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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO - CENTRAL DIVISION

DARRYL COTTON, an individual,

Plaintiff and Petitioner

v.

CITY OF SAN DIEGO, A Municipal Corporation; and DOES 1-100

Defendants and Respondents.

Case No.: 25CU016177C

VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND PETITION FOR WRIT OF MANDATE UNDER THE CALIFORNIA PUBLIC RECORDS ACT AND OTHER LAWS

Plaintiff and Petitioner DARRYL COTTON ("Cotton") alleges as follows:

INTRODUCTION

1. COTTON brings this action under the California Public Records Act ("CPRA"), as well as the California Constitution, the common law, and other legal authorities. COTTON has made lawful CPRA requests to Defendant/Respondents, but they have illegally failed to disclose the responsive public records.

PARTIES

2. COTTON is a resident of the City of San Diego and is acting on his own behalf as a taxpayer and a concerned citizen. COTTON is a government "watchdog" who is driven to ensure that public agencies comply with all applicable laws aimed at promoting transparency and accountability in government.

3. Defendant and Respondent CITY OF SAN DIEGO ("CITY") is a "local agency" within the meaning of Government Code Section 6252,

4. The true names and capacities of the Defendant/Respondents identified as DOES 1 through 100 are unknown to COTTON, who will seek the Court's permission to amend this pleading in

order to allege the true names and capacities as soon as they are ascertained. COTTON is informed and believes and, on that basis, alleges that each of the fictitiously names Defendants/Respondents 1 through 100 has jurisdiction by law over one or more aspects of he public records that are the subject of this lawsuit or has some other cognizable interest in the public records.

5. COTTON is informed and believes and, on that basis, alleges that, at all times stated in this pleading, each Defendant/Respondent was the agent, servant. Or employee of every other Defendant/Respondent and was, in doing the things alleged in this pleading, acting within the scope of said agency, servitude, or employment and with the full knowledge or subsequent ratification of his principals, masters and employers. Alternatively, in doing the things alleged in this pleading, each Defendant/Respondent was acting alone and solely to further his or hers own interests.

JURISDICTION and VENUE

6. The Court has jurisdiction over this lawsuit pursuant to Government Code Sections 6253, 6258 and 6259; Code of Civil Procedure Sections 526a, 1060 *et seq*., and 1084 *et seq*.; the California Constitution, and the common law, amongst other provisions of law.

7. Venue in the Court is proper because the obligations, liabilities and violations of law alleged in this pleading occurred in the County of San Diego in the State of California.

FIRST CAUSE OF ACTION:
Violation of Open-Government Laws
(Against All Defendants/Respondents)

8. The preceding allegations in this pleading are fully incorporated into this paragraph.

9. On or about February 18, 2025, COTTON caused to be submitted to CITY a request for certain public records, identified as **PRA 25-1287**, pertaining to all records related to the CITY's California Environmental Quality Act ("CEQA") program. A true and correct copy of the PRA 25-1287 request with the CITY's March 3, 2025, response is attached to this pleading as Exhibit "A."

10. CITY refused to provide any responsive documents to the request citing "The City has determined that it has no responsive documents" and closed the matter.

11. PLAINTIFF is informed and believes and, on that basis, alleges as follows:

A. The CITY did not do a thorough search for all public records responsive to PLAINTIFF'S request, including but not limited to failing to search for responsive public records maintained on the personal accounts and/or devices of public officials. By way of example and not limitation, CITY has never provided COTTON with any affidavit or any other evidence regarding if the CEQA determinations were ever applied to ANY of the Conditional Use Permit ("CUP") application processes when considering adult-use cannabis applications where the CITY had to decide whether to award or deny those applications[1].

B. The CITY has not produced public records responsive to COTTON's request. .

C. To the extent these documents may be is exempt from disclosure, CITY did nothing to assist COTTON in submitting a focused and effective request that would enable him to obtain those responsive records that are not exempt from disclosure.

12. COTTON and other members of the public have been harmed as a result of Defendants'/Respondents' failure to produce the public record responsive to COTTON's request. By way of example and not limitation, the legal rights of COTTON to access information concerning the conduct of the people's business are being violated and continue to be violated.

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[1] In an August 19, 2019, Supreme Court of California decision, UNION OF MEDICAL MARIJUANA PATIENTS, INC v. CITY OF SAN DIEGO ("UMMP") Case No. S238563 (See the "UMMP Case" at Exhibit "B") the CITY was ordered to treat these adult-use CUP applications as "projects" which are NOT exempt from CEQA determinations by the CITY when determining the environmental impact said projects may have on the environment. PRA 25-1287 was a request to see if ANY, which includes retail, distribution, cultivation and manufacturing of adult-use cannabis during a CUP application had been ordered to undergo a CEQA evaluation within the last 5 years. Upon information and belief COTTON does not believe ANY of these projects were ordered to undertake CEQA evaluations. This is particularly troubling from an environmental protection standpoint because one of the primary reasons of the November 2016 voter approved Proposition 64, the Adult Use of Marijuana Act ("AUMA") which ushered in adult-use as a licensed cannabis activity in the state and CITY was to PROTECT the environment.

The CITY's refusal to respond to this request for information is an egregious act to ignore a CA Supreme Court decision as they rush these projects to licensing completion, in some cases within sensitive use areas, for the enhanced tax benefits adult-use activities produce to the CITY without regard to the environmental consequences some of these licenses create. (See "AUMA" at Exhibit "C" Pg. 2 ¶ F)

SECOND CAUSE OF ACTION:
Declaratory Relief under Code of Civil Procedure Section 1060 *et seq.*
(Against all Defendants/Respondents)

13. The preceding allegations in this pleading are fully incorporated into this paragraph.

14. COTTON is informed, believes and on that basis, alleges an actual controversy exists between COTTON, on the one hand, and Defendants/Respondents, on the other hand, concerning their respective rights and duties under the CPRA, the California Constitution, the common law, and other applicable legal authorities. As alleged in this pleading, COTTON contends that at least public records responsive to COTTON's request exists and that Defendants/Respondents are required by law to produce each and every responsive record in a timely manner.

15. COTTON desires a judicial determination and declaration as to whether disclosable public records were unlawfully withheld by Defendants/Respondents and whether they were required by law to produce such records in a timely manner.

PRAYER

A. On the First Cause of Action;

1. A judgment determining or declaring that Defendant/Respondents have not promptly and fully complied with the CPRA, the California Constitution, the common law, and/or other applicable laws with regard to COTTON's request.

2. A writ of mandate ordering Defendant/Respondents to promptly and fully comply with the CPRA, the California Constitution, the common law, and all other applicable laws with regard to COTTON's request; and

3. Preliminary and permanent injunctive relief directing Defendants/Respondents to fully respond to COTTON's request to inspect and obtain copies of all responsive public records.

B. *On the Second Cause of Action;*

1. An order determining and declaring that the failure of Defendants/Respondents to disclose all public records responsive to COTTON's request to inspect and obtain copies of all responsive public

records responsive to COTTON's request and to permit COTTON to inspect and obtain copies of the responsive public records does not comply with the CPRA, the California Constitution, the common law, and/or other applicable laws; and

2. Preliminary and permanent injunctive relief directing Defendants/Respondents to fully respond to COTTON's request to inspect and obtain copies of all responsive public records.

C. *On All Causes of Action:*

1. That the Court, applying the doctrine of *Stare Decisis,* find the CITY, having a proven history of failing to provide responsive documents, appoint a special master to conduct a forensic audit of the CITY's responses to CPRA requests relating to adult-use cannabis licensing since the October 30, 2017, DONNA FRYE v. CITY OF SAN DIEGO ET AL, Case No. 37-2017-00041323-CU-MC-CTL VERIFIED COMPLAINT (ROA-1) and subsequent FRYE award (ROA-147) when these issues were initially brought to the Court's attention.

2. An order providing for the Court's continuing jurisdiction over this lawsuit in order to ensure that Defendants/Respondents fully comply with the CPRA, the California Constitution, the common law, and/or other applicable laws;

3. All legal expenses incurred by COTTON in connection with this lawsuit, and;

4. Any further relief that this Court may deem appropriate.

Date: March 27, 2025.

Respectfully submitted,

Darryl Cotton, in propria persona
Plaintiff/Petitioner

Attachments:

Exhibit A: March 12, 2025, CITY's Response to COTTON's PRA 25-1287
Exhibit B: April 19, 2019, UMMP v. CITY OF SAN DIEGO
Exhibit C: December 7, 2015, Amended Version of AUMA

Exhibit A

Request 25-1287

Closed

Dates

Received

February 18, 2025 via web

Requester

Darryl Cotton

151darrylcotton@gmail.com

6176 Federal Blvd , San Diego, CA, 92114

6199544447

Staff assigned

Departments

Development Services

Point of contact

Eric Wilsker

Request

Please provide me with a list of those adult-use cannabis conditional use permits that required a CEQA determination prior to being approved over the last 5 years.

Timeline | Documents

Request published — Anyone with access to this request

March 3, 2025, 9:35pm

Request closed — Anyone with access to this request

No responsive documents

The City of San Diego has no responsive documents.

February 28, 2025, 3:19pm by Eric Wilsker (Staff)

Message to requester — Requester + Staff

Greetings:

The City of San Diego has determined that it has no responsive documents.

Best regards.

February 28, 2025, 3:19pm by Eric Wilsker (Staff)

Message to requester — Requester + Staff

Please be advised that City staff have received your CPRA request. Within the next 10 days, we will determine whether your request seeks copies of disclosable records in the City's possession or whether the City will require an extension. If your request is submitted on a Saturday, Sunday, or City holiday, the City considers the request received on the following business day.

February 18, 2025, 12:11am

Department assignment — Anyone with access to this request

Development Services

February 18, 2025, 12:11am by the requester

Request opened — Anyone with access to this request

Request received via web

February 18, 2025, 12:11am by the requester

Exhibit B

IN THE SUPREME COURT OF CALIFORNIA

UNION OF MEDICAL MARIJUANA PATIENTS, INC.,
Plaintiff and Appellant,
v.
CITY OF SAN DIEGO,
Defendant and Respondent;
CALIFORNIA COASTAL COMMISSION,
Real Party in Interest.

S238563

Fourth Appellate District, Division One
D068185

San Diego County Superior Court
37-2014-00013481-CU-TT-CTL

August 19, 2019

Chief Justice Cantil-Sakauye authored the opinion of the Court, in which Justices Chin, Corrigan, Liu, Cuéllar, Kruger and Groban concurred.

UNION OF MEDICAL MARIJUANA PATIENTS, INC.,
v. CITY OF SAN DIEGO

S238563

Opinion of the Court by Cantil-Sakauye, C. J.

The California Environmental Quality Act, Public Resources Code sections 21000 et seq. (CEQA), applies to "projects," a term defined by statute. In general, a project is an activity that (1) is undertaken or funded by, or subject to the approval of a public agency and (2) may cause "either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment." (Pub. Res. Code, § 21065.)[1] Although section 21065 supplies the definition of a project, another provision of CEQA, section 21080, subdivision (a), can be interpreted to declare specified public agency activities, including the amendment of a zoning ordinance, to be a project as a matter of law, without regard to their potential for causing a physical change in the environment. In this matter, we must decide whether to adopt this interpretation of section 21080, which would prevail over section 21065 with respect to the specific public agency activities listed in section 21080.

In 2014, the City of San Diego (City) adopted an ordinance authorizing the establishment of medical marijuana

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[1] Unless indicated otherwise, all further statutory references are to the Public Resources Code.

dispensaries and regulating their location and operation. The central provisions of this ordinance amended various City zoning regulations to specify where the newly established dispensaries may be located. Because the City found that adoption of the ordinance did not constitute a project for purposes of CEQA, it did not conduct any environmental review. Petitioner Union of Medical Marijuana Patients (UMMP) challenged the City's failure to conduct CEQA review in a petition for writ of mandate, which was denied by the trial court.

On appeal, UMMP argued (1) the amendment of a zoning ordinance, one of the public agency activities listed in section 21080, is conclusively declared a project by that statute and (2) the City's ordinance, in any event, satisfied the definition of a project under section 21065. The former argument was premised in part on *Rominger v. County of Colusa* (2014) 229 Cal.App.4th 690 (*Rominger*), which relied on section 21080 in concluding that a county's approval of a tentative subdivision map, another activity listed in section 21080, was a project as a matter of law. Here, the Court of Appeal disagreed with *Rominger*, concluding that the amendment of a zoning ordinance is subject to the same statutory test as public agency activities not listed in section 21080. The court proceeded to find no error in the City's conclusion that the ordinance was not a project because it did not have the potential to cause a physical change in the environment. We granted review to resolve the conflict between the two Courts of Appeal regarding the interpretation of section 21080.

We agree with the Court of Appeal below that section 21080 does not override the definition of project found in

section 21065. Accordingly, the various activities listed in section 21080 must satisfy the requirements of section 21065 before they are found to be a project for purposes of CEQA. On the other hand, we conclude that the Court of Appeal misapplied the test for determining whether a proposed activity has the potential to cause environmental change under section 21065, which was established in *Muzzy Ranch Co. v. Solano County Airport Land Use Commission* (2007) 41 Cal.4th 372 (*Muzzy Ranch*), and erred in affirming the City's finding that adoption of the ordinance did not constitute a project. For that reason, we reverse and remand for further proceedings.

