportation, the licensed transporter shall maintain a physical copy of the shipping manifest and make it available upon request to agents of the Department of Consumer Affairs and law enforcement officers.

(d) The licensee receiving the shipment shall maintain each electronic shipping manifest and shall make it available upon request to the Department of Consumer Affairs and any law enforcement officers.

(e) Upon receipt of the transported shipment, the licensee receiving the shipment shall submit to the licensing agency a record verifying receipt of the shipment and the details of the shipment.

(f) Transporting, or arranging for or facilitating the transport of, medical cannabis or medical cannabis products in violation of this chapter is grounds for disciplinary action against the license.

19338. (a) This chapter shall not be construed to authorize or permit a licensee to transport or cause to be transported cannabis or cannabis products outside the state, unless authorized by federal law.

(b) A local jurisdiction shall not prevent transportation of medical cannabis or medical cannabis products on public roads by a licensee transporting medical cannabis or medical cannabis products in compliance with this chapter.

SEC. 16. Article 11 (commencing with Section 19348) is added to Chapter 3.5 of Division 8 of the Business and Professions Code, to read:

Article 11. Taxation

19348. (a) (1) A county may impose a tax on the privilege of cultivating, dispensing, producing, processing, preparing, storing, providing, donating, selling, or distributing medical cannabis or medical cannabis products by a licensee operating pursuant to this chapter.

(2) The board of supervisors shall specify in the ordinance proposing the tax the activities subject to the tax, the applicable rate or rates, the method of apportionment, if necessary, and the manner of collection of the tax. The tax may be imposed for general governmental purposes or for purposes specified in the ordinance by the board of supervisors.

(3) In addition to any other method of collection authorized by law, the board of supervisors may provide for the collection of the tax imposed pursuant to this section in the same manner, and subject to the same penalties and priority of lien, as other charges and taxes fixed and collected by the county. A tax imposed pursuant to this section is a tax and not a fee or special assessment. The board of supervisors shall specify whether the tax applies throughout the entire county or within the unincorporated area of the county.

(4) The tax authorized by this section may be imposed upon any or all of the activities set forth in paragraph (1), as specified in the ordinance, regardless of whether the activity is undertaken individually, collectively, or cooperatively, and regardless of whether the activity is for compensation or gratuitous, as determined by the board of supervisors.

(b) A tax imposed pursuant to this section shall be subject to applicable voter approval requirements imposed by law.

(c) This section is declaratory of existing law and does not limit or prohibit the levy or collection of any other fee, charge, or tax, or a license or service fee or charge upon, or related to, the activities set forth in subdivision (a) as otherwise provided by law. This section shall not be construed as a limitation upon the taxing authority of a county as provided by law.

(d) This section shall not be construed to authorize a county to impose a sales or use tax in addition to the sales and use tax imposed under an ordinance conforming to the provisions of Sections 7202 and 7203 of the Revenue and Taxation Code.

SEC. 17. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 18. The Legislature finds and declares that Section 14 of this act, which adds Section 19335 to the Business and Professions Code, thereby imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

The limitation imposed under this act is necessary for purposes of compliance with the federal Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. Sec. 1320d et seq.), the Confidentiality of Medical Information Act (Part 2.6 (commencing with Section 56) of Division 1 of the Civil Code), and the Insurance Information and Privacy Protection Act (Article 6.6 (commencing with Section 791) of Part 2 of Division 1 of the Insurance Code).

SEC. 19. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

SEC. 20. This act shall become operative only if Assembly Bill 266 and Assembly Bill 243 of the 2015–16 Session are enacted and take effect on or before January 1, 2016.

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Death Following Ingestion of an Edible Marijuana Product — Colorado, March 2014

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In March 2014, the Colorado Department of Public Health and Environment (CDPHE) learned of the death of a man aged 19 years after consuming an edible marijuana product. CDPHE reviewed autopsy and police reports to assess factors associated with his death and to guide prevention efforts. The decedent's friend, aged 23 years, had purchased marijuana cookies and provided one to the decedent. A police report indicated that initially the decedent ate only a single piece of his cookie, as directed by the sales clerk. Approximately 30–60 minutes later, not feeling any effects, he consumed the remainder of the cookie. During the next 2 hours, he reportedly exhibited erratic speech and hostile behaviors. Approximately 3.5 hours after initial ingestion, and 2.5 hours after consuming the remainder of the cookie, he jumped off a fourth floor balcony and died from trauma. The autopsy, performed 29 hours after time of death, found marijuana intoxication as a chief contributing factor. Quantitative toxicologic analyses for drugs of abuse, synthetic cannabinoid, and cathinones ("bath salts") were performed on chest cavity blood by gas chromatography and mass spectrometry. The only confirmed findings were cannabinoids (7.2 ng/mL delta-9 tetrahydrocannabinol [THC] and 49 ng/mL delta-9 carboxy-THC, an inactive marijuana metabolite). The legal whole blood limit of delta-9 THC for driving a vehicle in Colorado is 5.0 ng/mL. This was the first reported death in Colorado linked to marijuana consumption without evidence of polysubstance use since the state approved recreational use of marijuana in 2012.

According to the police report, the decedent had been marijuana-naïve, with no known history of alcohol abuse, illicit drug use, or mental illness. In addition to listing inactive ingredients, the cookie label described the psychoactive ingredients as "65 mg THC/6.5 servings (THC, tetrahydrocannabinol, the principal psychoactive agent in cannabis)." The label also noted, "This marijuana product has not been tested for contaminants or potency." According to the police report, the sales clerk had instructed the buyer and decedent to divide each cookie into sixths, each piece containing approximately 10 mg of THC, the serving size, and to ingest one serving at a time. The police report did not indicate whether the sales clerk provided specific instructions for how long to wait between ingesting each serving.

This case illustrates a potential danger associated with recreational edible marijuana use. Some studies have suggested an association between cannabis and psychological disturbances.^[1] Second to alcohol, marijuana is the most commonly used recreational drug in the United States, with an estimated 19.8 million past-month users during 2013.^[2] In 2012, Colorado and Washington became the first states to permit recreational use of marijuana under their state laws.^[3] The first state-licensed recreational

marijuana stores in Colorado opened in January 2014. An estimated 45% of Colorado's marijuana sales involve edible marijuana, including THC-infused food, drink, and pills.^[4, 5] Colorado's marijuana surveillance system collects adverse outcomes data from hospitalizations, emergency department visits, and poison center calls.

Systemic THC levels and psychoactive effects after ingestion are highly variable because of differences in bioavailability, rate of gastrointestinal absorption, and metabolic first-pass effect whereby an orally administered drug is partially metabolized (principally in the liver) before reaching systemic distribution.^[6, 7] Because absorption is slower, the onset of effects is delayed (with mean peak plasma concentration at 1–2 hours after ingestion, in contrast with 5–10 minutes to peak plasma concentrations if smoked), and duration of intoxication is longer when THC is ingested compared with when it is smoked.^[7] Whereas a single-serving recreational edible marijuana dose in Colorado was set at 10 mg of THC, multiple-dose recreational edible products, often containing 100 mg of THC, were available during March 2014.^[4] The marijuana store where the implicated cookies had been purchased voluntarily gave all 67 remaining cookies of the same brand to the Denver Police Department. Testing confirmed that the THC levels in the items were within required limits. Because of the delayed effects of THC-infused edibles, multiple servings might be consumed in close succession before experiencing the "high" from the initial serving, as reportedly occurred in this case. Consuming a large dose of THC can result in a higher THC concentration, greater intoxication, and an increased risk for adverse psychological effects.

Recreational marijuana is now permitted for persons aged ≥ 21 years under state law in four states (Alaska, Colorado, Oregon, and Washington) and the District of Columbia; marijuana-attributed morbidity and mortality surveillance can help guide efforts to prevent overconsumption in these jurisdictions. Regulation of recreational marijuana edibles in Colorado continues to evolve. On the basis of initial surveillance data in Colorado and numerous cases of accidental overconsumption, on February 1, 2015, Colorado instituted new packaging and labeling rules, requiring that recreational edible marijuana products contain no more than 10 mg of THC, or have clear demarcation of each 10-mg serving.^[8] In addition, before distribution, cannabinoid potency testing is now performed on batches of recreational edible marijuana products by state-certified laboratories. Other states permitting recreational marijuana use could potentially reduce adverse health effects by considering similar THC limits in marijuana edible products, and by enforcing clear labeling standards that require information on multidose products. Although the decedent in this case was advised against eating multiple servings at one time, he reportedly consumed all five of the remaining servings of the THC-infused cookie within 30–60 minutes after the first serving, suggesting a need for improved public health messaging to reduce the risk for overconsumption of THC.

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5. Ingold J. Proposed Colorado marijuana edibles ban shows lingering pot discord. *The Denver Post*. October 20, 2014. Available at http://www.denverpost.com/news/ci_26765732/proposed-colorado-marijuana-edibles-ban-shows-lingering-pot.
6. Huestis MA. Human cannabinoid pharmacokinetics. *Chem Biodivers* 2007;4:1770–804.
7. Perez-Reyes M, Lipton MA, Timmons MC, Wall ME, Brine DR, Davis KH. Pharmacology of orally administered 9-tetrahydrocannabinol. *Clin Pharmacol Ther* 1973;14:48–55.
8. Marijuana Enforcement Division, Colorado Department of Revenue. Retail marijuana product manufacturing, packaging, and labeling compliance guidance. Available at https://www.colorado.gov/pacific/sites/default/files/14-10_IndustryBulletin-Attachments.pdf.