I. FACTUAL AND PROCEDURAL BACKGROUND

A. The City's Medical Marijuana Ordinance

Health and Safety Code section 11362.83, a provision of the Medical Marijuana Program (Health & Saf. Code, § 11362.7 et seq.), recognizes the authority of local governments to adopt ordinances regulating the "location, operation, or establishment of a medicinal cannabis cooperative or collective." (Health & Saf. Code, § 11362.83, subd. (a); see *Kirby v. County of Fresno* (2015) 242 Cal.App.4th 940, 956.) In 2014, the City enacted such a regulation, San Diego Ordinance No. O-20356 (Ordinance). The Ordinance amended a variety of City Municipal Code sections to authorize the establishment, and regulate the siting and operation of, "medical marijuana consumer cooperatives" (dispensaries), which were defined as "a facility where marijuana is transferred to qualified patients or primary caregivers in accordance with the Compassionate Use Act of 1996 and the Medical Marijuana Program Act." (Ord., § 1.)

The primary provisions of the Ordinance amended several of the City's zoning regulations to cap the number of dispensaries and specify where in the City they could be located. Dispensaries were added to the list of permitted uses in two of the City's six categories of commercial zones and two of the four categories of industrial zones (Ord., §§ 6, 7, 13, 15), and they were expressly excluded from open space, agricultural, and residential zones. (*Id.*, §§ 3, 4, 5.) Dispensaries were also added to the list of permitted uses in certain planned districts of the City. (*Id.*, §§ 10, 11, 13.) The Ordinance placed an upper limit of four dispensaries in any single city council district and required a dispensary to be located more than 1,000 feet from certain sensitive uses, such as parks and schools, and more than 100 feet from a residential zone. (*Id.*, § 8.) Regardless of location, the Ordinance required the grant of a conditional use permit for a dispensary's operation. (*Id.*, §§ 2, 6, 7, 8.)

In addition to defining the location of dispensaries, the Ordinance imposed basic conditions on their operation, such as prohibiting the provision of medical consultation services, requiring particular lighting and security, defining permissible signage, and limiting hours of operation. (Ord., § 8.)

Because the City contains nine city council districts, the Ordinance's limit of four dispensaries per district permitted, in theory, the establishment of 36 dispensaries. A study commissioned by the City, however, found that the other restrictions placed on the location of dispensaries by the Ordinance, such as the limitation to particular zoning districts and the minimum distance from sensitive uses, precluded the establishment of a dispensary entirely in one city council

district and limited two other districts to three dispensaries each. This left a practical maximum of 30 dispensaries. City planning staff concluded that the actual number of dispensaries to be created "is very likely to be significantly less," since "factors such as available units for rent, rental rates, overall demand for dispensaries, and proximity of potential sites to target markets would rule out some sites."

Because the City found CEQA inapplicable to the Ordinance's enactment, it conducted no environmental review prior to its adoption. The City's finding explained its reasoning: "The . . . Ordinance is not subject to [CEQA] . . . , in that it is not a Project . . . . Adoption of the ordinance does not have the potential for resulting in either a direct physical change in the environment, or reasonably for[e]seeable indirect physical change in the environment. Future projects subject to the ordinance will require a discretionary permit and CEQA review, and will be analyzed at the appropriate time in accordance with CEQA."

B. This Litigation

According to its President, UMMP is "a civil rights organization that is devoted to defending and asserting the rights of medical cannabis patients as well as promoting safe access to medical marijuana." Prior to adoption of the Ordinance, UMMP submitted two letters to the City Council objecting to the failure to conduct environmental review under CEQA. The letters argued that the Ordinance should have been found to be a project for purposes of CEQA because it had the potential to cause either a direct physical change in the environment or a reasonably foreseeable indirect physical change. (§ 21065.) According to UMMP, adoption of the

Ordinance could affect the environment because (1) restrictions on the siting of dispensaries would require "thousands of patients to drive across the City" to obtain medical marijuana; (2) the City might prosecute and close existing, unpermitted marijuana dispensaries, causing medical marijuana users to engage in the "inherently agricultural practice" of growing their own marijuana; and (3) "the unique development impacts associated with [dispensaries] [would be] shifted to certain areas of the City and intensified due to the limit on the total number of [dispensaries]."

After the City disregarded UMMP's arguments and adopted the Ordinance without further environmental review, UMMP filed a petition for writ of mandate challenging the adoption of the Ordinance under CEQA. The trial court, in an extensive written minute order, rejected UMMP's claims of the Ordinance's potential for causing environmental change, concluding there was insufficient evidence in the record to support those claims.

On appeal, UMMP repeated its argument that the Ordinance should have been considered a project as a result of its potential for physical change in the environment, but it raised the additional argument that the Ordinance should be deemed a project as a matter of law under section 21080, which states that CEQA "shall apply to discretionary projects proposed to be carried out or approved by public agencies, including, but not limited to, the enactment and amendment of zoning ordinances . . . ." (§ 21080, subd. (a).) In effect, UMMP argued, section 21080 classifies every zoning amendment as a project under CEQA, regardless of its potential for effecting environmental change. In a published opinion that will be

discussed in more detail *post*, the Court of Appeal rejected both arguments. (*Union of Medical Marijuana Patients, Inc. v. City of San Diego* (2016) 4 Cal.App.5th 103, 116, 119-124 (*Marijuana Patients*).) In doing so, the court expressly disagreed with the holding of *Rominger*, *supra*, 229 Cal.App.4th 690, that section 21080 declares the specified public agency activities to be CEQA projects as a matter of law. (*Rominger*, at pp. 702-703; *Marijuana Patients*, at p. 118.)

II. DISCUSSION

A. Governing Law

1. Statutory interpretation

Statutory interpretation is "an issue of law, which we review de novo." (*United Riggers & Erectors, Inc. v. Coast Iron & Steel Co.* (2018) 4 Cal.5th 1082, 1089.)

Our overriding purpose in construing a provision of CEQA, as with any statute, is "to adopt the construction that best gives effect to the Legislature's intended purpose." (*California Building Industry Assn. v. Bay Area Air Quality Management Dist.* (2015) 62 Cal.4th 369, 381 (*Building Industry*).) In determining that intended purpose, we follow "[s]ettled principles." (*Elk Hills Power, LLC v. Board of Equalization* (2013) 57 Cal.4th 593, 609 (*Elk Hills*).) "We consider first the words of a statute, as the most reliable indicator of legislative intent." (*Tuolumne Jobs & Small Business Alliance v. Superior Court* (2014) 59 Cal.4th 1029, 1037 (*Tuolumne Jobs*).) In doing so, we give the words "their usual and ordinary meaning," viewed in the context of the statute as a whole. (*Pineda v. Williams-Sonoma Stores, Inc.* (2011) 51 Cal.4th 524, 529.) As part of this process, " ' "[every]

statute should be construed with reference to the whole system of law of which it is a part so that all may be harmonized and have effect." ' " (*Elk Hills*, at p. 610.)

When the language of a statute is ambiguous — that is, when the words of the statute are susceptible to more than one reasonable meaning, given their usual and ordinary meaning and considered in the context of the statute as a whole — we consult other indicia of the Legislature's intent, including such extrinsic aids as legislative history and public policy. (*Ceja v. Rudolph & Sletten, Inc.* (2013) 56 Cal.4th 1113, 1119; *Elk Hills*, *supra*, 57 Cal.4th at pp. 609-610.) If there is no ambiguity, " ' " 'we presume the Legislature meant what it said and the plain meaning of the statute governs.' " ' " (*Ceja*, at p. 1119.)

In construing provisions of CEQA, two unique considerations apply. First, CEQA is implemented by an extensive series of administrative regulations promulgated by the Secretary of the Natural Resources Agency, ordinarily referred to as the "CEQA Guidelines."[2] (Guidelines, § 15000.) Through long practice, we "afford great weight to the Guidelines except when a provision is clearly unauthorized or erroneous under CEQA." (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 391, fn. 2; see *Building Industry*, *supra*, 62 Cal.4th at p. 381.) Second, from CEQA's inception we have held that "the

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[2] We will cite and refer to CEQA's implementing regulations, codified at title 14, division 6, chapter 3 of the California Code of Regulations, as the "Guidelines."

Legislature intended . . . [C]EQA to be interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language." (*Friends of Mammoth v. Board of Supervisors* (1972) 8 Cal.3d 247, 259; see *Building Industry*, at p. 381.)

2. CEQA generally

"CEQA was enacted to advance four related purposes: to (1) inform the government and public about a proposed activity's potential environmental impacts; (2) identify ways to reduce, or avoid, environmental damage; (3) prevent environmental damage by requiring project changes via alternatives or mitigation measures when feasible; and (4) disclose to the public the rationale for governmental approval of a project that may significantly impact the environment." (*Building Industry*, *supra*, 62 Cal.4th at p. 382.) "CEQA embodies a central state policy to require state and local governmental entities to perform their duties 'so that major consideration is given to preventing environmental damage.' [Citations.] [¶] CEQA prescribes how governmental decisions will be made when public entities, including the state itself, are charged with approving, funding — or themselves undertaking — a project with significant effects on the environment." (*Friends of the Eel River v. North Coast Railroad Authority* (2017) 3 Cal.5th 677, 711-712, italics omitted (*Eel River*).)

"CEQA review is undertaken by a lead agency, defined as 'the public agency which has the principal responsibility for carrying out or approving a project which may have a significant effect upon the environment.' " (*Eel River*, *supra*, 3 Cal.5th at p. 712, quoting § 21067, italics omitted.)

A putative lead agency's implementation of CEQA proceeds by way of a multistep decision tree, which has been characterized as having three tiers. (*Muzzy Ranch*, *supra*, 41 Cal.4th at p. 380.) First, the agency must determine whether the proposed activity is subject to CEQA at all. Second, assuming CEQA is found to apply, the agency must decide whether the activity qualifies for one of the many exemptions that excuse otherwise covered activities from CEQA's environmental review. Finally, assuming no applicable exemption, the agency must undertake environmental review of the activity, the third tier.[3] (*Muzzy Ranch*, at pp. 380-381.) We examine the three-tier process in more detail below.

CEQA's applicability: When a public agency is asked to grant regulatory approval of a private activity or proposes to fund or undertake an activity on its own, the agency must first decide whether the proposed activity is subject to CEQA. (Guidelines, § 15060, subd. (c).) In practice, this requires the agency to conduct a preliminary review to determine whether the proposed activity constitutes a "project" for purposes of CEQA. (*Tuolumne Jobs*, *supra*, 59 Cal.4th at p. 1037; see § 21065; Guidelines, § 15378, subd. (a) [both defining

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[3] In a very early CEQA case, *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, we described the three tiers differently, disregarding the project step and dividing the third tier into two parts, the preparation of an initial study and, if required, an environmental impact report (EIR). (*Id.* at p. 74.) Because the initial study and EIR are both aspects of environmental review, we find the *Muzzy Ranch* characterization more helpful in understanding CEQA's procedures.

"project".) If the proposed activity is found not to be a project, the agency may proceed without further regard to CEQA.[4] (*Muzzy Ranch*, *supra*, 41 Cal.4th at p. 380; Guidelines, § 15060, subd. (c)(3) [if a proposed activity does not qualify as a project, it "is not subject to CEQA".)

Exemption from environmental review: If the lead agency concludes it is faced with a project, it must then decide "whether the project is exempt from the CEQA review process under either a statutory exemption [citation] or a categorical exemption set forth in the CEQA Guidelines." (*Building Industry*, *supra*, 62 Cal.4th at p. 382.) The statutory exemptions, created by the Legislature, are found in section 21080, subdivision (b). Among the most important exemptions is the first, for "[m]inisterial" projects, which are defined generally as projects whose approval does not require an agency to exercise discretion. (§ 21080, subd. (b)(1); Guidelines, § 15369; see *Sierra Club v. County of Sonoma* (2017) 11 Cal.App.5th 11, 19-20 (*Sierra Club*).) The categorical exemptions, found in Guidelines sections 15300 through 15333, were promulgated by the Secretary for Natural Resources in response to the Legislature's directive to develop "a list of

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[4] Courts have often labeled the project decision "jurisdictional" because it determines whether CEQA applies at all. (*Muzzy Ranch*, *supra*, 41 Cal.4th at p. 380; *Davidon Homes v. City of San Jose* (1997) 54 Cal.App.4th 106, 112.) The term is inapposite because an agency's jurisdiction over a proposed activity does not depend upon the application of CEQA. Nonetheless, its use conveys the preliminary nature of the project determination.

classes of projects which have been determined not to have a significant effect on the environment." (§ 21084, subd. (a); Guidelines, § 15354; see generally, *Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, 1100-1101 (*Berkeley Hillside*).) If the lead agency concludes a project is exempt from review, it must issue a notice of exemption citing the evidence on which it relied in reaching that conclusion. (*Muzzy Ranch*, *supra*, 41 Cal.4th at pp. 380, 386-387.) The agency may thereafter proceed without further consideration of CEQA.

Environmental review: Environmental review is required under CEQA only if a public agency concludes that a proposed activity is a project and does not qualify for an exemption. In that case, the agency must first undertake an initial study to determine whether the project "may have a significant effect on the environment." (Guidelines, § 15063, subd. (a); *Friends of the College of San Mateo Gardens v. San Mateo County Community College Dist.* (2016) 1 Cal.5th 937, 945 (*San Mateo Gardens*).) If the initial study finds no substantial evidence that the project may have a significant environmental effect, the lead agency must prepare a negative declaration, and environmental review ends. (§ 21080, subd. (c)(1); *San Mateo Gardens*, at p. 945.) If the initial study identifies potentially significant environmental effects but (1) those effects can be fully mitigated by changes in the project and (2) the project applicant agrees to incorporate those changes, the agency must prepare a *mitigated* negative declaration. This too ends CEQA review. (§ 21080, subd. (c)(2); *San Mateo Gardens*, at p. 945.) Finally, if the initial study finds substantial evidence that the project may have a significant environmental impact and a

mitigated negative declaration is inappropriate, the lead agency must prepare and certify an environmental impact report before approving or proceeding with the project. (§ 21080, subd. (d); *Building Industry*, *supra*, 62 Cal.4th at p. 382.)

3. The Court of Appeal's decision

At issue before the Court of Appeal was the first tier in the CEQA process, the determination by a putative lead agency whether a proposed activity constitutes a project. In particular, the court was asked to decide whether a public agency's amendment of a zoning ordinance constitutes a project as a matter of law.

As suggested *ante*, two separate provisions of the Public Resources Code are potentially relevant to this question. "Project" is defined in section 21065 as an activity (1) undertaken or funded by or requiring the approval of a public agency that (2) "may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment."[5] (See *Sunset*

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[5] The full text of section 21065 follows:

" 'Project' means an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and which is any of the following:

"(a) An activity directly undertaken by any public agency.

"(b) An activity undertaken by a person which is supported, in whole or in part, through contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies.

Sky Ranch Pilots Assn. v. County of Sacramento (2009) 47 Cal.4th 902, 907 (*Sky Ranch Pilots*).) The controversy arises because a related statute, section 21080, can be interpreted to override section 21065 with respect to the classification of zoning ordinance amendments and certain other public agency activities: "Except as otherwise provided in this division, this division shall apply to discretionary *projects* proposed to be carried out or approved by public agencies, *including, but not limited to, the enactment and amendment of zoning ordinances,* the issuance of zoning variances, the issuance of conditional use permits, and the approval of tentative subdivision maps unless the project is exempt from this division." (§ 21080, subd. (a), italics added.) As UMMP argued, this language can be read to classify the various listed agency activities as "discretionary projects" in every case, regardless of their potential for bringing about a physical change in the environment.

The Court of Appeal rejected UMMP's argument that "*any* enactment of a zoning ordinance by a public agency *necessarily* constitutes a project." (*Marijuana Patients*, *supra*, 4 Cal.App.5th at p. 114.) The court began its analysis by concluding that section 21080's listing of various local agency activities is ambiguous. As the court viewed it, the Legislature could have intended either "that the examples given . . . are illustrations of activities that are 'discretionary projects

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"(c) An activity that involves the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies."

proposed to be carried out or approved by public agencies,' *or* . . . are illustrations of activities 'proposed to be carried out or approved by public agencies,' but that not all such activities will qualify as 'discretionary projects.' " (*Marijuana Patients*, at p. 115.) The court rejected the first reading on the basis of section 21065. It noted that section 21065 defines a project as having two characteristics, the potential to cause a physical change in the environment and the involvement of a public agency. To harmonize the "more specific provision" of section 21065 with the "more general provision" of section 21080, the court held that the "most reasonable interpretation" of section 21080, subdivision (a), is that the various listed public agency activities are examples of " '[a]n activity directly undertaken by any public agency' as set forth in section 21065, but that the enactment or amendment of a zoning ordinance will not constitute a CEQA project unless it *also* meets the second requirement in section 21065, namely that it 'may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.' " (*Marijuana Patients*, at p. 116.)

The court found support for its interpretation in Guidelines section 15378. (*Marijuana Patients*, *supra*, 4 Cal.App.5th at p. 116.) As noted above, the Guidelines are "afford[ed] great weight" in interpreting CEQA. (*Building Industry*, *supra*, 62 Cal.4th at p. 381.) In defining "project," Guidelines section 15378, subdivision (a)(1) partially melds sections 21065 and 21080: " 'Project' means the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and

that is any of the following: [¶] (1) An activity directly undertaken by any public agency including but not limited to public works construction and related activities[,] clearing or grading of land, improvements to existing public structures, enactment and amendment of zoning ordinances, and the adoption and amendment of local General Plans or elements thereof . . . ."[6] Although Guidelines section 15378 includes an express reference to the enactment or amendment of a zoning ordinance, it classifies those activities merely as examples of "activit[ies] directly undertaken by any public agency." (*Id.*, subd. (a)(1).) The requirement that an activity have the potential to cause a change in the environment is classified by

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[6] The complete text of Guidelines section 15378, subdivision (a), is as follows:

" 'Project' means the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and that is any of the following:

"(1) An activity directly undertaken by any public agency including but not limited to public works construction and related activities[,] clearing or grading of land, improvements to existing public structures, enactment and amendment of zoning ordinances, and the adoption and amendment of local General Plans or elements thereof pursuant to Government Code Sections 65100-65700.

"(2) An activity undertaken by a person which is supported in whole or in part through public agency contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies.

"(3) An activity involving the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies."

Guidelines section 15378 as an independent element of "project," applicable whether or not the activity is listed in section 21080. "Thus," the Court of Appeal concluded, "under the CEQA Guidelines, the enactment and amendment of a zoning ordinance is a project *only if* that action *also* creates 'a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.' " (*Marijuana Patients*, *supra*, at p. 116.)

The Court of Appeal rejected the contrary conclusion of *Rominger*, *supra*, 229 Cal.App.4th 690, because that court's "analysis ignores the definition of a project as set forth in CEQA and the CEQA Guidelines." (*Marijuana Patients*, *supra*, 4 Cal.App.5th at p. 118.) *Rominger*, in holding that a county's approval of a tentative subdivision map constituted a project as a matter of law under section 21080, did not base its ruling on an analysis of the respective texts of sections 21065 and 21080. Rather, it looked to our observation in *Muzzy Ranch*, *supra*, 41 Cal.4th 372, that "[w]hether an activity constitutes a project subject to CEQA is a categorical question respecting whether the activity is of a general kind with which CEQA is concerned, without regard to whether the activity will actually have environmental impact." (*Id.* at p. 381.) Taking this principle as its guide, *Rominger* concluded that "the Legislature has determined [in section 21080, subdivision (a)] that certain activities, including the approval of tentative subdivision maps, *always* have at least the *potential* to cause a direct physical change or a reasonably foreseeable indirect physical change in the environment." (*Rominger*, at p. 702.) In reaching this conclusion, *Rominger* did not, as *Marijuana*

Patients rightly noted, take into account the language of section 21065 or otherwise attempt to reconcile the two statutes.

Having held that the Ordinance was not a project unless it had the potential to cause a direct or reasonably foreseeable indirect physical change in the environment, as required by section 21065, the Court of Appeal proceeded to consider UMMP's argument that the City erred in concluding that the Ordinance did not have that potential. (*Marijuana Patients*, *supra*, 4 Cal.App.5th at p. 119.) UMMP effectively conceded that the Ordinance did not have the potential to cause a direct physical change (*Marijuana Patients*, at p. 113), but it contended, as noted above, that the Ordinance had the potential to cause various indirect effects, namely, increased traffic from patients driving to the new dispensaries, increased self-cultivation of marijuana, and changed patterns of urban development within the City. (*Marijuana Patients*, at p. 120.) After evaluating each of the claimed indirect effects individually, the court concluded that all were too speculative or lacking in evidentiary support in the administrative record to permit a finding that they were reasonably foreseeable, as required by section 21065. (*Marijuana Patients*, at pp. 120-124.) Finding no error in the City's determination that CEQA was inapplicable, the Court of Appeal affirmed the trial court's denial of a writ of mandate. (*Marijuana Patients*, at p. 124.)

B. Whether Section 21080 Conclusively Declares the Amendment of a Zoning Ordinance To Be a CEQA "Project"

We agree with the Court of Appeal that section 21080 does not dictate the result here as a matter of law, and we agree for essentially the reasons cited by that court.[7]

As the Court of Appeal concluded, section 21080's statement that CEQA applies to "discretionary projects proposed to be carried out or approved by public agencies," followed by its listing of the amendment of a zoning ordinance as an example, is ambiguous, at least when considered in isolation. It is unclear from the text of section 21080 whether the amendment of a zoning ordinance, as well as the other listed activities, are examples of "discretionary projects" to

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[7] The City urges us to dismiss this appeal as moot on the basis of Business and Professions Code section 26055, subdivision (h), enacted after we granted review (Stats. 2017, ch. 27, § 41), which exempts from CEQA a public agency's enactment of any regulation that requires discretionary review of licenses to engage in "commercial cannabis activity." The City does not argue that subdivision (h) applies retroactively to exempt the Ordinance from CEQA, and we offer no opinion on that issue. Instead, the City contends that UMMP can no longer be granted effective relief because the City could re-enact the Ordinance without environmental review. (See *In re David B.* (2017) 12 Cal.App.5th 633, 644 [a matter becomes moot if effective relief can no longer be granted].) We reject the argument because the trial court can still grant some of the relief requested by UMMP by vacating the City's approval of the Ordinance, if such relief is appropriate. (See *Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116, 127 [matter not moot because petitioner "can still be awarded the relief it seeks, an order that [the] [c]ity set aside its approvals"].)

which CEQA *does* apply, or whether they are examples of discretionary activities "proposed to be carried out or approved by public agencies" to which CEQA *might* apply.

When interpreting the provisions of CEQA, however, we do not consider them in isolation, but in the context of the entire statute. (*Tuolumne Jobs*, *supra*, 59 Cal.4th 1029, 1037.) Within CEQA, "project" is not merely a word; it is a defined term. " 'If the Legislature has provided an express definition of a term, that definition ordinarily is binding on the courts.' " (*State ex rel. Dept. of California Highway Patrol v. Superior Court* (2015) 60 Cal.4th 1002, 1011.) As a corollary of this principle, "[t]erms defined by the statute in which they are found will be presumed to have been used in the sense of the definition." (*Faulder v. Mendocino County Bd. of Supervisors* (2006) 144 Cal.App.4th 1362, 1371.) In the case of CEQA, this judicial presumption is legislatively mandated. Section 21060 expressly states that CEQA's definitions "govern the construction of this division."

Applying this principle of interpretation, we must assume that in using the defined term "project" in section 21080, the Legislature intended it to bear the definition assigned in section 21065. Accordingly, the first portion of section 21080, subdivision (a) — "Except as otherwise provided in this division, this division shall apply to discretionary projects proposed to be carried out or approved by public agencies" — must be understood to mean that CEQA applies to activities proposed to be carried out or approved by a public agency that both (1) are discretionary and (2) satisfy the requirements for a project under section 21065. Although all of the exemplary activities listed in section 21080 necessarily

satisfy section 21065's requirement of public agency involvement, there is no reason to conclude that they invariably satisfy its requirement of the potential to cause a physical change in the environment. For that reason, we must interpret the listing of public agency activities in section 21080, subdivision (a), merely to offer generic examples of the type of "discretionary [activities] proposed to be carried out or approved by public agencies" to which CEQA *could* apply. CEQA *does* apply only to activities that qualify as projects — in other words, to specific examples of the listed activities that have the potential to cause, directly or indirectly, a physical change in the environment.

UMMP has not suggested any reason why the ordinary presumption requiring a defined term to carry that meaning should not apply in these circumstances, and we aware of none. As noted, the definition in section 21065 is legislatively mandated to apply to section 21080, as well as to the remainder of CEQA. (§ 21060.) Nothing in section 21080 suggests that the Legislature intended to exempt the listed activities from satisfying the requirements for a project. On the contrary, its use of the defined term "project," rather than a generic term such as "activity," suggests that the Legislature intended to incorporate the defined concept. Finally, using the defined meaning does not result in an absurdity or otherwise impair the enforcement of CEQA. It simply confirms that the public agency activities listed in section 21080 must satisfy the same requirement applicable to nonlisted activities before they are subject to CEQA, the requirement of potential for physical change in the environment. (See § 21065.)

Because the plain language of section 21080 is unambiguous when evaluated in context, it is unnecessary for us to consider other indicia of meaning. Yet it is worth noting that other available indicia support our interpretation. First and most important, as the Court of Appeal recognized, our interpretation is consistent with that of the Secretary for Natural Resources in the Guidelines, to which we must "afford great weight." (*Building Industry*, *supra*, 62 Cal.4th at p. 381.) In defining "project," the Guidelines impose the requirement of a potential for causing a physical change in the environment on all public agency activities. (Guidelines, § 15378, subd. (a).) Although Guidelines section 15378 mentions enactment and amendment of a zoning ordinance, activities also mentioned in section 21080, it cites those activities merely as examples of activities "directly undertaken by any public agency" (§ 15378, subd. (a)(1)), a usage equivalent to our understanding of the significance of the list of activities in section 21080. Guidelines section 15378 does not suggest that the enactment or amendment of a zoning ordinance constitutes a project without regard to its potential for causing environmental change.