Fw: Marijuana Site in Nipomo

Lynn Compton to: cr_board_clerk Clerk Recorder
Sent by: **Jocelyn Brennan**

11/02/2015 09:49 AM

----- Forwarded by Jocelyn Brennan/BOS/COSLO on 11/02/2015 09:49 AM -----

From: Janice Porter <porter.janice1@gmail.com>
To: lcompton@co.slo.ca.us, fmecham@co.slo.ca.us, bgibson@co.slo.ca.us, ahill@co.slo.ca.us,
darnold@co.slo.ca.us
Date: 10/31/2015 01:48 PM
Subject: Marijuana Site in Nipomo

Please reject the new marijuana shop. It will only bring crime and problems to our county!
Thank you - Janice Porter, , Nipomo, Ca. 93444,



Fw: Medical Marijuana Dispensary

Lynn Compton to: cr_board_clerk Clerk Recorder
Sent by: **Jocelyn Brennan**

11/02/2015 09:50 AM

----- Forwarded by Jocelyn Brennan/BOS/COSLO on 11/02/2015 09:50 AM -----

From: David Gaskill <agdaveandanita@msn.com>
To: "lcompton@co.slo.ca.us" <lcompton@co.slo.ca.us>
Date: 11/02/2015 08:41 AM
Subject: Medical Marijuana Dispensary

The county has rules in place to allow for this. The Planning Commission
> and County Staff have recommended approval. There is no reason not to
> approve this medical marijuana dispensary. Please think of the many people
> who benefit from the use of medical marijuana and approve this dispensary.
>
> Thank you
> Anita and David Gaskill
> Pismo Beach, CA



Fw: Ethnobotanica - DRC2014-00070
Jennifer Caffee to: cr_board_clerk Clerk Recorder

11/02/2015 10:11 AM

Jennifer Caffee
Legislative Assistant
5th District Supervisor Debbie Arnold
San Luis Obispo County
(805) 781-4339/FAX (805) 781-1350

----- Forwarded by Jennifer Caffee/BOS/COSLO on 11/02/2015 10:11 AM -----

From: zwrights229@aol.com
To: district5@co.slo.ca.us
Date: 10/30/2015 02:51 PM
Subject: Ethnobotanica - DRC2014-00070

Dear Supervisor Arnold -

Please see the attached letter regarding the appeal of the Planning Commission's decision on the medical marijuana dispensary in Nipomo scheduled for your Board meeting on November 3, 2015.

Your consideration of this matter is appreciated.

Dick Wright



Nipomo resident MMD Supervisor lettr.docx

San Luis Obispo County Board of Supervisors
1055 Monterey St. #D430
San Luis Obispo, CA 93401

Dear Supervisor –

The proposal to establish a Medical Marijuana Dispensary in Nipomo is a serious “Public Safety” issue.

Some Considerations:

- The South County Advisory Council examined the issue, with public comment, and voted to recommend “Denial” of Ethnobotanica’s application for an MUP.

- Availability of medical marijuana in our County is not an issue. The current 30 home delivery medical marijuana companies operating in SLO County adequately and more safely provide the product to legitimate patients.

- Retail marijuana dispensaries have a significant history of being targets for criminal attacks in California and other states. In a number of instances, violence has occurred.
 - o For example, just this year:
 - A security officer at a dispensary in San Bernardino was shot and killed during a robbery.
 - In Upland, a police SWAT unit arrested four armed suspects following a dispensary robbery in which the suspects pistol-whipped an employee and shot another in the leg.
 - In Bakersfield, a defendant who shot and killed two individuals during a robbery at a dispensary pled guilty to murder.

- The SLO Sheriff’s Department has publicly stated that due to the remote location of the proposed dispensary the estimated response time for deputies to a felonious situation there would be from 10 to 30 minutes.

- This would be the only retail medical marijuana dispensary on the Central Coast and would draw the attention of the active criminal street gangs from across the river in Santa Maria.

- From a criminal’s perspective this location is perfect: easy access and egress via the freeway and the driveway that circles around the building, no armed security, and no realistic threat of being interrupted by local law enforcement.

- In August, the Sheriff in Spokane, Washington made three significant points following a marijuana dispensary robbery there. He said, this was the second dispensary robbery in six months (frequency of incidents), there was a top-rate surveillance system in place (no deterrent) and the robbers really didn’t go after the cash, they went after the marijuana (target).

A retail medical marijuana dispensary in the proposed location is a serious and unnecessary exposure of our citizens to potential violence. You have the ability to prevent this criminal threat. I urge you to deny this application for a medical marijuana dispensary in Nipomo.

Respectfully,

Dick Wright
Nipomo resident



Fw: Regarding the proposed Nipomo dispensary

Bruce Gibson to: cr_board_clerk Clerk Recorder

11/02/2015 10:38 AM

Sent by: **Cherie McKee**

Cc: Adam Hill, Frank Mecham, Bruce Gibson, Debbie Arnold, Lynn Compton, Jennifer Caffee, Hannah Miller, Vicki Shelby, Jocelyn Brennan

fyi

----- Forwarded by Cherie McKee/BOS/COSLO on 11/02/2015 10:37 AM -----

From: Geoff Roberts <scrambledeg81@gmail.com>
To: bgibson@co.slo.ca.us,
Date: 10/20/2015 02:34 PM
Subject: Regarding the proposed Nipomo dispensary

Mr. Gibson-

My name's Geoff, and I'm writing to express my support for the proposed dispensary in Nipomo for your November 3rd meeting. I've been a cannabis patient for 5 years now, and I can say, with confidence, that 99.9% of the arguments against bringing a brick & mortar dispensary to SLO county are not only unfounded, but also highly illogical.

If you have the time, I strongly encourage you to watch this documentary:

<https://www.youtube.com/watch?v=wfxaJQVxSA4>

It explains in detail how the cannabis industry operates, how cannabis users have been thrown under the bus for close to a century, and it also addresses much of the criticism that the proposed dispensary has had to deal with. I've seen the proposal, and not only does the dispensary meet all of the county's restrictions on where it can be located, but the SLO Planning Commission has also given them the green light. I strongly urge you to approve this proposal which will enable patients like myself to receive their doctor-recommended medications from a professional and trustworthy organization.

Thank you-

Geoff

Los Osos



Re: Fw: Contact Us (response #2952) 

Jocelyn Brennan to: Board of Supervisors

11/02/2015 10:42 AM

Cc: Vicki Shelby, Cherie McKee, Hannah Miller, Jennifer Caffee, Juliane Hendricks, cr_board_clerk Clerk Recorder

Sending to the clerk for 11/3/15.

Sincerely,
Jocelyn Brennan
Legislative Assistant to Supervisor Lynn Compton
San Luis Obispo County, District 4
805 781-4337

Board of Supervisors

Good Morning Ladies, I am forwarding you all...

11/02/2015 09:50:30 AM

From: Board of Supervisors/BOS/COSLO
To: BOS_Legislative Assistants Only
Date: 11/02/2015 09:50 AM
Subject: Fw: Contact Us (response #2952)
Sent by: Juliane Hendricks

Good Morning Ladies,

I am forwarding you all this e-mail. I did look him up to see if he was a local resident but it turns out he is not a local registered voter and the only Lawrence Staton's live in: Claremont, Los Angeles, Redwood and Sacramento.

Thank you

Juliane D Hendricks

----- Forwarded by Juliane Hendricks/BOS/COSLO on 11/02/2015 09:46 AM -----

From: "Internet Webmaster" <webmaster@co.slo.ca.us>
To: "BoardOfSups@co.slo.ca.us" <BoardOfSups@co.slo.ca.us>
Date: 11/02/2015 09:35 AM
Subject: Contact Us (response #2952)

Contact Us (response #2952)

Survey Information

Site:County of SLO
Page Title:Contact Us
URL:<http://www.slocounty.ca.gov/bos/BOSContactUs.htm>
Submission Time/Date:11/2/2015 9:34:55 AM

Survey Response

Name:
LAWRENCE STANTON

Telephone Number:

Email address:
larrystankus@me.com

Comments or questions (8,192 characters max):
I am a new resident to California and fully support the approval of a brick-and-mortar medical marijuana dispensary in San Luis Obispo county.

As a Pharmacist since 1978 I have watched and studied medical marijuana usage closely and would encourage you to follow the will of the people and the ever expanding evidence on the effectiveness and safety for this product. My own personal experience (new cardholder) makes me more convinced we need to move forward with this plan.

Thank you for your consideration.

Lawrence P Stanton, Pharm D, DC



Fw: [QUAR] Warning about Ethnobotanica Dispensary Request and Supervisors Meeting Today

Jocelyn Brennan to: Vicki Shelby, Cherie McKee, Hannah Miller,
Jennifer Caffee
Cc: cr_board_clerk Clerk Recorder

11/02/2015 10:42 AM

To Clerk for 11/3/15

Sincerely,
Jocelyn Brennan
Legislative Assistant to Supervisor Lynn Compton
San Luis Obispo County, District 4
805 781-4337

----- Forwarded by Jocelyn Brennan/BOS/COSLO on 11/02/2015 10:42 AM -----

From: ron stephens <st3ph3ns@hotmail.com>
To: fmecham@co.slo.ca.us, bgibson@co.slo.ca.us, ahill@co.slo.ca.us, lcompton@co.slo.ca.us,
darnold@co.slo.ca.us, vshelby@co.slo.ca.us, cmckee@co.slo.ca.us, hmiller@co.slo.ca.us,
jbrennan@co.slo.ca.us, jcaffee@co.slo.ca.us
Date: 11/02/2015 10:40 AM
Subject: [QUAR] Warning about Ethnobotanica Dispensary Request and Supervisors Meeting Today

Dear SLO Supervisors and Legislative Assistants,

Hello, my name is R.E. and I am a former employee of Ethnobotanica and a former resident of SLO. I was recently notified of Ethnobotanica's attempts at acquiring approval for a brick and mortar Cannabis Dispensary. Although I think a storefront dispensary is a good idea for the SLO area, I also firmly believe that this privilege should be allocated to a responsible, law abiding, community driven company, and I regret to inform you that Ethnobotanica (in particular, the owner Ryan Booker), is extremely far from a healthy choice for your area.