Policy considerations favor this interpretation as well. Finding a proposed activity subject to CEQA can lead to additional costs, in time and money, for both a public agency and a private applicant. (*Sky Ranch Pilots*, *supra*, 47 Cal.4th 902, 909.) As section 21065 recognizes, there is no reason to impose those costs by subjecting a proposed activity to CEQA if the activity does not have the potential to affect the environment. Declaring all of the activities listed in section 21080 to be a project would necessarily subject them to these

incremental costs without regard to their potential for causing an environmental impact.

The legislative history of sections 21065 and 21080 also supports our conclusion. As originally enacted, section 21065 defined "project" merely as an activity undertaken, financed or subject to approval by a government agency, using the text now contained in subdivisions (a) through (c) of the statute. (Stats. 1972, ch. 1154, § 1, pp. 2271-2272.) The statute did not contain the further requirement that a proposed activity have the potential to cause environmental change. At that time, section 21080, subdivision (a) was materially identical to its present text. (Stats. 1972, ch. 1154, § 1, p. 2272.) Accordingly, the local government activities listed in section 21080 necessarily constituted examples of "projects," since all land use regulations and approvals constituted projects under the version of section 21065 in effect at the time.[8] In 1994, section 21065 was amended to its present form, limiting "projects" to governmental activities that posed the possibility of an environmental effect. (Stats. 1994, ch. 1230, § 4, p. 7682.) The purpose of the amendment was to "prohibit CEQA from being used to delay or kill [activities] that have no direct or indirect effect on the environment" by narrowing the definition of project. (Assem. Natural Resources Com., Republican Analysis of Sen. Bill No. 749 (1993-1994 Reg. Sess.) Aug. 22, 1994, p. 1.)

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[8] The significance of the list in section 21080 was presumably to classify the activities as "discretionary" projects, which made them ineligible for the ministerial exemption under section 21080, subdivision (b).

To continue to treat all of the activities listed in section 21080 as "projects" following this amendment of section 21065, regardless of their potential for producing an environmental change, would entirely defeat the narrowing purpose of the amendment, at least as far as the listed activities are concerned.

The *Rominger* court, in holding that section 21080 declared all tentative subdivision map approvals to be projects, explained its reasoning in part by noting, "Presumably no one goes to the trouble of subdividing property just for the sake of the process; the goal of subdividing property is to make that property more useable. And with the potential for greater or different use comes the potential for environmental impacts from that use." (*Rominger*, *supra*, 229 Cal.App.4th at p. 702.) Even assuming this to be true with respect to tentative subdivision maps, the rationale supports *Rominger*'s statutory interpretation only if the same logic also holds for the other public agency activities listed in section 21080. It does not. As amici curiae League of California Cities and California State Association of Counties point out, many types of local government regulations are labeled "zoning ordinances," covering a wide range of regulatory subjects. Whether the enactment or amendment of a regulation denominated a "zoning ordinance" carries the potential for environmental change depends entirely on the nature of the particular regulation. A potential environmental effect cannot be presumed solely from the label applied to it. The same point applies with equal force to the two other activities listed in section 21080, zoning variances and conditional use permits. Neither can reliably be presumed to have the potential to

create environmental change. To subject such activities to CEQA as a matter of course serves no obvious public policy purpose.

It might be objected that this interpretation of section 21080, subdivision (a), strips the provision of its legal significance, rendering it surplusage (e.g., *Berkeley Hillside*, *supra*, 60 Cal.4th 1086, 1097 [we should avoid "interpretations that render any language surplusage"]), but that argument misunderstands the significance of section 21080 within CEQA. Section 21080, subdivision (a) establishes that CEQA applies to activities proposed to be carried out or approved by a public agency that are (1) discretionary and (2) satisfy the requirements for a project. This limitation to activities requiring the exercise of agency discretion is not otherwise reflected in CEQA, at least as stated in the affirmative. The only other statutory reference occurs by negative inference from the exemption for ministerial activities, which are defined as activities *not* requiring an agency's exercise of discretion. (*Sierra Club*, *supra*, 11 Cal.App.5th at pp. 19-20.) Not by coincidence, this exemption is contained in subdivision (b)(1) of section 21080, the subdivision immediately following the statute's reference to "discretionary projects."[9] Because it establishes the requirement of discretionary agency action, section 21080, subdivision (a) retains a legal significance

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[9] As originally enacted, section 21080 consisted of the present text of subdivision (a) and a single exemption, the ministerial exemption, which was codified as subdivision (b). (Stats. 1972, ch. 1154, § 1, p. 2272.)

independent of its purported classification of the agency activities it specifies.

UMMP relies on *Rominger*, *supra*, 229 Cal.App.4th 690, in arguing that our decision in *Muzzy Ranch*, *supra*, 41 Cal.4th 372, dictates the conclusion that section 21080 declares the listed public agency activities to be a project as a matter of law. Again, we do not agree. *Muzzy Ranch* did not address, or even purport to consider, the question before us. Because the activity of concern in *Muzzy Ranch* was a local agency's approval of a land use compatibility plan (*Muzzy Ranch*, at p. 378), an activity not mentioned in section 21080, we had no reason to construe that statute, and the decision mentions section 21080 only once, in a general discussion of statutory exemptions. (*Muzzy Ranch*, at p. 380.) *Muzzy Ranch* is in no way binding in the present circumstances.[10]

We recognize that the *Muzzy Ranch* observation cited by *Rominger*, "[w]hether an activity constitutes a project subject to CEQA is a *categorical question* respecting whether the activity is of a *general kind* with which CEQA is concerned," may be interpreted to suggest that certain types of activities can be considered projects as a matter of law. (*Muzzy Ranch*, *supra*, 41 Cal.4th at p. 381, italics added.) Yet the decision does not so state. Other than its particular choice of phrase,

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10 For reasons stated in the text, we disapprove *Rominger v. County of Colusa*, *supra*, 229 Cal.App.4th 690, to the extent it holds that the various public agency activities listed in section 21080, subdivision (a), are conclusively declared to be CEQA projects.

there is no indication in *Muzzy Ranch* that the description of the project decision as a "categorical question" was intended to imply that entire categories of local governmental activities may be deemed projects, without consideration of their individual substance. Instead, as discussed further below, that characterization was intended to convey the relatively abstract and preliminary nature of the project decision.

C. Whether the Ordinance Is the Sort of Activity That May Cause a Direct or Indirect Physical Change in the Environment

Because we conclude that section 21080 does not declare every zoning amendment to be a CEQA project as a matter of law, we must, like the Court of Appeal, review the City's conclusion that the Ordinance did not qualify as a project under section 21065. On this issue, we part ways with the Court of Appeal.

The governing decision is *Muzzy Ranch*, *supra*, 41 Cal.4th 372. The lead agency in *Muzzy Ranch* was a Solano County commission (commission) established to regulate land uses associated with county airports. (*Id.* at p. 378.) The activity of concern was the commission's adoption of the Travis Air Force Base land use compatibility plan (TALUP), which set out model land use policies for portions of the county neighboring the military air base. The policies were designed " 'to ensure that future land uses in the surrounding area will be compatible with the realistically foreseeable, ultimate potential aircraft activity at the base.' " (*Ibid.*) The *Muzzy Ranch* plaintiff was particularly concerned with the TALUP's model policy for a 600-square-mile area exposed to low altitude overflights by aircraft using the base. The policy, which did

not apply to developed areas within existing city limits, "purport[ed] to restrict residential development within [areas subject to overflights] to levels currently permitted under existing general plans and zoning regulations. Specifically, the TALUP state[d] that '[n]o amendment of a general plan land use policy or land use map designation and no change of zoning shall be permitted if such amendment or change would allow more dwelling units in the affected area than are allowed under current zoning.' " (*Muzzy Ranch*, at p. 379.)

In approving the TALUP, the commission initially adopted a resolution finding that the approval was not a project under CEQA because the TALUP would not cause a direct or reasonably foreseeable indirect physical change in the environment. (*Muzzy Ranch*, *supra*, 41 Cal.4th at p. 378.) Five days later, the commission also adopted a CEQA notice of exemption, finding that the TALUP's adoption "created '[n]o possibility of significant effect on the environment.' " (*Id.* at p. 379.) *Muzzy Ranch* reviewed both the commission's conclusion that TALUP's approval was not a project and its finding that, if a project, the approval was exempt from environmental review.

As noted above, we began our discussion of the TALUP's status as a project by observing, "Whether an activity constitutes a project subject to CEQA is a categorical question respecting whether the activity is of a general kind with which CEQA is concerned, without regard to whether the activity will actually have environmental impact." (*Muzzy Ranch*, *supra*, 41 Cal.4th at p. 381.) Because there was no question the commission's approval satisfied section 21065's requirement of public agency involvement, we addressed only "whether the

Commission's adoption of the TALUP is the sort of activity that may cause a direct physical change or a reasonably foreseeable indirect physical change in the environment." (*Muzzy Ranch*, at p. 382.)

On this issue, the plaintiff contended that the TALUP's limitation of development in the relevant area to existing approved levels could cause intensified development in other parts of the county, a phenomenon referred to as "displaced development." (*Muzzy Ranch*, *supra*, 41 Cal.4th at p. 382.) The commission responded that such effects were "inherently too speculative to be considered a reasonably foreseeable effect of an airport land use compatibility plan." (*Ibid.*) We began our analysis by recognizing that "no California locality is immune from the legal and practical necessity to expand housing due to increasing population pressures." (*Id.* at p. 383.) Given this expectation of growth, we reasoned that a local agency "may reasonably anticipate that its placing a ban on development in one area of a jurisdiction may have the consequence, notwithstanding existing zoning or land use planning, of displacing development to other areas of the jurisdiction." (*Ibid.*) On that reasoning alone, we held that the TALUP's approval might cause a reasonably foreseeable indirect physical change in the environment and therefore constituted a project. (*Ibid.*)

Our analysis of the commission's notice of exemption was quite different. In finding the TALUP exempt from environmental review, the commission relied on the "commonsense" exemption of the Guidelines, which applies "[w]here it can be seen with certainty that there is no possibility that the activity in question may have a significant

effect on the environment." (Guidelines, § 15061, subd. (b)(3).) In contrast to the decision under section 21065, which we treated as an issue of law, *Muzzy Ranch* held that the TALUP's eligibility for the commonsense exemption "presents an issue of fact, and . . . the agency invoking the exemption has the burden of demonstrating it applies." (*Muzzy Ranch*, *supra*, 41 Cal.4th at p. 386.) Applying this standard of review, we held that the commission correctly found that the commonsense exemption applied, notwithstanding our conclusion that the TALUP's *possible* environmental impact was sufficient to require its treatment as a project. As we reasoned, "When approving a project that is consistent with a community plan, general plan, or zoning ordinance for which an environmental impact report already has been certified, a public agency need examine only those environmental effects that are peculiar to the project and were not analyzed or were insufficiently analyzed in the prior environmental impact report." (*Id*. at pp. 388-389.) In restricting growth in areas of the county affected by overflights, the TALUP merely incorporated limits already imposed by existing general plan and zoning provisions. (*Id*. at p. 389.) As a result, "any potential displacement the TALUP might otherwise have effected already has been caused by the existing land use policies and zoning regulations to which the TALUP is keyed." (*Ibid*.)

Under *Muzzy Ranch*, a local agency's task in determining whether a proposed activity is a project is to consider the potential environmental effects of undertaking the type of activity proposed, "without regard to whether the activity will actually have environmental impact." (*Muzzy*

Ranch, *supra*, 41 Cal.4th at p. 381.) Applying this test, our discussion of the TALUP's status as a project was brief and straightforward. We made no reference to any evidence in the record bearing on the *actual* impact of the TALUP on development in Solano County. Instead, the decision restricted itself to an examination of the potential effects that could reasonably be anticipated from adopting a land use policy of the type contained in the TALUP. Reasoning that population growth and resulting development can be anticipated in California counties, and that a policy capping development in one area might be expected to divert this growth to other areas of a county, we found the TALUP to be the sort of activity that could result in a physical change in the environment. (*Id*. at p. 383.)

To encapsulate the *Muzzy Ranch* test, a proposed activity is a CEQA project if, by its general nature, the activity is capable of causing a direct or reasonably foreseeable indirect physical change in the environment. This determination is made without considering whether, under the specific circumstances in which the proposed activity will be carried out, these potential effects will actually occur. Consistent with this standard, a "reasonably foreseeable" indirect physical change is one that the activity is capable, at least in theory, of causing. (Guidelines, § 15064, subd. (d)(3).) Conversely, an indirect effect is not reasonably foreseeable if there is no causal connection between the proposed activity and the suggested environmental change or if the postulated causal mechanism connecting the activity and the effect is so attenuated as to be "speculative." (*Ibid*.; e.g., *City of Livermore v. Local Agency Formation Com.* (1986) 184 Cal.App.3d 531, 541-543

[amendment of local agency formation commission guidelines to permit urban development outside cities constitutes a project]; *Kaufman & Broad-South Bay, Inc. v. Morgan Hill Unified School Dist.* (1992) 9 Cal.App.4th 464, 474 [creation of a Mello-Roos district for the purposes of funding an anticipated future school system in an undeveloped portion of the city not a project because "the causal link between the [formation of the district] and the alleged environmental impact (construction of new schools) is missing"].)

The somewhat abstract nature of the project decision is appropriate to its preliminary role in CEQA's three-tiered decision tree. Determination of an activity's status as a project occurs at the inception of agency action, presumably before any formal inquiry has been made into the actual environmental impact of the activity. The question posed at that point in the CEQA analysis is not whether the activity will affect the environment, or what those effects might be, but whether the activity's potential for causing environmental change is sufficient to justify the further inquiry into its actual effects that will follow from the application of CEQA. If the proposed activity is the sort that is capable of causing direct or reasonably foreseeable indirect effects on the environment, some type of environmental review is justified, and the activity must be deemed a project. CEQA analysis is then undertaken to evaluate the likelihood and nature of the project's environmental impacts, in order to determine the extent of environmental review required.

Only as so understood is the nature of the project decision consistent with the scope of appellate review. As noted, we evaluate that decision as a question of law, rather

than fact, to be decided on "undisputed data in the record on appeal." (*Muzzy Ranch*, *supra*, 41 Cal.4th at p. 382; see *San Mateo Gardens*, *supra*, 1 Cal.5th at p. 952 [whether an activity constitutes a project under CEQA is "a predominantly legal question"].) Given the often disputed nature of the real-world environmental impacts of a typical project and the discretion invested in an agency to make related factual findings, the environmental effects of a proposed activity can be reviewed as a matter of law only if the analysis is restricted to the effects that the activity is capable of causing, rather than those it actually will cause if implemented.

Our understanding of *Muzzy Ranch* is therefore somewhat different from *Rominger*'s understanding, which UMMP urges here. UMMP argues that *Muzzy Ranch*'s reference to "a categorical question respecting whether the activity is of a general kind with which CEQA is concerned" (*Muzzy Ranch*, *supra*, 41 Cal.4th at p. 381) makes it unnecessary to consider the substance of a proposed activity. Instead, UMMP argues, it is sufficient to know the nature of the agency action involved — for example, approval of a zoning amendment or of a permit for private land development. On the contrary, as our discussion demonstrates, *Muzzy Ranch* clearly requires a public agency to consider the substance of a proposed activity in determining its status as a project. What need not be considered is the activity's actual impact in the specific circumstances presented. As *Muzzy Ranch* noted, the analysis is conducted "without regard to whether the activity will *actually* have environmental impact." (*Ibid.*, italics added.) Similarly irrelevant is the specific type of governmental action required, so long as the proposed activity

satisfies one of the criteria for governmental involvement established in section 21065, subdivisions (a) through (c).[11]

Applying the foregoing test, we conclude the City erred in determining that the adoption of the Ordinance was not a project. Prior to the Ordinance, no medical marijuana dispensaries were legally permitted to operate in the City. The Ordinance therefore amended the City's zoning regulations to permit the establishment of a sizable number of retail businesses of an entirely new type. Although inconsistency with prior permissible land uses is not necessary for an activity to constitute a project (see *Muzzy Ranch*, *supra,* 41 Cal.4th at p. 388), establishment of these new businesses is capable of causing indirect physical changes in the environment. At a minimum, such a policy change could foreseeably result in new retail construction to accommodate the businesses. In addition, as UMMP suggests, the establishment of new stores could cause a citywide change in patterns of vehicle traffic from the businesses' customers, employees, and suppliers. The necessary causal connection between the Ordinance and these effects is present because adoption of the Ordinance was "an essential step culminating in action [the establishment of new

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[11] The characterization of the project decision in *Muzzy Ranch* as a "categorical question" derives from the description of the relevant question as whether "the activity is of a *general kind* with which CEQA is concerned." (*Muzzy Ranch*, *supra*, 41 Cal.4th at p. 381, italics added.) Given the demonstrated potential for confusion in using the term, however, we now refrain from characterizing the project decision as a "categorical question." This will also avoid any confusion with "categorical exemptions," an unrelated concept.

businesses] which may affect the environment." (*Fullerton Joint Union High School Dist. v. State Board of Education* (1982) 32 Cal.3d 779, 797 (*Fullerton*).) The theoretical effects mentioned above are sufficiently plausible to raise the possibility that the Ordinance "may cause . . . a reasonably foreseeable indirect physical change in the environment" (§ 21065), warranting its consideration as a project.

Although UMMP raised these potential effects in the Court of Appeal, as well as other, less plausible effects, it framed them in the context of the specific circumstances it claimed to prevail in the City, hypothesizing various City-specific reasons why the Ordinance might indirectly produce physical changes. The Court of Appeal understandably rejected these specific impacts as speculative, given the absence of any evidence to support their occurrence. For the reasons discussed above, however, both UMMP's framing of the arguments in this manner and the court's rejection of them put the cart before the horse. The likely *actual* impact of an activity is not at issue in determining its status as a project.[12]

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[12] The Court of Appeal misunderstood its task in reviewing the City's decision. Although the court noted *Muzzy Ranch*'s characterization of the project decision as requiring a "categorical approach," it ultimately described the required analysis in a very different way. Quoting *Wal-Mart Stores, Inc. v. City of Turlock* (2006) 138 Cal.App.4th 273, 290-291, the court held, " 'The correct analysis of the relevant physical change in the environment involves a comparison of (1) the physical conditions that existed at the time the Ordinance was proposed or approved with (2) forecasts of reasonably foreseeable future conditions that may occur as a result of the adoption of the Ordinance.' " (*Marijuana Patients*, *supra*,

Further, at this stage of the CEQA process virtually any postulated indirect environmental effect will be "speculative" in a legal sense — that is, unsupported by evidence in the record (e.g., *People v. Murtishaw* (2011) 51 Cal.4th 574, 591 ["defendant's claim . . . is entirely speculative, for he points to nothing in the record that supports his claim"]) — because little or no factual record will have been developed. A lack of support in the record, however, does not prevent an agency from considering a possible environmental effect at this initial stage of CEQA analysis. Instead, such an effect may be rejected as speculative only if, as noted above, the postulated causal mechanism underlying its occurrence is tenuous.

Finally, the City argues, in passing, that environmental review would be more appropriate at the time each dispensary applies for a conditional use permit, which is required by the Ordinance for operation of a dispensary. We withhold comment on the significance of this argument for tiers two and three of the CEQA decision tree, but we note that the requirement of individual use permits does not prevent the Ordinance from being considered a project if section 21065 is otherwise satisfied. As we observed in *Fullerton*, *supra*,

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4 Cal.App.5th 103, 120.) The test quoted from *Wal-Mart*, however, was not intended to govern the project decision but instead concerned the application of Guidelines section 15183, which permits "a streamlined environmental review for qualifying projects that are consistent with a general plan for which an EIR was certified." (*Wal-Mart*, *supra*, at p. 286; see *id.* at pp. 286-288.) The project decision never arose in *Wal-Mart* because the court assumed that the activity under consideration was a project. (*Id.* at p. 286.)

32 Cal.3d at page 795, a local agency "cannot argue" that approval of a regulation is not a project "merely because further decisions must be made" before the activities directly causing environmental change will occur. The City argues that too little is known about the environmental impact of the Ordinance to permit effective environmental review at this stage, but that argument conflates the various tiers of CEQA review. (*Muzzy Ranch*, *supra*, 41 Cal.4th at p. 383 ["That further governmental decisions need to be made before a land use measure's actual environmental impacts can be determined with precision does not necessarily prevent the measure from qualifying as a project"].) At this initial tier in the CEQA process, the potential of the Ordinance to cause an environmental change requires the City to treat it as a project and proceed to the next steps of the CEQA analysis.

It ultimately might prove true that, in the context of the City, the actual environmental effects of the Ordinance will be minimal. It is possible, as the Court of Appeal assumed, that the City's commercial vacancy rate is sufficient to provide retail space for the new businesses without the need for expansion. (*Marijuana Patients*, *supra*, 4 Cal.App.5th at p. 123 [dispensaries "could simply cho[o]se to locate in available commercial space in an existing building"].) It is also possible, as UMMP suggests, that a significant number of unlicensed businesses selling medical marijuana already exist in the City and that the newly licensed businesses will simply displace them. Rather than causing increased traffic and other activity, the net effect of this substitution might be little or no additional environmental burden on the City. All of these factors can be explored in the second and, if warranted, third

tiers of the CEQA process. As to those tiers, we are in no position to offer, and do not express, an opinion on the applicability of the various exemptions or, alternatively, the appropriate level of environmental review.

III. DISPOSITION

The judgment of the Court of Appeal is reversed. That court is directed to vacate the order of the superior court denying a writ of mandate and to remand the case to the trial court for further proceedings consistent with this opinion.

CANTIL-SAKAUYE, C. J.

We Concur:

CHIN, J.
CORRIGAN, J.
LIU, J.
CUÉLLAR, J.
KRUGER, J.
GROBAN, J.

See next page for addresses and telephone numbers for counsel who argued in Supreme Court.

Name of Opinion Union of Medical Marijuana Patients, Inc. v. City of San Diego

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Unpublished Opinion
Original Appeal
Original Proceeding
Review Granted XXX 4 Cal.App.5th 103
Rehearing Granted

Opinion No. S238563
Date Filed: August 19, 2019

Court: Superior
County: San Diego
Judge: Joel R. Wohlfeil

Counsel:

Channel Law Group, Jamie T. Hall and Julian Killen Quattlebaum for Plaintiff and Appellant.

Jan I. Goldsmith and Mara W. Elliott, City Attorneys, George F. Schaefer, Assistant City Attorney, Glenn T. Spitzer and M. Travis Phelps, Deputy City Attorneys, for Defendant and Respondent.

Best Best & Krieger, Michelle Ouellette, Charity Schiller and Sarah E. Owsowitz for League of California Cities and California State Association of Counties as Amici Curiae on behalf of Defendant and Respondent.

No appearance for Real Party in Interest.

Counsel who argued in Supreme Court (not intended for publication with opinion):

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Exhibit C

15 - 0 1 0 3 Amdt. # |

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December 7, 2015

VIA MESSENGER

Office of the Attorney General
1300 "I" Street
Sacramento, CA 95814

Attention: Ashley Johansson, Initiative Coordinator

RE: Submission of Amendment to Statewide Initiative Measure – Control, Regulate and Tax Adult Use of Marijuana Act, No. 15-0103

Dear Ms. Johansson:

As you know, I serve as counsel for the proponents of the proposed statewide initiative, "Control, Regulate and Tax Adult Use of Marijuana Act." The proponents of the proposed initiative are Dr. Donald Lyman and Mr. Michael Sutton. On their behalf, I am enclosing the following documents:

- The amended text of "Control, Regulate and Tax Adult Use of Marijuana Act"
- A red-line version showing the changes made in the amended text
- Signed authorizations from each of the proponents for the submission of the amended text together with their requests that the Attorney General's Office prepare a circulating title and summary using the amended text.

Please continue to direct all inquiries or correspondence relative to this proposed initiative to me at the address listed below:

Lance H. Olson
Olson, Hagel & Fishburn LLP
555 Capitol Mall, Suite 1425
Sacramento, CA 95814

Very truly yours,

OLSON HAGEL & FISHBURN LLP

LANCE H. OLSON
LHO:mdm
I:\WPDOC\PUBLIC\POL\40083-4\Amendment Cover Letter 12.7.15.docx

VIA MESSENGER

December 7, 2016

Office of the Attorney General
1300 "I" Street
Sacramento, CA 95814

Attention: Ashley Johansson, Initiative Coordinator

Re: Submission of Amendment to Control, Regulate and Tax Adult Use of Marijuana Act, No. 15-0103, and Request to Prepare Circulating Title and Summary

Dear Ms. Johansson:

On November 2, 2015, the proponents of a proposed statewide initiative titled "Control, Regulate and Tax Adult Use of Marijuana Act" ("Initiative") submitted a request that the Attorney General prepare a circulating title and summary pursuant to section 10(d) of Article II of the California Constitution. Pursuant to Elections Code section 9002(b), the proponents hereby submit timely amendments to the text of the Initiative. As one of the proponents of the Initiative, I approve the submission of the amended text to the Initiative and I declare that the amendment is reasonably germane to the theme, purpose, and subject of the Initiative. I request that the Attorney General prepare a circulating title and summary using the amended Initiative.

Sincerely,

Michael Sutton

VIA MESSENGER

December 7, 2016

Office of the Attorney General
1300 "I" Street
Sacramento, CA 95814

Attention: Ashley Johansson, Initiative Coordinator

Re: Submission of Amendment to Control, Regulate and Tax Adult Use of Marijuana Act, No. 15-0103, and Request to Prepare Circulating Title and Summary

Dear Ms. Johansson:

On November 2, 2015, the proponents of a proposed statewide initiative titled "Control, Regulate and Tax Adult Use of Marijuana Act" ("Initiative") submitted a request that the Attorney General prepare a circulating title and summary pursuant to section 10(d) of Article II of the California Constitution. Pursuant to Elections Code section 9002(b), the proponents hereby submit timely amendments to the text of the Initiative. As one of the proponents of the Initiative, I approve the submission of the amended text to the Initiative and I declare that the amendment is reasonably germane to the theme, purpose, and subject of the Initiative. I request that the Attorney General prepare a circulating title and summary using the amended Initiative.