His track record speaks for itself. I and several past employees were witnesses and targets to many abuses in and outside of their work environment, directed at both employees and his domestic partner (Stephanie Kiel) including: DUIs, drunk on the job, wife-beating (domestic violence), extreme verbal abuse, forcing employees to work other positions than they were hired for (including construction of their grow rooms in Moss Landing), illegal operations of Cannabis grows, etc.

Due to the "grey" nature of the medical Cannabis industry, you won't find any reports or documents (other than this email) regarding the above mentioned facts. None of the employees who either resigned, quit or were fired... Were able to make any claims to the EDD or Labor Boards due to the fact that the industry is still operating in a "Grey" area despite the recent headway made by California Governor Jerry Brown signing the AB266 bill package.

I can think of no less than 6 employees who would be willing to testify to these statements and who I am still in touch with.

I felt obligated to notify you of the true situation behind this company so that your supervisors can make an informed and responsible decision regarding who you choose to allocate a Cannabis dispensary storefront to. I feel this is an important step in modernizing your area and it would be a step backwards if you decide this company is the right choice for your area.

Agenda Item No: 16 • Meeting Date: November 3, 2015
Presented By: R.E. Stephens
Rec'd prior to the meeting & posted on: November 2, 2015

Best of Luck and Best Regards,

- R.E. Stephens
(Former Ethnobotanica Employee)

Cheers!

- R.E. Stephens



Fw: Application for Dispensary in Nipomo

Hannah Miller to: BOS_Legislative Assistants, cr_board_clerk
Clerk Recorder

11/02/2015 11:56 AM

Cc: kate.czek

To Clerk for 11/3/15

Hannah Miller
Legislative Assistant to Supervisor Adam Hill
District 3, County of San Luis Obispo
1055 Monterey St. Rm D430
San Luis Obispo, CA 93408
805-781-4336
805-781-1350 fax

----- Forwarded message -----

From: **KateCzek** <kate.czek@yahoo.com>
Date: Mon, Nov 2, 2015 at 11:53 AM
Subject: Application for Dispensary in Nipomo

Application for dispensary in Nipomo issue up for vote

I am a recovered cancer patient who in the past used the services of Ethnobotanica, who is applying for a permitted cannabis dispensary in Nipomo.

I have always found Ethnobotanica to conduct themselves very professionally in their operations. In my experience, they have always been careful to follow the letter of the law in providing their services, and I trust they would do the same with a fixed-location dispensary.

A dispensary would serve the needs of the many patients in our area who rely on the proven benefits of cannabis for their illness.

I urge you to support the application for a dispensary in Nipomo.

Sincerely,
Kate Czekala
San Luis Obispo



Fw: Final word prior to hearing on marijuana dispensary in Nipomo .

Adam Hill, Bruce Gibson, Debbie Arnold,

Jocelyn Brennan to: Frank Mecham, Hannah Miller, Jennifer Caffee, Vicki Shelby, Cherie McKee

11/02/2015 12:58 PM

Cc: cr_board_clerk Clerk Recorder

Sincerely,
Jocelyn Brennan
Legislative Assistant to Supervisor Lynn Compton
San Luis Obispo County, District 4
805 781-4337

----- Forwarded by Jocelyn Brennan/BOS/COSLO on 11/02/2015 12:58 PM -----

From: Nipomo Resident <nipomoresident@gmail.com>
To: lcompton@co.slo.ca.us, jbrennan@co.slo.ca.us
Date: 11/02/2015 12:57 PM
Subject: Final word prior to hearing on marijuana dispensary in Nipomo.

November 2, 2015

Dear Lynn Compton, San Luis Obispo County Supervisor, District 4:

I have read all of the submitted documents regarding a marijuana dispensary in Nipomo. I oppose a marijuana dispensary in Nipomo. A marijuana dispensary would be detrimental to the public health, safety and welfare of the community. A marijuana dispensary would adversely impact the quality of life in the community. The South County Advisory Council, San Luis Obispo County Sheriff and Santa Barbara County Sheriff oppose a marijuana dispensary in Nipomo.

The laws about marijuana are constantly changing. The laws are conflicting, vague and ambiguous. On 10-9-15, Governor Brown signed into law the Medical Marijuana Program and Safety Act (Assembly Bill 243, Assembly Bill 266, Senate Bill 643). Governor Brown said state agencies will begin working immediately with experts and stakeholders on crafting clear guidelines so local government can prepare and adapt to the new regulated system. The SLO Board of Supervisors should wait for clarity of the new law from the state agencies.

I cannot find any scientific research that indicates marijuana is a safe and effective drug for any medical condition. The US Food and Drug Administration (FDA) has not approved marijuana as a safe and effective drug for any medical condition. The Controlled Substances Act (CSA) classifies marijuana as a Schedule I controlled substance and is not approved for medical use and has a high potential for abuse. The state and federal governments are funding scientific research to study the effects and side effects of marijuana. The SLO Board of Supervisors should wait for the results of the scientific research.

Every person and public official in our democracy is subject to the rule of law. It is preposterous for SLO County to issue a use permit for the applicant to commit federal crimes. This would be an act of federal civil disobedience. This would be an act of aiding and abetting a violation of the federal Controlled Substances Act. Facilitating a marijuana dispensary would send the wrong message to our community.

I request the SLO Board of Supervisors deny a use permit for a marijuana dispensary in Nipomo. In the event the SLO Board of Supervisors approves a use permit for a marijuana dispensary in Nipomo, then I request the following conditions prior to issuing a use permit:

Agenda Item No: 16 • Meeting Date: November 3, 2015
Presented By: Resident of Nipomo
Rec'd prior to the meeting & posted on: November 2, 2015

1. The dispensary obtain a state license prior to selling marijuana.
2. The dispensary not be allowed to sell marijuana to any person under the age of 21.

Sincerely,

Resident of Nipomo



Fw: Marijuana

Lynn Compton to: Adam Hill, Bruce Gibson, Debbie Arnold,
Frank Mecham, Hannah Miller, Jennifer
Caffee, Vicki Shelby, Cherie McKee

11/02/2015 02:47 PM

Sent by: **Jocelyn Brennan**
Cc: cr_board_clerk Clerk Recorder

----- Forwarded by Jocelyn Brennan/BOS/COSLO on 11/02/2015 02:46 PM -----

From: Ian Parkinson/Sheriff/COSLO
To: Lynn Compton/BOS/COSLO@Wings
Date: 10/27/2015 08:18 AM
Subject: Marijuana

Lynn,
Attached is some information that you might find helpful.



2015.1.5 SAM Report Lessons Learned After Two Years.pdf

Ian S. Parkinson
Sheriff-Coroner
San Luis Obispo Sheriff's Office



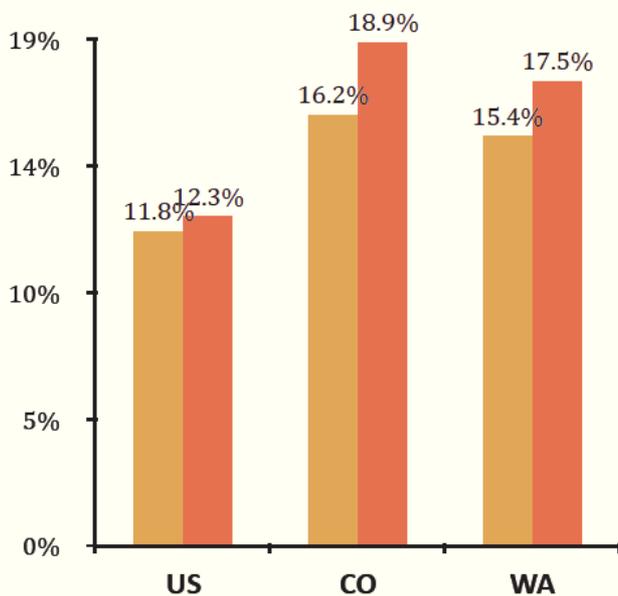
COLORADO & WASHINGTON SINCE LEGALIZATION

After multimillion-dollar political campaigns, funded with out of state money, Colorado and Washington voted to legalize marijuana in November of 2012. Though it would take more than a year to set up retail stores, personal use (in Colorado and Washington) and home cultivation and giving away of up to 6 plants (in Colorado) were almost immediately legalized following the vote. Public marijuana use,

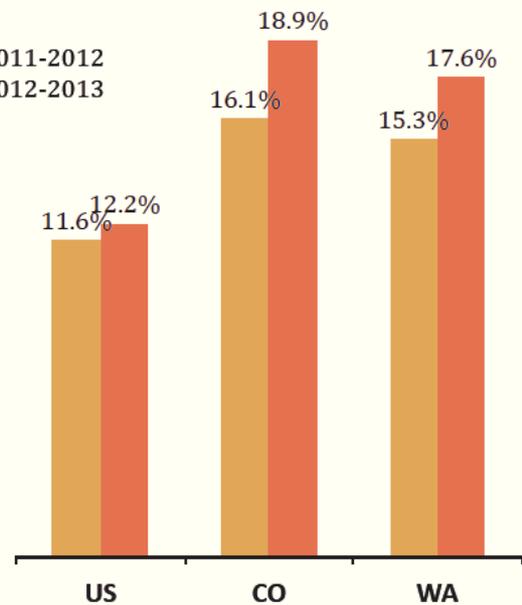
though illegal, remains a common way to celebrate the law, and a brand new industry selling candies, waxes, sodas, and other marijuana items has exploded. The federal government announced they would initially take a hands-off approach, promising to track nine consequences of legalization (from youth marijuana use to use on public lands) and determine action later. So far, however, no robust public

tracking system by federal or state authorities has been implemented. Earlier this year, Smart Approaches to Marijuana (SAM) began tracking developments on www.legalizationviolations.com, and this report is meant to be a working paper to track legalization developments.