Sincerely,

Dr. Donald Lyman

SECTION 1. TITLE.

This measure shall be known as the Control, Regulate and Tax Adult Use of Marijuana Act ("the Adult Use of Marijuana Act").

SECTION 2. FINDINGS AND DECLARATIONS.

A. Currently in California, nonmedical marijuana use is unregulated, untaxed, and occurs without any consumer or environmental protections. The Control, Regulate and Tax Adult Use of Marijuana Act will legalize marijuana for those over 21 years old, protect children, and establish laws to regulate marijuana cultivation, distribution, sale and use, and will protect Californians and the environment from potential dangers. It establishes the Bureau of Marijuana Control within the Department of Consumer Affairs to regulate and license the marijuana industry.

B. Marijuana is currently legal in our state for medical use and illegal for nonmedical use. Abuse of the medical marijuana system in California has long been widespread, but recent bipartisan legislation signed by Governor Jerry Brown is establishing a comprehensive regulatory scheme for medical marijuana. The Control, Regulate and Tax Adult Use of Marijuana Act (hereafter called the Adult Use of Marijuana Act) will consolidate and streamline regulation and taxation for both nonmedical and medical marijuana.

C. Currently, marijuana growth and sale is not being taxed by the State of California, which means our state is missing out on hundreds of millions of dollars in potential tax revenue every year. The Adult Use of Marijuana Act will tax both the growth and sale of marijuana to generate hundreds of millions of dollars annually. The revenues will cover the cost of administering the new law and will provide funds to: invest in public health programs that educate youth to prevent and treat serious substance abuse; train local law enforcement to enforce the new law with a focus on DUI enforcement; invest in communities to reduce the illicit market and create job opportunities; and provide for environmental cleanup and restoration of public lands damaged by illegal marijuana cultivation.

D. Currently, children under the age of 18 can just as easily purchase marijuana on the black market as adults can. By legalizing marijuana, the Adult Use of Marijuana Act will incapacitate the black market, and move marijuana purchases into a legal structure with strict safeguards against children accessing it. The Adult Use of Marijuana Act prohibits the sale of nonmedical marijuana to those under 21 years old, and provides new resources to educate youth against drug abuse and train local law enforcement to enforce the new law. It bars marijuana businesses from being located within 600 feet of schools and other areas where children congregate. It establishes mandatory and strict packaging and labeling requirements for marijuana and marijuana products. And it mandates that marijuana and marijuana products cannot be advertised or marketed towards children.

E. There are currently no laws governing adult use marijuana businesses to ensure that they operate in accordance with existing California laws. Adult use of marijuana may only be

accessed from the unregulated illicit market. The Adult Use of Marijuana Act sets up a comprehensive system governing marijuana businesses at the state level and safeguards local control, allowing local governments to regulate marijuana-related activities, to subject marijuana businesses to zoning and permitting requirements, and to ban marijuana businesses by a vote of the people within a locality.

F. Currently, illegal marijuana growers steal or divert millions of gallons of water without any accountability. The Adult Use of Marijuana Act will create strict environmental regulations to ensure that the marijuana is grown efficiently and legally, to regulate the use of pesticides, to prevent wasting water, and to minimize water usage. The Adult Use of Marijuana Act will crack down on the illegal use of water and punish bad actors, while providing funds to restore lands that have been damaged by illegal marijuana grows. If a business does not demonstrate they are in full compliance with the applicable water usage and environmental laws, they will have their license revoked.

G. Currently, the courts are clogged with cases of non-violent drug offenses. By legalizing marijuana, the Adult Use of Marijuana Act will alleviate pressure on the courts, but continue to allow prosecutors to charge the most serious marijuana-related offenses as felonies, while reducing the penalties for minor marijuana-related offenses as set forth in the Act.

H. By bringing marijuana into a regulated and legitimate market, the Adult Use of Marijuana Act creates a transparent and accountable system. This will help police crackdown on the underground black market that currently benefits violent drug cartels and transnational gangs, which are making billions from marijuana trafficking and jeopardizing public safety.

I. The Adult Use of Marijuana Act creates a comprehensive regulatory structure in which every marijuana business is overseen by a specialized agency with relevant expertise. The Bureau of Marijuana Control, housed in the Department of Consumer Affairs, will oversee the whole system and ensure a smooth transition to the legal market, with licenses issued beginning in 2018. The Department of Consumer Affairs will also license and oversee marijuana retailers, distributors, and microbusinesses. The Department of Food and Agriculture will license and oversee marijuana cultivation, ensuring it is environmentally safe. The Department of Public Health will license and oversee manufacturing and testing, ensuring consumers receive a safe product. The State Board of Equalization will collect the special marijuana taxes, and the Controller will allocate the revenue to administer the new law and provide the funds to critical investments.

J. The Adult Use of Marijuana Act ensures the nonmedical marijuana industry in California will be built around small and medium sized businesses by prohibiting large-scale cultivation licenses for the first five years. The Adult Use of Marijuana Act also protects consumers and small businesses by imposing strict anti-monopoly restrictions for businesses that participate in the nonmedical marijuana industry.

SECTION 3. PURPOSE AND INTENT.

The purpose of the Adult Use of Marijuana Act is to establish a comprehensive system to legalize, control and regulate the cultivation, processing, manufacture, distribution, testing, and sale of nonmedical marijuana, including marijuana products, for use by adults 21 years and older, and to tax the commercial growth and retail sale of marijuana. It is the intent of the People in enacting this Act to accomplish the following:

(a) Take nonmedical marijuana production and sales out of the hands of the illegal market and bring them under a regulatory structure that prevents access by minors and protects public safety, public health, and the environment.

(b) Strictly control the cultivation, processing, manufacture, distribution, testing and sale of nonmedical marijuana through a system of state licensing, regulation, and enforcement.

(c) Allow local governments to enforce state laws and regulations for nonmedical marijuana businesses and enact additional local requirements for nonmedical marijuana businesses, but not require that they do so for a nonmedical marijuana business to be issued a state license and be legal under state law.

(d) Allow local governments to ban nonmedical marijuana businesses as set forth in this Act.

(e) Require track and trace management procedures to track nonmedical marijuana from cultivation to sale.

(f) Require nonmedical marijuana to be comprehensively tested by independent testing services for the presence of contaminants, including mold and pesticides, before it can be sold by licensed businesses.

(g) Require nonmedical marijuana sold by licensed businesses to be packaged in child-resistant containers and be labeled so that consumers are fully informed about potency and the effects of ingesting nonmedical marijuana.

(h) Require licensed nonmedical marijuana businesses to follow strict environmental and product safety standards as a condition of maintaining their license.

(i) Prohibit the sale of nonmedical marijuana by businesses that also sell alcohol or tobacco.

(j) Prohibit the marketing and advertising of nonmedical marijuana to persons younger than 21 years old or near schools or other places where children are present.

(k) Strengthen the state's existing medical marijuana system by requiring patients to obtain by January 1, 2018, a new recommendation from their physician that meets the strict standards signed into law by the Governor in 2015, and by providing new privacy protections for patients who obtain medical marijuana identification cards as set forth in this Act.

(l) Permit adults 21 years and older to use, possess, purchase and grow nonmedical marijuana within defined limits for use by adults 21 years and older as set forth in this Act.

(m) Allow local governments to reasonably regulate the cultivation of nonmedical marijuana for personal use by adults 21 years and older through zoning and other local laws, and only to ban outdoor cultivation as set forth in this Act.

(n) Deny access to marijuana by persons younger than 21 years old who are not medical marijuana patients.

(o) Prohibit the consumption of marijuana in a public place unlicensed for such use, including near K-12 schools and other areas where children are present.

(p) Maintain existing laws making it unlawful to operate a car or other vehicle used for transportation while impaired by marijuana.

(q) Prohibit the cultivation of marijuana on public lands or while trespassing on private lands.

(r) Allow public and private employers to enact and enforce workplace policies pertaining to marijuana.

(s) Tax the growth and sale of marijuana in a way that drives out the illicit market for marijuana and discourages use by minors, and abuse by adults.

(t) Generate hundreds of millions of dollars in new state revenue annually for restoring and repairing the environment, youth treatment and prevention, community investment, and law enforcement.

(u) Prevent illegal production or distribution of marijuana.

(v) Prevent the illegal diversion of marijuana from California to other states or countries or to the illegal market.

(w) Preserve scarce law enforcement resources to prevent and prosecute violent crime.

(x) Reduce barriers to entry into the legal, regulated market.

(y) Require minors who commit marijuana-related offenses to complete drug prevention education or counseling and community service.

(z) Authorize courts to resentence persons who are currently serving a sentence for offenses for which the penalty is reduced by the Act, so long as the person does not pose a risk to public safety, and to redesignate or dismiss such offenses from the criminal records of persons who have completed their sentences as set forth in this Act.

(aa) Allow industrial hemp to be grown as an agricultural product, and for agricultural or academic research, and regulated separately from the strains of cannabis with higher delta-9 tetrahydrocannabinol concentrations.

SECTION 4. PERSONAL USE.

Sections 11018 of the Health and Safety Code is hereby amended, and Sections 11018.1 and 11018.2 of the Health and Safety Code are hereby added to read:

11018. Marijuana
"Marijuana" means all parts of the plant Cannabis sativa L., whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include ~~the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination~~.
(a) industrial hemp, as defined in Section 11018.5; or
(b) the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other product.

11018.1. Marijuana Products
"Marijuana products" means marijuana that has undergone a process whereby the plant material has been transformed into a concentrate, including, but not limited to, concentrated cannabis, or an edible or topical product containing marijuana or concentrated cannabis and other ingredients.

11018.2. Marijuana Accessories
"Marijuana accessories" means any equipment, products or materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, smoking, vaporizing, or containing marijuana, or for ingesting, inhaling, or otherwise introducing marijuana or marijuana products into the human body.

Sections 11362.1 through 11362.45 are added to the Health and Safety Code, to read:

11362.1.
(a) Subject to Sections 11362.2, 11362.3, 11362.4, and 11362.45, but notwithstanding any other provision of law, it shall be lawful under state and local law, and shall not be a violation of state or local law, for persons 21 years of age or older to:
(1) Possess, process, transport, purchase, obtain, or give away to persons 21 years of age or older without any compensation whatsoever, not more than 28.5 grams of marijuana not in the form of concentrated cannabis;

(2) Possess, process, transport, purchase, obtain, or give away to persons 21 years of age or older without any compensation whatsoever, not more than eight grams of marijuana in the form of concentrated cannabis, including as contained in marijuana products;
(3) Possess, plant, cultivate, harvest, dry, or process not more than six living marijuana plants and possess the marijuana produced by the plants;
(4) Smoke or ingest marijuana or marijuana products; and
(5) Possess, transport, purchase, obtain, use, manufacture, or give away marijuana accessories to persons 21 years of age or older without any compensation whatsoever.
(b) Paragraph (5) of subdivision (a) is intended to meet the requirements of subdivision (f) of Section 863 of Title 21 of the United States Code (21 U.S.C. § 863(f)) by authorizing, under state law, any person in compliance with this section to manufacture, possess, or distribute marijuana accessories.
(c) Marijuana and marijuana products involved in any way with conduct deemed lawful by this section are not contraband nor subject to seizure, and no conduct deemed lawful by this section shall constitute the basis for detention, search, or arrest.

11362.2.
(a) Personal cultivation of marijuana under paragraph (3) of subdivision (a) of Section 11362.1 is subject to the following restrictions:
(1) A person shall plant, cultivate, harvest, dry, or process plants in accordance with local ordinances, if any, adopted in accordance with subdivision (b) of this section.
(2) The living plants and any marijuana produced by the plants in excess of 28.5 grams are kept within the person's private residence, or upon the grounds of that private residence (e.g., in an outdoor garden area), are in a locked space, and are not visible by normal unaided vision from a public place.
(3) Not more than six living plants may be planted, cultivated, harvested, dried, or processed within a single private residence, or upon the grounds of that private residence, at one time.
(b)(1) A city, county, or city and county may enact and enforce reasonable regulations to reasonably regulate the actions and conduct in paragraph (3) of subdivision (a) of Section 11362.1.
(2) Notwithstanding paragraph (1), no city, county, or city and county may completely prohibit persons engaging in the actions and conduct under paragraph (3) of subdivision (a) of Section 11362.1 inside a private residence, or inside an accessory structure to a private residence located upon the grounds of a private residence that is fully enclosed and secure.
(3) Notwithstanding paragraph (3) of subdivision (a) of Section 11362.1, a city, county, or city and county may completely prohibit persons from engaging in actions and conduct under paragraph (3) of subdivision (a) of Section 11362.1 outdoors upon the grounds of a private residence.
(4) Paragraph (3) of this subdivision shall become inoperable upon a determination by the California Attorney General that nonmedical use of marijuana is lawful in the State of California under federal law, and an act taken by a city, county, or city and county under paragraph (3) shall be deemed repealed upon the date of such determination by the California Attorney General.
(5) For purposes of this section, "private residence" means a house, an apartment unit, a mobile home, or other similar dwelling.

11362.3.
(a) Nothing in Section 11362.1 shall be construed to permit any person to:
(1) Smoke or ingest marijuana or marijuana products in any public place, except in accordance with Section 26200 of the Business and Professions Code.
(2) Smoke marijuana or marijuana products in a location where smoking tobacco is prohibited.
(3) Smoke marijuana or marijuana products within 1,000 feet of a school, day care center, or youth center while children are present at such a school, day care center, or youth center, except in or upon the grounds of a private residence or in accordance with Section 26200 of the Business and Professions Code or Chapter 3.5 of Division 8 of the Business and Professions Code and only if such smoking is not detectable by others on the grounds of such a school, day care center, or youth center while children are present.
(4) Possess an open container or open package of marijuana or marijuana products while driving, operating, or riding in the passenger seat or compartment of a motor vehicle, boat, vessel, aircraft, or other vehicle used for transportation.
(5) Possess, smoke or ingest marijuana or marijuana products in or upon the grounds of a school, day care center, or youth center while children are present.
(6) Manufacture concentrated cannabis using a volatile solvent, unless done in accordance with a license under Chapter 3.5 of Division 8 or Division 10 of the Business and Professions Code.
(7) Smoke or ingest marijuana or marijuana products while driving, operating a motor vehicle, boat, vessel, aircraft, or other vehicle used for transportation.
(8) Smoke or ingest marijuana or marijuana products while riding in the passenger seat or compartment of a motor vehicle, boat, vessel, aircraft, or other vehicle used for transportation except as permitted on a motor vehicle, boat, vessel, aircraft, or other vehicle used for transportation that is operated in accordance with Section 26200 of the Business and Professions Code and while no persons under the age of 21 years are present.
(b) For purposes of this section, "day care center" has the same meaning as in Section 1596.76.
(c) For purposes of this section, "smoke" means to inhale, exhale, burn, or carry any lighted or heated device or pipe, or any other lighted or heated marijuana or marijuana product intended for inhalation, whether natural or synthetic, in any manner or in any form. "Smoke" includes the use of an electronic smoking device that creates an aerosol or vapor, in any manner or in any form, or the use of any oral smoking device for the purpose of circumventing the prohibition of smoking in a place.
(d) For purposes of this section, "volatile solvent" means volatile organic compounds, including: (1) explosive gases, such as Butane, Propane, Xylene, Styrene, Gasoline, Kerosene, O2 or H2; and (2) dangerous poisons, toxins, or carcinogens, such as Methanol, Iso-propyl Alcohol, Methylene Chloride, Acetone, Benzene, Toluene, and Tri-chloro-ethylene.
(e) For purposes of this section, "youth center" has the same meaning as in Section 11353.1.
(f) Nothing in this section shall be construed or interpreted to amend, repeal, affect, restrict, or preempt laws pertaining to the Compassionate Use Act of 1996.

11362.4.
(a) A person who engages in the conduct described in paragraph (1) of subdivision (a) of Section 11362.3 is guilty of an infraction punishable by no more than a one hundred dollar ($100) fine; provided, however, that persons under the age of 18 shall instead be required to complete four hours of a drug education program or counseling, and up to 10 hours of community service, over

a period not to exceed 60 days once the drug education program or counseling and community service opportunity are made available to the person.
(b) A person who engages in the conduct described in paragraphs (2) through (4) of subdivision (a) of Section 11362.3 shall be guilty of an infraction punishable by no more than a two hundred and fifty dollar ($250) fine, unless such activity is otherwise permitted by state and local law; provided, however, that persons under the age of 18 shall instead be required to complete four hours of drug education or counseling, and up to 20 hours of community service, over a period not to exceed 90 days once the drug education program or counseling and community service opportunity are made available to the person.
(c) A person who engages in the conduct described in paragraph (5) of subdivision (a) of Section 11362.3 shall be subject to the same punishment as provided under subdivisions (c) or (d) of Section 11357.
(d) A person who engages in the conduct described in paragraph (6) of subdivision (a) of Section 11362.3 shall be subject to punishment under Section 11379.6.
(e) A person who violates the restrictions in subdivision (a) of Section 11362.2 is guilty of an infraction punishable by no more than a two hundred and fifty dollar ($250) fine.
(f) Notwithstanding subdivision (e), a person under the age of 18 who violates the restrictions in subdivision (a) of Section 11362.2 shall be punished under subdivision (a) of Section 11358.
(g)(1) The drug education program or counseling hours required by this section shall be mandatory unless the court makes a finding that such a program or counseling is unnecessary for the person or that a drug education program or counseling is unavailable.
(2) The drug education program required by this section for persons under the age of 18 must be free to participants and provide at least four hours of group discussion or instruction based on science and evidence-based principles and practices specific to the use and abuse of marijuana and other controlled substances.
(h) Upon a finding of good cause, the court may extend the time for a person to complete the drug education or counseling, and community service required under this section.

11362.45.
Nothing in section 11362.1 shall be construed or interpreted to amend, repeal, affect, restrict, or preempt:
(a) Laws making it unlawful to drive or operate a vehicle, boat, vessel, or aircraft, while smoking, ingesting, or impaired by, marijuana or marijuana products, including, but not limited to, subdivision (e) of Section 23152 of the Vehicle Code, or the penalties prescribed for violating those laws.
(b) Laws prohibiting the sale, administering, furnishing, or giving away of marijuana, marijuana products, or marijuana accessories, or the offering to sell, administer, furnish, or give away marijuana, marijuana products, or marijuana accessories to a person younger than 21 years of age.
(c) Laws prohibiting a person younger than 21 years of age from engaging in any of the actions or conduct otherwise permitted under Section 11362.1.
(d) Laws pertaining to smoking or ingesting marijuana or marijuana products on the grounds of, or within, any facility or institution under the jurisdiction of the Department of Corrections and Rehabilitation or the Division of Juvenile Justice, or on the grounds of, or within, any other facility or institution referenced in Section 4573 of the Penal Code.

(e) Laws providing that it would constitute negligence or professional malpractice to undertake any task while impaired from smoking or ingesting marijuana or marijuana products.
(f) The rights and obligations of public and private employers 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 marijuana in the workplace, or affect the ability of employers to have policies prohibiting the use of marijuana by employees and prospective employees, or prevent employers from complying with state or federal law.
(g) The ability of a state or local government agency to prohibit or restrict any of the actions or conduct otherwise permitted under Section 11362.1 within a building owned, leased, or occupied by the state or local government agency.
(h) The ability of an individual or private entity to prohibit or restrict any of the actions or conduct otherwise permitted under Section 11362.1 on the individual's or entity's privately owned property.
(i) Laws pertaining to the Compassionate Use Act of 1996.

SECTION 5. USE OF MARIJUANA FOR MEDICAL PURPOSES.

Sections 11362.712, 11362.713, 11362.84 and 11362.85 are added to the Health and Safety Code, and 11362.755 of the Health and Safety Code is amended to read:

11362.712.
(a) Commencing on January 1, 2018, a qualified patient must possess a physician's recommendation that complies with Article 25 (commencing with Section 2525) of Chapter 5 of Division 2 of the Business and Professions Code. Failure to comply with this requirement shall not, however, affect any of the protections provided to patients or their primary caregivers by Section 11362.5.
(b) A county health department or the county's designee shall develop protocols to ensure that, commencing upon January 1, 2018, all identification cards issued pursuant to Section 11362.71 are supported by a physician's recommendation that complies with Article 25 (commencing with Section 2525) of Chapter 5 of Division 2 of the Business and Professions Code.

11362.713.
(a) Information identifying the names, addresses, or social security numbers of patients, their medical conditions, or the names of their primary caregivers, received and contained in the records of the Department of Public Health and by any county public health department are hereby deemed "medical information" within the meaning of the Confidentiality of Medical Information Act (Civil Code § 56, et seq.) and shall not be disclosed by the Department or by any county public health department except in accordance with the restrictions on disclosure of individually identifiable information under the Confidentiality of Medical Information Act.
(b) Within 24 hours of receiving any request to disclose the name, address, or social security number of a patient, their medical condition, or the name of their primary caregiver, the Department of Public Health or any county public health agency shall contact the patient and inform the patient of the request and if the request was made in writing, a copy of the request.
(c) Notwithstanding Section 56.10 of the Civil Code, neither the Department of Public Health, nor any county public health agency, shall disclose, nor shall they be ordered by agency or court to disclose, the names, addresses, or social security numbers of patients, their medical

conditions, or the names of their primary caregivers, sooner than the 10th day after which the patient whose records are sought to be disclosed has been contacted.
(d) No identification card application system or database used or maintained by the Department of Public Health or by any county department of public health or the county's designee as provided in Section 11362.71 shall contain any personal information of any qualified patient, including but not limited to, the patient's name, address, social security number, medical conditions, or the names of their primary caregivers. Such an application system or database may only contain a unique user identification number, and when that number is entered, the only information that may be provided is whether the card is valid or invalid.

11362.755.
(a) ~~The department shall establish application and renewal fees for persons seeking to obtain or renew identification cards that are sufficient to cover the expenses incurred by the department, including the startup cost, the cost of reduced fees for Medi-Cal beneficiaries in accordance with subdivision (b), the cost of identifying and developing a cost-effective Internet Web-based system, and the cost of maintaining the 24-hour toll-free telephone number.~~ Each county health department or the county's designee may charge ~~an additional~~ *a* fee for all costs incurred by the county or the county's designee for administering the program pursuant to this article.
(b) In no event shall the amount of the fee charged by a county health department exceed $100 per application or renewal.
(*c*) Upon satisfactory proof of participation and eligibility in the Medi-Cal program, a Medi-Cal beneficiary shall receive a 50 percent reduction in the fees established pursuant to this section.
(d) Upon satisfactory proof that a qualified patient, or the legal guardian of a qualified patient under the age of 18, is a medically indigent adult who is eligible for and participates in the County Medical Services Program, the fee established pursuant to this section shall be waived.
(e) In the event the fees charged and collected by a county health department are not sufficient to pay for the administrative costs incurred in discharging the county health department's duties with respect to the mandatory identification card system, the Legislature, upon request by the county health department, shall reimburse the county health department for those reasonable administrative costs in excess of the fees charged and collected by the county health department.

11362.84.
The status and conduct of a qualified patient who acts in accordance with the Compassionate Use Act shall not, by itself, be used to restrict or abridge custodial or parental rights to minor children in any action or proceeding under the jurisdiction of family or juvenile court.

11362.85.
Upon a determination by the California Attorney General that the federal schedule of controlled substances has been amended to reclassify or declassify marijuana, the Legislature may amend or repeal the provisions of the Health and Safety Code, as necessary, to conform state law to such changes in federal law.

SECTION 6. MARIJUANA REGULATION AND SAFETY.

Division 10 is hereby added to the Business and Professions Code to read as follows:

Division 10. Marijuana

Chapter 1. General Provisions and Definitions

26000.
(a) The purpose and intent of this division is to establish a comprehensive system to control and regulate the cultivation, distribution, transport, storage, manufacturing, processing, and sale of nonmedical marijuana and marijuana products for adults 21 years of age and over.
(b) In the furtherance of subdivision (a), this division expands the power and duties of the existing state agencies responsible for controlling and regulating the medical cannabis industry under Chapter 3.5 of Division 8 to include the power and duty to control and regulate the commercial nonmedical marijuana industry.
(c) The Legislature may, by majority vote, enact laws to implement this division, provided such laws are consistent with the purposes and intent of the Control, Regulate and Tax Adult Use of Marijuana Act.

26001.
For purposes of this division, the following definitions shall apply:
(a) "Applicant" means the following:
(1) The owner or owners of a proposed licensee. "Owner" means all persons having (A) an aggregate ownership interest (other than a security interest, lien, or encumbrance) of 20 percent or more in the licensee and (B) the power to direct or cause to be directed, the management or control of the licensee.
(2) If the applicant is a publicly traded company, "owner" includes the chief executive officer and any member of the board of directors and any person or entity with an aggregate ownership interest in the company of 20 percent or more. If the applicant is a nonprofit entity, "owner" means both the chief executive officer and any member of the board of directors.
(b) "Bureau" means the Bureau of Marijuana Control within the Department of Consumer Affairs.
(c) "Child resistant" means designed or constructed to be significantly difficult for children under five years of age to open, and not difficult for normal adults to use properly.
(d) "Commercial marijuana activity" includes the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, labeling, transportation, distribution, delivery or sale of marijuana and marijuana products as provided for in this division.
(e) "Cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of marijuana.
(f) "Customer" means a natural person 21 years of age or over.
(g) "Day care center" shall have the same meaning as in Section 1596.76 of the Health and Safety Code.
(h) "Delivery" means the commercial transfer of marijuana or marijuana products to a customer. "Delivery" also includes the use by a retailer of any technology platform owned and controlled by the retailer, or independently licensed under this division, that enables customers to arrange for or facilitate the commercial transfer by a licensed retailer of marijuana or marijuana products.
(i) "Director" means the Director of the Department of Consumer Affairs.