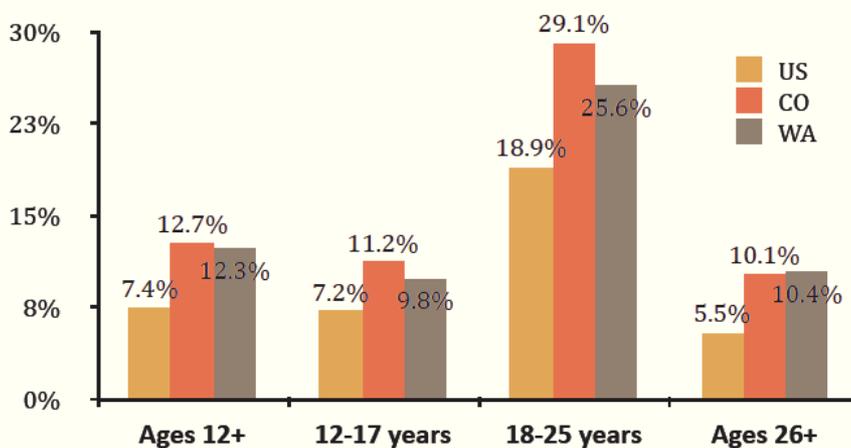
PAST-YEAR MARIJUANA USE (AGES 12+)



PAST-YEAR MARIJUANA USE (AGES 18+)



PAST-MONTH MARIJUANA USE (2012-2013)



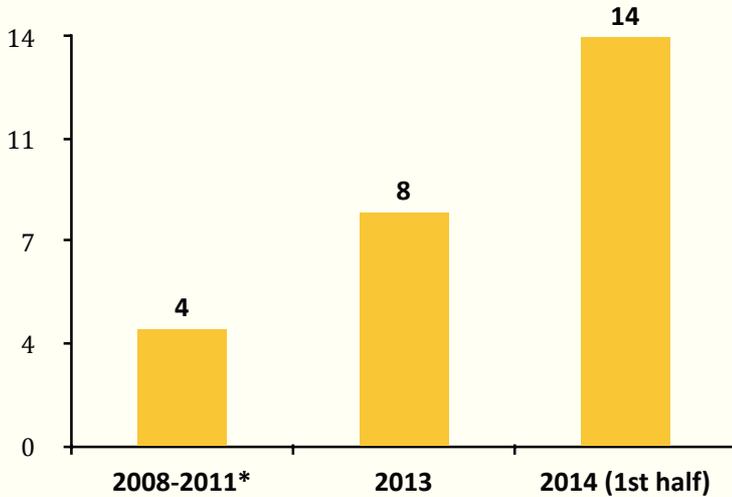
Past-year and past-month marijuana use by all ages exceeds the national average in both Washington State and Colorado. Marijuana use in both these states has risen significantly* between 2011-2012 and 2012-2013.

*Significant at the 0.05 levels.

Source: NSDUH, 2014

ACCIDENTAL INGESTIONS BY CHILDREN

Nº of children ages 3-7 sent to ER for accidental marijuana ingestion



*On average each year

Between 2008 and 2011, an average of 4 children (between the ages of 3 and 7) were sent to the ER for unintentional marijuana ingestion.

In 2013, 8 children went to the CO children's hospital.

As of the first half of 2014, at least 14 children had already been sent to the ER for accidentally ingesting marijuana products.

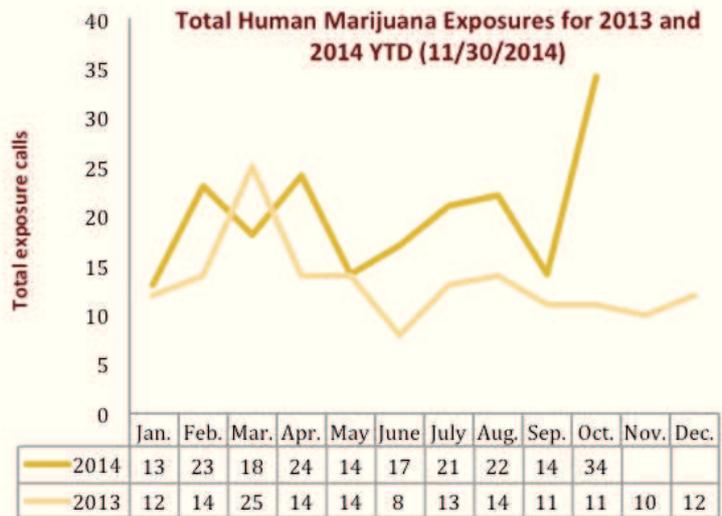
More than doubling from the year before.

Source: Children's Hospital of Colorado Emergency Department

MARIJUANA-RELATED POISONINGS

According to the Washington Poison Center, "the selling of cannabis for recreational purposes became legalized in the state of Washington on July 7th, 2014. As a direct result, the Washington Poison Center (WAPC) has encountered an increase in the number of human exposures related to accidental or excessive consumption/inhalation of marijuana and marijuana edibles, particularly among pediatrics."

Source: Washington Poison Center



TEEN ARRESTS

6%

Arrests for marijuana use in Denver public schools increased by 6% between 2013 and 2014.

Source: Denver Police Department Versadex and OSI database

TEEN ADMISSIONS TO TREATMENT

66%

Teen admissions to treatment for marijuana use at the Arapahoe House treatment network in CO increased by 66% between 2011 and 2014.

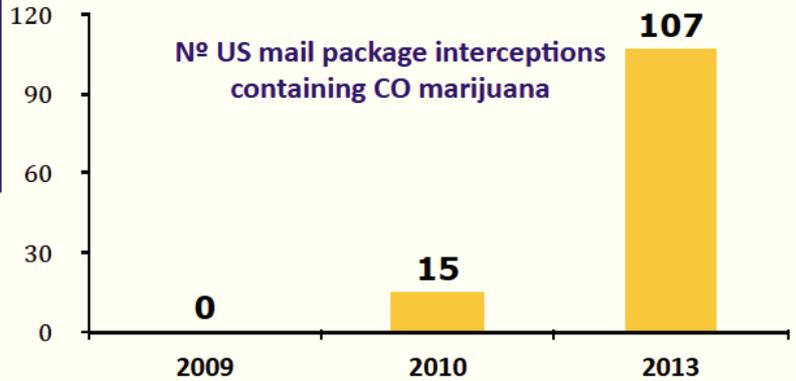
Source: Arapahoe House Treatment Network

COLORADO MARIJUANA IS REGULARLY DIVERTED TO OTHER STATES

288

In 2013, there were 288 highway interdictions resulting in seizures of Colorado marijuana destined to over 40 states.

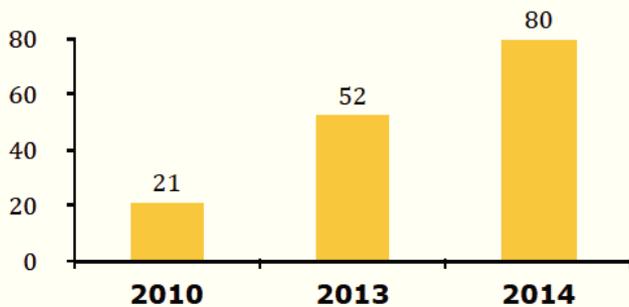
This increased by 397% from 2008.



Source: El Paso Intelligence Center National Seizure System

MARIJUANA USE IN NEARBY PUBLIC LANDS

Nº of prosecuted marijuana cases from Yellowstone National Park



"An increasing number of visitors to Yellowstone National Park are being prosecuted for possessing small amounts of medical and recreational pot, which remains illegal on federal land."

A THRIVING BLACK MARKET

According to the Associated Press "in Washington, the black market has exploded since voters legalized marijuana in 2012, with scores of legally dubious medical dispensaries opening and some pot delivery services brazenly advertising that they sell outside the legal system."

In Colorado, "[Legalization] has done nothing more than enhance the opportunity for the black market", Lt. Mark Comte of the Colorado Springs Police Vice and Narcotics Unit, told the AP.

Source: Associated Press

DENVER CITY AND COUNTY CRIME IS UP

In the city and county of Denver, overall crime is slightly higher through November 2014 than it was during that same time period in 2013. Most crime categories are up, like simple assault and criminal mischief; but some categories show reductions, like sex offenses, kidnapping, and motor vehicle theft. Some trends possibly related to marijuana include:

- ↑ Disorderly conduct is up 51%
- ↑ Drug violations are up 12%
- ↑ Public drunkenness is up 53%

It's possible that crime statistics have little to do with marijuana law changes, but rampant media reports of "legalization linked with a crime drop" are unsubstantiated.

Source: Denver Police Department

UNEXPECTED CONSEQUENCES: BURNS

The University of Colorado's Burn Center observed an increase in the number of marijuana-related burns since legalization in 2012.



Some cases involve more than 70% of body surface area.
21 cases required skin grafting.
The majority of cases were flash burns that occurred during THC extraction from marijuana plants using butane as a solvent.

*As of Dec 17, 2014

Source: University Hospital Burn Unit – University of Colorado Hospital

MORE MARIJUANA CITATIONS GIVEN IN DENVER...

184

In 2013, Denver police issued 184 citations for public display of marijuana.

668

In just the first 9 months of 2014, there have been 668 such citations.

The 668 do not include another 221 citations for using marijuana in city parks.

Source: Denver Police Department

...AND BEYOND

In Aurora, marijuana citations for underage or public use are up.

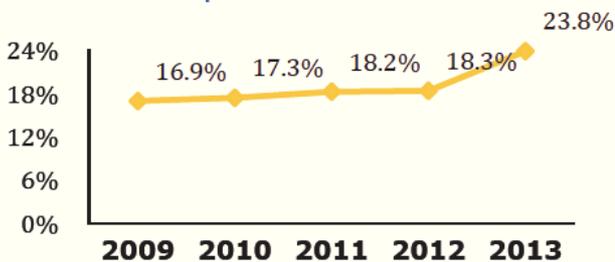
As of December 1, 2014 Aurora police have issued 154 summons, compared with 118 citations issued in 2013.

154

Source: Denver Post

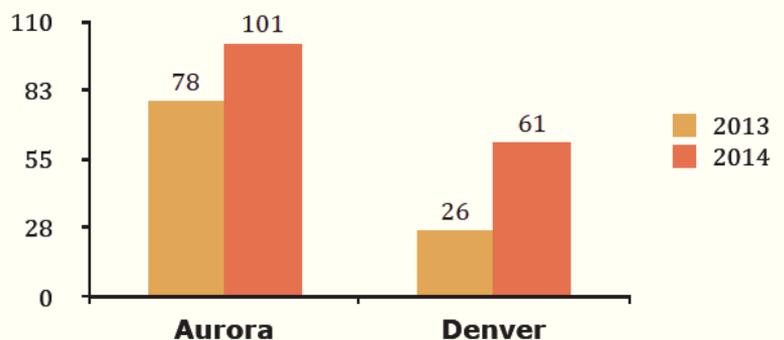
WA & CO OBSERVE AN INCREASE IN SHARE OF MARIJUANA DRIVING CASES

Percentage of total DUI/DRE cases tested positive for THC* in WA



*According to toxicology data that have been normalized by the State of Washington to allow for a multi-year comparison despite the fact that a "marijuana positive" is now triggered at the 2 ng/ml level versus the 1 ng/ml level prior to 2013. 2014 data will be provided once available.

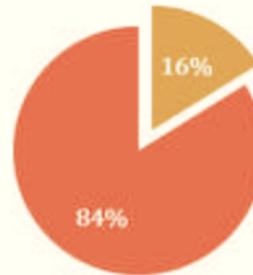
Number of citations for driving under the influence of marijuana in CO (through Dec. 1)



Source: Denver Police Department

CITIES ACROSS COLORADO ARE BANNING THE RECREATIONAL SALES OF MARIJUANA

Of the 31 cities in Colorado that voted in November to allow the recreational sales of marijuana, 26* voted to ban it.



*Breckenridge voted to ban stores in the downtown core, but other stores remain in the outskirts of town.

Source: Colorado Municipalities League

● Approved recreation sales ● Banned recreational sales*

MARIJUANA EDIBLES POSE A PUBLIC HEALTH RISK

Edibles often contain 3-20 times the THC concentration recommended for intoxication.

There have been at least 2 deaths related to marijuana edibles in 2014.



While Colorado is looking at how to control this industry, the marijuana industry marches on - defending gummy bears, cupcakes, sugary cereals and sodas - similar to how Big Tobacco defended their practices for a century.

REGULATION: CONTAMINANTS

Contaminant testing in Washington finds that 13% of marijuana and THC-infused products contain mold, salmonella, and E. coli.

Colorado has not begun such testing yet.

BIG MARIJUANA ASCENDANT: MARLEY NATURAL BRAND DEBUTS

The marijuana-focused private equity firm, Privateer Holdings, in partnership with the descendants of Bob Marley have created a multinational cannabis brand called Marley Natural.

Investors have already raised \$50 million to launch Marley Natural.

There is no mention of these branded marijuana products, candies, or advertising practices in the course of the political campaigns to legalize marijuana.



NO DATA, NO COST ACCOUNTING, NO PROBLEM?

More sophisticated data are sorely lacking with respect to marijuana in Colorado and Washington. Real time data are needed on both the consequences of legalization and the economic costs of such a policy to track:

- Emergency room and hospital admissions related to marijuana
- Marijuana potency and price trends in the legal and illegal markets
- School incidents related to marijuana, including representative data sets
- Extent of marijuana advertising toward youth and its impact
- Marijuana-related car crashes, including THC levels even when BAC is over 0.08
- Mental health effects of marijuana
- Marijuana brief intervention and treatment admissions
- Cost of implementing legalization from law enforcement to regulators
- Cost of mental health and addiction treatment related to more marijuana use
- Cost of needing but not receiving treatment
- Cost to workplace and productivity
- The effect on the alcohol and other drug markets

ABOUT SMART APPROACHES TO MARIJUANA

Comprising the top scientists and thinkers in the marijuana research and practice space, SAM works to bridge the gap between the public's understanding of marijuana and science's understanding of marijuana. At the local, state, Tribal, and federal levels, SAM seeks to align marijuana policy and attitudes about the drug with 21st-century science, which continues to show how marijuana use harms the mind and body. SAM argues against extremes in marijuana policy, and opposes both incarceration for low level use and blanket legalization, favoring instead a health-based marijuana policy. Come visit us at www.learnaboutsam.org.

SAM SCIENCE ADVISORY BOARD

Hoover Adger, MD, Professor of Pediatrics and Director of Adolescent Medicine, Johns Hopkins University

Eden Evins, MD, MPH, Associate Professor of Psychiatry, Harvard Medical School

Stuart Gitlow, MD, MPH, MBA, President, American Society of Addiction Medicine

Sion Harris, PhD, Center for Adolescent Substance Abuse Research, Children's Hospital Boston

Sharon Levy, MD, MPH, Assistant Professor of Pediatrics, Harvard Medical School

Kimber Richter, MD, PhD, Professor of Preventive Medicine and Public Health, University of Kansas.

Paula Riggs, MD, Associate Professor of Psychiatry, University of Colorado at Denver

Christian Thurstone, MD, Associate Professor of Psychiatry, University of Colorado

Kathryn Wells, MD, Associate Professor of Pediatrics, University of Colorado at Denver.





Fw: 11/03/15 Board Of Supervisors Meeting

Lynn Compton to: Adam Hill, Bruce Gibson, Debbie Arnold,
Frank Mecham, Hannah Miller, Jennifer
Caffee, Vicki Shelby, Cherie McKee

11/02/2015 03:45 PM

Sent by: **Jocelyn Brennan**
Cc: cr_board_clerk Clerk Recorder

----- Forwarded by Jocelyn Brennan/BOS/COSLO on 11/02/2015 03:45 PM -----

From: Roger Dickinson <rogerdickinson@msn.com>
To: "lcompton@co.slo.ca.us" <lcompton@co.slo.ca.us>
Date: 11/02/2015 03:44 PM
Subject: 11/03/15 Board Of Supervisors Meeting

Dear Ms. Compton,

I am writing in regards to the up-coming meeting tomorrow 11/03/15 the final decision on Ethnobotanica's plans on opening a brick and mortar dispensary in Nipomo. I have been a Nipomo resident since 1985 and **I am in support of this. I ask that you support and approve in your final decision as well.** I feel that this is a good alternative for patients to make better choices for their medical needs in a safe environment. Home delivery has been the only way to get medication but you are limited to only what a driver has available at the time as they are limited. I would feel much safer and much more secure buying my medication where I know it has been tested and I have a choice on the type of medication needed.

Kind Regards,
Roger Dickinson

Nipomo, CA 93444



Fw: Cannabis Dispensary

Lynn Compton to: Adam Hill, Bruce Gibson, Debbie Arnold,
Frank Mecham, Hannah Miller, Jennifer
Caffee, Vicki Shelby, Cherie McKee

11/02/2015 03:55 PM

Sent by: **Jocelyn Brennan**
Cc: cr_board_clerk Clerk Recorder

----- Forwarded by Jocelyn Brennan/BOS/COSLO on 11/02/2015 03:55 PM -----

From: EAREinheimer <erica_r@charter.net>
To: lcompton@co.slo.ca.us
Date: 10/24/2015 03:10 PM
Subject: Cannabis Dispensary

Hello Lynn,

I am a resident of your district.
Please support opening a Cannabis Dispensary in Nipomo, and vote for
approval on Nov. 3.

I have a prescription because of a chronic back problem, and it is too
far to go to the nearest dispensary.
Delivery options are spotty.

Thank You for Your Support;

Erica Reinheimer

Arroyo Grande, CA 93420



Fw: 11/03/15 Board Of Supervisors Meeting
Lynn Compton to: cr_board_clerk Clerk Recorder
Sent by: **Jocelyn Brennan**

11/02/2015 03:57 PM

----- Forwarded by Jocelyn Brennan/BOS/COSLO on 11/02/2015 03:56 PM -----

From: Roger Dickinson <rogerdickinson@msn.com>
To: "lcompton@co.slo.ca.us" <lcompton@co.slo.ca.us>
Date: 11/02/2015 03:44 PM
Subject: 11/03/15 Board Of Supervisors Meeting

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Kind Regards,

Roger Dickinson

Nipomo, CA 93444



Fw: Medical Marijuana AB 266

Lynn Compton to: Adam Hill, Bruce Gibson, Debbie Arnold,
Frank Mecham, Hannah Miller, Jennifer
Caffee, Vicki Shelby, Cherie McKee

11/02/2015 03:58 PM

Sent by: **Jocelyn Brennan**
Cc: cr_board_clerk Clerk Recorder

----- Forwarded by Jocelyn Brennan/BOS/COSLO on 11/02/2015 03:57 PM -----

From: Ian Parkinson/Sheriff/COSLO
To: Lynn Compton/BOS/COSLO@Wings
Date: 09/22/2015 02:49 PM
Subject: Medical Marijuana AB 266

Lynn,

I believe that this is one of the compelling reasons to reject the Nipomo Dispensary. If this law is passed, it would require regulation of any medical marijuana. Other than the public safety issues that I intend to introduce, this will change the requirements and to approve Nipomo before this is signed or vetoed by the Governor would be premature.

http://www.californiapolicechiefs.org/assets/Marijuana/Medical%20Marijuana%20Package_Summary%20for%20Chiefs.pdf

Ian S. Parkinson
Sheriff-Coroner
San Luis Obispo Sheriff's Office



AN ANALYSIS OF CALIFORNIA'S MEDICAL MARIJUANA REGULATION & SAFETY ACT

The Medical Marijuana Regulation & Safety Act is embodied in three bills, which were “triple-joined.” In other words, all three bills have to be signed into law for any of them to go into effect. Those three bills are Senate Bill 643, by Senator McGuire, Assembly Bill 266, by Assembly Members Bonta, Cooley, Lackey and Jones-Sawyer, and Assembly Bill 243, by Assembly Member Wood.

In order to provide the reader with an understanding of the act, this document will describe the major changes by subject matter and then indicate the bill in which that particular change can be found. In this fashion, the reader will be able to comprehend the totality of the act.

DOCTOR RECOMMENDATIONS

The Act:

Requires that only a patient's attending physician may recommend medical marijuana. Currently there is no such requirement, which has resulted in dubious recommendation practices having no real medical context. Further, the Act also directs the Medical Board to prioritize investigations into allegations of excessive medical marijuana recommendations by physicians. Finally, the Act specifies that recommendation of medical marijuana to a patient without a prior examination is deemed to constitute unprofessional conduct. (Senate Bill 643).

Prohibits physicians from having a financial interest in any other medical marijuana enterprise and provides for a \$5,000 fine for violation of this section (Senate Bill 643).

Enumerates restrictions on physician advertising and prohibits the offering of discounts in those advertisements (Senate Bill 643).

PUBLIC SAFETY

The Act:

Establishes a unique identifier and track and trace program to be administered by the Department of Food and Agriculture. The program will track and report the movement of medical marijuana items throughout the distribution chain while utilizing a unique identifier (SB 643).

Establishes uniform safety standards and security requirements at dispensaries as well as for transport of the product (AB 266).

Limits vertical integration by requiring third party transportation, distribution and testing (AB 266).

Provides that state licenses may be denied for any past criminal conviction that is substantially related to the operation of a medical marijuana enterprise. Leaves the enumeration of such

offenses to the state licensing entity except that all felony convictions involving trafficking in controlled substances, all serious or violent felonies, and all felony convictions involving fraud, deceit or embezzlement are deemed to be substantially related offenses. (SB 643).

Requires licensees to maintain records and allows for premise inspections during business hours (AB 266).

Requires the development of a study that identifies the impact and impairing effect that marijuana has on motor skills (AB 266).

ADMINISTRATION OF THE ACT

The act establishes a statewide regulatory scheme that is headed by the Bureau of Medical Marijuana Regulation within the Department of Consumer Affairs (AB 266). Although the state will issue licenses, the Act provides for a system of dual licensing: The state will issue licenses, but local governments will issue permits or licenses to operate medical marijuana enterprises. Anyone operating a medical marijuana enterprise must have BOTH a state license and a local permit (AB 266). If the local jurisdiction revokes or suspends the local permit, the enterprise must be shuttered (AB 266). Jurisdictions with bans on cultivation or sales will be able to maintain them.

Local permitting practices, zoning ordinances and local regulations may impose more stringent standards on medical marijuana enterprises than the state (AB 266).

The Department of Consumer Affairs will issue licenses for Dispensaries, Distributors, and Transporters (AB 266). The Department of Food and Agriculture is in charge of licensing and regulation of indoor and outdoor cultivation sites (AB 243); the Department of Pesticide Regulation is mandated to develop standards for pesticides in marijuana cultivation with maximum tolerance standards and other foreign object residue. The Department of Pesticide Regulation is also mandated to develop regulations for the application of pesticides in all cultivation and are required to consult with the State Water Resources Control Board in developing these regulations (AB 243); Joint responsibility is assigned to the Department of Food and Agriculture, the Department of Fish and Wildlife and the State Water Resources Control Board to prevent illegal water diversion associated with marijuana cultivation from adversely affecting California fish population (AB 243).

The Department of Public Health is placed in charge of standards for production and labeling of all edible medical marijuana products. (AB 243, SB 643)

LICENSING AND ENFORCEMENT

Local jurisdictions are permitted to have more stringent permitting conditions (SB 643).

The act provides that patients and caregivers are exempted from licensing provisions, but limits the number of patients a caregiver may have to five patients (AB 266).

Provides for the termination of the existing model of marijuana cooperatives and collectives one year after the Department of Consumer Affairs announces that state licensing has commenced (AB 266).

Any unlicensed activity is subject to civil penalties and is also subject to all applicable criminal penalties under existing law (AB 266).

Local entities have unfettered right to enforce all local laws and may be given specific delegation to the state to enforce state laws (AB 643).

DELIVERY SERVICES

The Act:

Permits local governments to prohibit any delivery services upon enactment of a local ordinance prohibiting that activity (AB 266).

Requires that delivery services be affiliated with the dispensary and prohibits free-standing “Uber”- like delivery services. All delivery service personnel must be employees of the dispensary (AB 266).

HEALTH AND SAFETY

The Act:

Specifies a standard for certification of testing labs, with specified minimum testing requirements. Test lab operators may not be licensees nor may they have a financial or ownership interest in any licensed business (AB 266).

Requires uniform health and testing standards (AB 266)

Specifies strict standards for the packaging, labeling or presentation of edible products and specifically prohibits any portion of that activity from appealing to children (AB 266).



Fw: marihuana dispensary

Lynn Compton to: cr_board_clerk Clerk Recorder
Sent by: **Jocelyn Brennan**

11/02/2015 03:58 PM

----- Forwarded by Jocelyn Brennan/BOS/COSLO on 11/02/2015 03:58 PM -----

From: "Lynn Compton" <lynn.compton@earthlink.net>
To: <lcompton@co.slo.ca.us>
Date: 09/26/2015 08:35 PM
Subject: FW: marihuana dispensary

From: Peter Shkabara [mailto:kolya23@gmail.com]
Sent: Friday, July 10, 2015 11:37 AM
To: lynn@lynncompton.com
Subject: marihuana dispensary

Hi Lynn,

In a move I don't quite understand, the County of San Luis Obispo seems intent on allowing a marihuana dispensary to be opened here. This is despite it being against federal laws. Locating it in Nipomo is the attitude of "let's dump our trash in the south county". Please do what you can to stop this blemish.

Peter Shkabara
kolya23@gmail.com
Nipomo, CA



Fw: Marijuana Legalization in Colorado --A Report
Lynn Compton to: cr_board_clerk Clerk Recorder
Sent by: **Jocelyn Brennan**

11/02/2015 03:58 PM

----- Forwarded by Jocelyn Brennan/BOS/COSLO on 11/02/2015 03:58 PM -----

From: zwrights229@aol.com
To: lcompton@co.slo.ca.us
Cc: jbreannan@co.slo.ca.us
Date: 10/24/2015 10:03 PM
Subject: Marijuana Legalization in Colorado--A Report

Supervisor Compton -

Below are links to three volumes of a public report produced by the federally funded intelligence organization, the Rocky Mountain High Intensity Drug Trafficking Area (HIDTA). They address Colorado's experience with both medical marijuana and recreational legalization with sections on Impaired driving, Use by Juveniles, Use by adults, Emergency room admissions, Related exposure cases, Diversion of marijuana from Colorado to other states and the trend of extracting THC in concentrated form (up to 90%) for a more "euphoric high". The process of vaporizing THC concentrate has also resulted in a number of lab explosions and injuries.

The reports provide some insight into what California can expect if legalization becomes a reality in our state. I thought you might find it of interest.

Take care,
Dick Wright

-----Original Message-----

From: LEIU <LEIU@doj.ca.gov>
To: LEIU <LEIU@doj.ca.gov>
Sent: Thu, Jun 11, 2015 1:05 pm
Subject: Marijuana Legalization in Colorado--A Report

Dear LEIU Member,

Although some of you may already be aware of these reports—I thought I would share them for those who do not have access. In 2014, the Rocky Mountain HIDTA produced a report on the [impact of the legalization of marijuana in Colorado](http://www.rmhidta.org/html/FINAL%20Legalization%20of%20MJ%20in%20Colorado%20The%20Impact.pdf). The reports are in three volumes. I have copied the links for each report and have provided that below. The Colorado report provided some very insightful information on the effects of marijuana legalization in Colorado.

<http://www.rmhidta.org/html/FINAL%20Legalization%20of%20MJ%20in%20Colorado%20The%20Impact.pdf>

<http://www.rmhidta.org/html/August%202014%20Legalization%20of%20MJ%20in%20Colorado%20the%20Impact.pdf>

<http://www.rmhidta.org/html/2015%20PREVIEW%20Legalization%20of%20MJ%20in%20Colorado%20the%20Impact.pdf>

Agenda Item No: 16 • Meeting Date: November 3, 2015
Presented By: Dick Wright
Rec'd prior to the meeting & posted on: November 2, 2015

Sincerely,

Bob Morehouse, Executive Director
Association of Law Enforcement Intelligence Units (LEIU)

Bob.morehouse@doj.ca.gov



Association of
Law Enforcement Intelligence Units
www.leiu.org

CONFIDENTIALITY NOTICE: This communication with its contents may contain confidential and/or legally privileged information. It is solely for the use of the intended recipient(s). Unauthorized interception, review, use or disclosure is prohibited and may violate applicable laws including the Electronic Communications Privacy Act. If you are not the intended recipient, please contact the sender and destroy all copies of the communication.



Fw: Additional MMD information

Lynn Compton to: cr_board_clerk Clerk Recorder
Sent by: **Jocelyn Brennan**

11/02/2015 04:00 PM

----- Forwarded by Jocelyn Brennan/BOS/COSLO on 11/02/2015 03:59 PM -----

From: zwrights229@aol.com
To: lcompton@co.slo.ca.us
Cc: jbreannan@co.slo.ca.us
Date: 10/31/2015 03:20 PM
Subject: Additional MMD information

Supervisor Compton -

Attached are two other summaries that may be useful to you.

1. Impacts Associated with MMD in other jurisdictions - This 2 page report summarizes reports from 10 separate listed sources. However, these reports were all prepared prior to 2011. It has three parts: Increase in crime, Illegal Diversion of medical marijuana, and Negative impacts on neighboring land uses.

2. An Analysis of "California's Medical Marijuana Regulation and Safety Act". This 3 page summary was prepared by the California Police Chiefs Association.

Take care,



Dick MMD impacts MetaViewer.pdf Medical Marijuana Package_Summary for Chiefs.pdf

Impacts Associated with Medical Marijuana Dispensaries in Other Jurisdictions

This report summarizes a number of negative impacts associated with medical marijuana dispensaries as reported in the following documents on file at the City Attorney's office.

- *County of Santa Clara Office of the Sheriff Memorandum Regarding Medical Marijuana Dispensaries*, (April 27, 2011).
- *Medical Marijuana and Associated Issues: Presented to the California Chiefs of Police Association*, (Jan. to March 2010).
- *Medical Marijuana and Associated Issues: Presented to the California Chiefs of Police Association*. (April to June 2010).
- *White Paper on Marijuana Dispensaries* by California Police Chiefs Association Task Force on Marijuana Dispensaries, (2009).
- *Medical Marijuana Dispensaries and Associated Issues: Presented to the California Chiefs of Police Association*, (2004 to 2006)
- *Fullerton Police Department Memorandum Regarding Medical Marijuana Dispensaries (MMDs)*, (Oct. 25, 2006).
- *Concord Police Department Letter Regarding Medical Marijuana Dispensaries—Potential Secondary Impacts*, (Aug. 29, 2005).
- *El Cerrito Police Department Memorandum Regarding Recent Information Regarding Marijuana and Dispensaries*, (Jan. 11, 2007).
- South Bay News, *22 arrested in drug dealing scheme*, (Oct. 1, 2010).
- Los Angeles Times, *Sheriff says pot dispensaries have become crime targets*, (Sept. 2, 2010).

I. Increase in Crime

A number of California cities with medical marijuana dispensaries have experienced an increase in crime associated with these dispensaries. Storefront dispensaries have been targets of violent, take-over style armed robberies. One such robbery occurred in Anaheim, and another in San Leandro where the owner shot and killed an 18 year old suspect. Police from other jurisdictions have also reported an increase of burglaries at or near dispensaries. Patrons going to or leaving medical marijuana dispensaries have been robbed for their cash and medical marijuana, including a man in Hayward who had a gun pointed at his head.

Operators of medical marijuana dispensaries have been associated with a variety of illegal activity. Police report that medical marijuana dispensary operators in Oakland, San Francisco, San Diego, Redwood City, Vacaville, Santa Clara County, and Pacific Beach have possessed and sold illegal weapons and drugs at their dispensaries. Dispensary operators in Oakland, San Francisco, Pacific Beach, and Roseville have also been involved in organized crime and money laundering activities. Organized criminal gangs have been linked to grow operations in the San Francisco Bay Area and in the vicinity of Sacramento that supplied medical marijuana to dispensaries.

Residences where medical marijuana was grown or that were associated with storefront dispensaries have been targets for armed robberies and assault. A resident in Willits was shot in such a robbery and a resident in Laytonville was shot and killed during another. In other cases, marijuana cultivators have resisted police investigations with fire arms.

II. Illegal Diversion of Medical Marijuana

In numerous cases, medical marijuana from dispensaries has been diverted to illegal uses. The City of Pleasanton reported illegal re-sales of medical marijuana to juveniles. The Los Angeles County police reported that a dispensary sold marijuana to minors who were in possession of third party's medical marijuana identification card. A teen in Oak Park reported that at least 10 of his friends have fraudulently obtained medical marijuana identification cards to purchase marijuana from a local dispensary. An undercover officer in Morro Bay purchased marijuana on the street from a dispensary security guard, and undercover officers observed patrons of a Modesto dispensary re-selling medical marijuana in the shop's parking lot. Similarly, two individuals were arrested for illegal re-sales in the parking lot of an Anaheim medical marijuana dispensary.

III. Negative Impacts on Neighboring Land Uses

Neighborhoods and retail districts with medical marijuana dispensaries have reported an increase in noise, traffic, and other activity that negatively impacts neighboring land uses. Neighbors of a dispensary in San Francisco experienced patrons double-parking and blocking driveways. Neighbors of dispensaries in the City of West Hollywood also complained of increased pedestrian and vehicle traffic and noise. Other cities and counties have experienced street dealers attempting to sell marijuana at a lower rate to people entering dispensaries. Police agencies also reported increased loitering and public marijuana smoking in the vicinity of dispensaries. In addition, dispensaries have been associated with an increase in traffic accidents and arrests for driving under the influence in which marijuana was implicated. Residential fires have been caused by improper electrical modifications to facilitate marijuana cultivation.

Dispensaries have also had an adverse impact on neighboring businesses, including a loss of business as a result of the above mentioned impacts. Two businesses neighboring a dispensary in Anaheim relocated because of problems associated with the dispensary. One left out of fear for the safety of their employees after the dispensary was robbed. Another left because it could find no solution for the marijuana smell permeating through a common wall with the dispensary. Business owners in the City of Yorba Linda likewise suffered from the smell of marijuana inside their business from an adjacent dispensary. Businesses in the City of Long Beach contacted police regarding smells in their businesses and marijuana being smoked and sold in parking lots around the dispensary.

AN ANALYSIS OF CALIFORNIA'S MEDICAL MARIJUANA REGULATION & SAFETY ACT

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Specifies strict standards for the packaging, labeling or presentation of edible products and specifically prohibits any portion of that activity from appealing to children (AB 266).



Fw: Ethnobotanica MUP DRC 2014-00070
Debbie Arnold to: cr_board_clerk Clerk Recorder
Sent by: **Jennifer Caffee**

11/02/2015 04:05 PM

Debbie Arnold

Supervisor, 5th District
San Luis Obispo County
(805) 781-4339

----- Forwarded by Jennifer Caffee/BOS/COSLO on 11/02/2015 04:05 PM -----

From: John Belsher <john@pbcompanies.co>
To: "fmecham@co.slo.ca.us" <fmecham@co.slo.ca.us>, "ahill@co.slo.ca.us" <ahill@co.slo.ca.us>, "bgibson@co.slo.ca.us" <bgibson@co.slo.ca.us>, "lcompton@co.slo.ca.us" <lcompton@co.slo.ca.us>, "darnold@co.slo.ca.us" <darnold@co.slo.ca.us>
Cc: 'JK Bigelow' <jameskbigelow@gmail.com>, "brobeson@co.slo.ca.us" <brobeson@co.slo.ca.us>
Date: 11/02/2015 02:56 PM
Subject: Ethnobotanica MUP DRC 2014-00070

This Supplement to the current Appeal should be added to the materials to be considered by the Board of Supervisors with respect to the referenced item.

John W. Belsher
Belsher, Becker, Roberts & Connell

San Luis Obispo, CA 93401



Supplemental Appeal Filing Nov 3, 2015.docx

Appellant's supplemental Appeal Filing

November 3, 2015

Ethnobotanical Dispensary

Appellant offers the following proposed finding of denial for the Ethnobotanica MUP application DRC 2014-00070

Overview: The existence of a local ordinance or a State law does not a) require local approval of a dispensary, or b) legalize the sale of an illegal Schedule I drug under federal law. The Board has full discretion to deny this application on any one of the following grounds,

1. Failure to meet required findings under CZLUO Section 22.62.070 (required findings for a CUP):

A) The dispensary would be "incompatible with the health, safety or welfare of the general public";

Testimony of nearby neighbors and the adjoining Mayor of the City of Santa Maria detail concern with crime, drug use and impact on the health, safety and welfare of the general public and the community of Nipomo, including:

Petition signed by 36 residents of Nipomo Mesa opposing the facility based on public safety and other grounds.

Extensive delay in response time for the SLO County Sheriff, estimated to be between 10 and 30 minutes.

Extensive gang activity in nearby Santa Maria, which has acknowledged 2500 documented criminal street gang members in their community, which will lead to gang member activity at the proposed facility as Santa Barbara County has precluded marijuana dispensaries. Ethnobotanica has stated in news articles that it will sell to "patients" in Santa Maria, which is only minutes south on Highway 101.

South County Advisory Council (SCAC) opposing the facility by an 8-2 vote.

SLO County Sheriff and SB County Sheriff opposing the facility.

The traffic on Hutton Road will be adversely impacted by the proposed facility. Traffic studies suggest the heaviest hours of activity for the facility will be PM peak hours between 4-6. Photos of delays on Hutton Road show a line of cars in the PM peak hours queuing north from the intersection with Highway 166 such that cars are delayed 13 minutes getting to this intersection. The proposed facility will contribute to this unacceptable level of delay.

Concerns with loitering, littering, trespassing, robberies, burglaries and assaults, all noted in reports to occur with respect to dispensaries.

Increase in butane distillation of marijuana, which is a highly dangerous process, including explosions and severe burn results.

The facility will result in an increase in diversion of marijuana for recreational use, including use by minors.

As the only dispensary on the Central Coast, this facility will attract out of area drug users to Nipomo, with resultant crime and traffic.

B) The proposed dispensary would be “incompatible with the health, safety or welfare of ... persons residing or working in the neighborhood of the use”;

See the foregoing findings support for Finding A.

C) The proposed dispensary would be “detrimental or injurious to property or improvements in the vicinity of the use”;

The location of the dispensary will affect property values of the neighborhood immediately to the west. These homes will necessarily have to disclose the existence of this drug facility on their sales disclosures, thereby adversely affecting their property values.

D) The proposed dispensary will be “inconsistent with the character of the immediate neighborhood” and/or “contrary to its orderly development”.

See summary of evidence outlined above.

E) The proposed dispensary will generate traffic which will exacerbate a roadway (Hutton) which is at capacity for PM peak hour use.

JK Bigelow has provided photographs and testimony concerning the near daily delays in PM peak hour traffic on southbound Hutton Road, up to 13 minutes. The proposed facility will contribute PM peak hour traffic to this already unacceptable condition.

2. Additional finding relating to State and federal law

Approval of the proposed facility would result in violation of federal and State law including encouraging sale and distribution of marijuana for profit as well as prescription and delivery of marijuana in violation of federal law as a Schedule I drug.

See the attached summary of violations of State and federal law anticipated from the operation of this business.

3. New State laws and pending regulations warrant delay in approval.

The State has adopted three new statutes (AB 243, AB 266 SB 643) which regulate the sale and growing of marijuana for medicinal purposes. (Among other things the new laws regulate dosages, labelling, restrictions on and testing for pesticide use, for example). The State has yet to adopt regulations required by the statutes. The County can choose and chooses to wait until adoption of these regulations before approving a medical marijuana facility.

Q) What is the relationship of federal law to marijuana dispensary approvals?

1. The Controlled Substances Act (Title 21 of federal regulations) lists marijuana as a Schedule I drug, listed just below opium derivatives (including heroin), under “hallucinogenic substances” just before mescaline and peyote.

“A Schedule I drug under federal law meets the following criteria:

- A) The drug or other substance has a high potential for abuse
 - B) The drug or other substance has no currently accepted medical use in treatment in the United States.
 - C) There is a lack of accepted safety for use of the drug or other substance under medical supervision.” [21 USC Section 812-Schedule of Controlled Substances]
2. As a Schedule I drug under FDA regulations, the cultivation, re-sale and prescription of marijuana is illegal under federal law. [USDEA Pharmacists Manual, Section II—“Drugs listed in Schedule I . . . may not be prescribed, administered, or dispensed for medical use.”]
 3. It is illegal under federal law to deal with a controlled substance outside federal regulations. “Under the framework of the CSA, all controlled substance transactions take place within a “closed system” of distribution established by Congress. Within this “closed system” all legitimate handlers of controlled substances—manufacturers, distributors, pharmacies, and others, must be regulated with DEA (unless exempt) and maintain strict accounting for all controlled substance transactions.” USDEA Pharmacists Manual Section I; see also Section IV, Recordkeeping Requirements
 4. A prescription for a controlled substance must include the following, per USDEA directive:
 1. Drug name
 2. Strength
 3. Dosage form
 4. Quantity prescribed
 5. Directions for use
 6. Number of refills authorized.(USDEA Pharmacist’s Manual Section XI-Valid Prescription Requirements)

Summary: Marijuana dispensaries violate federal law. It is a crime to cooperate in this endeavor. Today’s medical marijuana dispensaries do not even attempt to comply with federal law or regulations for control and prescription because they can’t. To the extent a “medical” cover is sought to support this illicit drug dealing, this Schedule I drug is “prescribed” without dosages or strength because it is impractical or impossible to do so without any clear standards. The basic prescription says “Here, go smoke and/or ingest as much of this stuff as you can manage, as often as you like in whatever doses you feel like.” This is nowhere close to responsible medicine. It is simply cover for hallucinogenic drug dealing.

Essentially hiding behind state sanction, drug dealers are pushing this hallucinogenic drug of unknown strength and toxicity to recreational and other buyers without federal reporting and without responsible

dosing. As a Schedule I drug our national laws say this drug has no proven medical use and has not been proven to be safe to use.

There are medicines approved for the same benefits marijuana users claim to need. These are well-documented and have been available for many years. One such synthetic marijuana is Dronabinol, approved for use in 1985. It comes in capsule form and is prescribed for treating nausea and vomiting associated with cancer chemotherapy, as well as weight loss. Other synthetic cannabinoids are under review with FDA. To date FDA has not approved marijuana as a medicine. Increasing medical reports question both its effectiveness in treatment and its causal linkage to psychosis and brain deformity from teen use, even occasional use. See e.g. research published by Jody Gilman, Harvard Medical School, Addiction Center and other sources listed at the website [The Other Side of Cannabis](#).

Q) What is the effect of State law on approvals of marijuana dispensary approvals?

The State of California authorizes the use of medical marijuana by virtue of several statutes (and one initiative). These regulations do not amend federal law to make marijuana a legal substance. Although federal law requires state licensing before a regulated drug can be dispensed (USDEA Pharmacists Manual, Section III), obtaining a state license does not make it lawful under federal law to manage or dispense a controlled substance, particularly a Schedule I substance.

Under Court authority from this County, no person may profit from the cultivation or distribution of marijuana. People v Sandercock 220 Cal.App.4th 733 (2013 Division Six) Ethnobotanica is run by Stephanie Kyle and Ryan Booker, a convicted felon. Ethnobotanica claims to project between \$1.5 million and \$8 million in sales. This is clearly a for-profit venture and illegal at its outset.

Marijuana remains illegal under federal law as a Schedule I drug and it is illegal to prescribe it. Even if prescribed it would have to meet federal regulations for registration of all providers and users, as well as meet criteria for dosing and labelling required under federal law for all drugs. The present practice falls far short of this by using “care-giver” cover under State law to those “non-profits” who deal to consumers.



Fw: BOS decision on marijuana store

Adam Hill, Bruce Gibson, Debbie Arnold,

Lynn Compton to: Frank Mecham, Hannah Miller, Jennifer Caffee, Vicki Shelby, Cherie McKee

11/02/2015 04:23 PM

Sent by: **Jocelyn Brennan**

Cc: cr_board_clerk Clerk Recorder

----- Forwarded by Jocelyn Brennan/BOS/COSLO on 11/02/2015 04:22 PM -----

From: <tomnelaine@charter.net>
To: "Compton Lynn" <lcompton@co.slo.ca.us>
Date: 11/02/2015 04:21 PM
Subject: BOS decision on marijuana store

Hi Lynn: The BOS will be voting tomorrow on the proposed marijuana stores south of Nipomo. I urge a NO vote for a number of reasons:

1. The security guard is unarmed
2. The law enforcement in our area consists of only 2 officers who may take time arriving at the store if there is a problem (if they are in Oceano for instance)
3. The proximity to highways 101, both south and north on ramps, also highway 166 west.
If there is a robbery it would be very easy for the thieves to make an easy getaway.
4. The ease of Santa Barbara County residents to come to our area to buy their drugs and or to commit crimes. Since Santa Barbara County has the good sense to deny the establishment of marijuana stores.
5. The residents in the nearly neighborhood completely against this store opening.

6. The age old question: If marijuana is medically beneficial, why can't you go to your doctor, get a prescription and go the pharmacy and have it filled?

We have heard the presentation to the SCAC and the reasons for and against this store. The SCAC voted to deny recommendation for the store's placement and product.

I am not representing the SCAC in this email although I am a member.

Elaine Thomas