(j) "Distribution" means the procurement, sale, and transport of marijuana and marijuana products between entities licensed pursuant to this division.
(k) "Fund" means the Marijuana Control Fund established pursuant to Section 26210.
(l) "Kind" means applicable type or designation regarding a particular marijuana variant or marijuana product type, including, but not limited to, strain name or other grower trademark, or growing area designation.
(m) "License" means a state license issued under this division.
(n) "Licensee" means any person or entity holding a license under this division.
(o) "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 licensee.
(p) "Local jurisdiction" means a city, county, or city and county.
(q) "Manufacture" means to compound, blend, extract, infuse, or otherwise make or prepare a marijuana product.
(r) "Manufacturer" means a person that conducts the production, preparation, propagation, or compounding of marijuana or marijuana 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 marijuana or marijuana products or labels or re-labels its container, that holds a state license pursuant to this division.
(s) "Marijuana" has the same meaning as in Section 11018 of the Health and Safety Code, except that it does not include marijuana that is cultivated, processed, transported, distributed, or sold for medical purposes under Chapter 3.5 of Division 8.
(t) "Marijuana accessories" has the same meaning as in Section 11018.2 of the Health and Safety Code.
(u) "Marijuana products" has the same meaning as in Section 11018.1 of the Health and Safety Code, except that it does not include marijuana products manufactured, processed, transported, distributed, or sold for medical purposes under Chapter 3.5 of Division 8.
(v) "Nursery" means a licensee that produces only clones, immature plants, seeds, and other agricultural products used specifically for the planting, propagation, and cultivation of marijuana.
(w) "Operation" means any act for which licensure is required under the provisions of this division, or any commercial transfer of marijuana or marijuana products.
(x) "Package" means any container or receptacle used for holding marijuana or marijuana products.
(y) "Person" includes any individual, firm, co-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 the plural as well as the singular.
(z) "Purchaser" means the customer who is engaged in a transaction with a licensee for purposes of obtaining marijuana or marijuana products.
(aa) "Sell," "sale," and "to sell" include any transaction whereby, for any consideration, title to marijuana is transferred from one person to another, and includes the delivery of marijuana or marijuana products pursuant to an order placed for the purchase of the same and soliciting or receiving an order for the same, but does not include the return of marijuana or marijuana products by a licensee to the licensee from whom such marijuana or marijuana product was purchased.

(bb) "Testing service" means a laboratory, facility, or entity in the state, that offers or performs tests of marijuana or marijuana products, including the equipment provided by such laboratory, facility, or entity, and that is both of the following:
(1) Accredited by an accrediting body that is independent from all other persons involved in commercial marijuana activity in the state.
(2) Registered with the Department of Public Health.
(cc) "Unique identifier" means an alphanumeric code or designation used for reference to a specific plant on a licensed premises.
(dd) "Unreasonably impracticable" means that the measures necessary to comply with the regulations require such a high investment of risk, money, time, or any other resource or asset, that the operation of a marijuana establishment is not worthy of being carried out in practice by a reasonably prudent business person.
(ee) "Youth center" shall have the same meaning as in Section 11353.1 of the Health and Safety Code.

Chapter 2. Administration

26010.
(a) The Bureau of Medical Marijuana Regulation established in Section 19302 in Chapter 3.5 of Division 8 is hereby renamed the Bureau of Marijuana Control. The director shall administer and enforce the provisions of this division in addition to the provisions of Chapter 3.5 of Division 8. The director shall have the same power and authority as provided by subdivisions (b) and (c) of Section 19302.1 for purposes of this division.
(b) The bureau and the director shall succeed to and are vested with all the duties, powers, purposes, responsibilities, and jurisdiction vested in the Bureau of Medical Marijuana Regulation under Chapter 3.5 of Division 8.
(c) In addition to the powers, duties, purposes, responsibilities, and jurisdiction referenced in subdivision (b), the bureau shall heretofore have the power, duty, purpose, responsibility, and jurisdiction to regulate commercial marijuana activity as provided in this division.
(d) Upon the effective date of this section, whenever "Bureau of Medical Marijuana Regulation" appears in any statute, regulation, or contract, or in any other code, it shall be construed to refer to the bureau.

26011.
Neither the chief of the bureau nor any member of the Marijuana Control Appeals Panel established under Section 26040 shall have nor do any of the following:
(a) Receive any commission or profit whatsoever, directly or indirectly, from any person applying for or receiving any license or permit under this division or Chapter 3.5 of Division 8.
(b) Engage or have any interest in the sale or any insurance covering a licensee's business or premises.
(c) Engage or have any interest in the sale of equipment for use upon the premises of a licensee engaged in commercial marijuana activity.
(d)Knowingly solicit any licensee for the purchase of tickets for benefits or contributions for benefits.
(e) Knowingly request any licensee to donate or receive money, or any other thing of value, for the benefit of any person whatsoever.

26012.
(a) It being a matter of statewide concern, except as otherwise authorized in this division:
(1) The Department of Consumer Affairs shall have the exclusive authority to create, issue, renew, discipline, suspend, or revoke licenses for the transportation, storage unrelated to manufacturing activities, distribution, and sale of marijuana within the state.
(2) The Department of Food and Agriculture shall administer the provisions of this division related to and associated with the cultivation of marijuana. The Department of Food and Agriculture shall have the authority to create, issue, and suspend or revoke cultivation licenses for violations of this division.
(3) The Department of Public Health shall administer the provisions of this division related to and associated with the manufacturing and testing of marijuana. The Department of Public Health shall have the authority to create, issue, and suspend or revoke manufacturing and testing licenses for violations of this division.
(b) The licensing authorities and the bureau shall have the authority to collect fees in connection with activities they regulate concerning marijuana. The bureau may create licenses in addition to those identified in this division that the bureau deems necessary to effectuate its duties under this division.
(c) Licensing authorities shall begin issuing licenses under this division by January 1, 2018.

26013.
(a) Licensing authorities shall make and prescribe reasonable rules and regulations as may be necessary to implement, administer and enforce their respective duties under this division in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. Such rules and regulations shall be consistent with the purposes and intent of the Control, Regulate and Tax Adult Use of Marijuana Act.
(b) Licensing authorities may prescribe, adopt, and enforce any emergency regulations as necessary to implement, administer and enforce their respective duties under this division. 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.
(c) Regulations issued under this division shall be necessary to achieve the purposes of this division, based on best available evidence, and shall mandate only commercially feasible procedures, technology, or other requirements, and shall not unreasonably restrain or inhibit the development of alternative procedures or technology to achieve the same substantive requirements, nor shall such regulations make compliance unreasonably impracticable.

26014.
(a) The bureau shall convene an advisory committee to advise the bureau and licensing authorities on the development of standards and regulations pursuant to this division, including best practices and guidelines that protect public health and safety while ensuring a regulated environment for commercial marijuana activity that does not impose such unreasonably

impracticable barriers so as to perpetuate, rather than reduce and eliminate, the illicit market for marijuana.
(b) The advisory committee members shall include, but not be limited to, representatives of the marijuana industry, representatives of labor organizations, appropriate state and local agencies, public health experts, and other subject matter experts, including representatives from the Department of Alcoholic Beverage Control, with expertise in regulating commercial activity for adult-use intoxicating substances. The advisory committee members shall be determined by the director.
(c) Commencing on January 1, 2019, the advisory committee shall publish an annual public report describing its activities including, but not limited to, the recommendations the advisory committee made to the bureau and licensing authorities during the immediately preceding calendar year and whether those recommendations were implemented by the bureau or licensing authorities.

26015.
A licensing authority may make or cause to be made such investigation as it deems necessary to carry out its duties under this division.

26016.
For any hearing held pursuant to this division, except a hearing held under Chapter 4, 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.

26017.
In any hearing before a licensing authority pursuant to this division, 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.

26018.
A licensing authority 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.

Chapter 3. Enforcement

26030.
Grounds for disciplinary action include:
(a) Failure to comply with the provisions of this division or any rule or regulation adopted pursuant to this division.
(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 division.

(d) Failure to comply with any state law including, but not limited to, the payment of taxes as required under the Revenue and Taxation Code, except as provided for in this division or other California law.
(e) Knowing violations of any state or local law, ordinance, or regulation conferring worker protections or legal rights on the employees of a licensee.
(f) Failure to comply with the requirement of a local ordinance regulating commercial marijuana activity.
(g) The intentional and knowing sale of marijuana or marijuana products by a licensee to a person under the legal age to purchase or possess.

26031.
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.

26032.
Each licensing authority may take disciplinary action against a licensee for any violation of this division when the violation was committed by the licensee's agent or employee while acting on behalf of the licensee or engaged in commercial marijuana activity.

26033.
Upon suspension or revocation of a license, the licensing authority shall inform the bureau. The bureau shall then inform all other licensing authorities.

26034.
Accusations against licensees under this division shall be filed within the same time limits as specified in Section 19314 or as otherwise provided by law.

26035.
(a) The director shall designate the persons employed by the Department of Consumer Affairs for purposes of the administration and enforcement of this division. The director shall ensure that a sufficient number of employees are qualified peace officers for purposes of enforcing this division.

26036.
Nothing in this division shall be interpreted to supersede or limit state agencies from exercising their existing enforcement authority, including, but not limited to, under the Fish and Game Code, the Food and Agricultural Code, the Government Code, the Health and Safety Code, the Public Resources Code, the Water Code, or the application of those laws.

26037.
(a) The actions of a licensee, its employees, and its agents that are: (1) permitted under a license issued under this division and any applicable local ordinances; and (2) conducted in accordance

with the requirements of this division and regulations adopted pursuant to this division, 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 a state license and any 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.

26038.
(a) A person engaging in commercial marijuana activity without a license required by this division shall be subject to civil penalties of up to three times the amount of the license fee for each violation, and the court may order the destruction of marijuana 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 General Fund except as provided in subdivision (b).
(b) If an action for civil penalties is brought against a licensee pursuant to this division by the Attorney General on behalf of the people, the penalty collected shall be deposited into the General Fund. If the action is brought by a district attorney or county counsel, the penalty shall first be used to reimburse the district attorney or county counsel for the costs of bringing the action for civil penalties, with the remainder, if any, to be deposited into the General Fund. If the action is brought by a city attorney or city prosecutor, the penalty collected shall first be used to reimburse the city attorney or city prosecutor for the costs of bringing the action for civil penalties, with the remainder, if any, to be deposited into the General Fund.
(c) Notwithstanding subdivision (a), criminal penalties shall continue to apply to an unlicensed person engaging in commercial marijuana activity in violation of this division.

Chapter 4. Appeals

26040.
(a) There is established in state government a Marijuana Control Appeals Panel which shall consist of three members appointed by the Governor and subject to confirmation by a majority vote of all of the members elected to the Senate. Each member, at the time of his or her initial appointment, shall be a resident of a different county from the one in which either of the other members resides. Members of the panel shall receive an annual salary as provided for by Chapter 6 (commencing with Section 11550) of Part 1 of Division 3 of Title 2 of the Government Code.
(b) The members of the panel may be removed from office by the Governor, and the Legislature shall have the power, by a majority vote of all members elected to each house, to remove any member from office for dereliction of duty, corruption or incompetency.
(c) A concurrent resolution for the removal of any member of the panel may be introduced in the Legislature only if five Members of the Senate, or ten Members of the Assembly, join as authors.

26041.
All personnel of the panel shall be appointed, employed, directed, and controlled by the panel consistent with state civil service requirements. The director shall furnish the equipment, supplies, and housing necessary for the authorized activities of the panel and shall perform such other mechanics of administration as the panel and the director may agree upon.

26042.
The panel shall adopt procedures for appeals similar to the procedures used in Articles 3 and 4 in Chapter 1.5 in Division 9 of the Business and Professions Code. Such procedures shall be adopted in accordance with the Administrative Procedure Act (Government Code, Title 2, Division 3, section 11340 et seq.).

26043.
(a) When any person aggrieved thereby appeals from a decision of the bureau or any licensing authority ordering any penalty assessment, issuing, denying, transferring, conditioning, suspending or revoking any license provided for under this division, the panel shall review the decision subject to such limitations as may be imposed by the Legislature. In such cases, the panel shall not receive evidence in addition to that considered by the bureau or the licensing authority.
(b) Review by the panel of a decision of the bureau or a licensing authority shall be limited to the following questions:
(1) Whether the bureau or any licensing authority has proceeded without or in excess of its jurisdiction.
(2) Whether the bureau or any licensing authority has proceeded in the manner required by law.
(3) Whether the decision is supported by the findings.
(4) Whether the findings are supported by substantial evidence in the light of the whole record.

26044.
(a) In appeals where the panel finds that there is relevant evidence which, in the exercise of reasonable diligence, could not have been produced or which was improperly excluded at the hearing before the bureau or licensing authority, it may enter an order remanding the matter to the bureau or licensing authority for reconsideration in the light of such evidence.
(b) Except as provided in subdivision (a), in all appeals, the panel shall enter an order either affirming or reversing the decision of the bureau or licensing authority. When the order reverses the decision of the bureau or licensing authority, the board may direct the reconsideration of the matter in the light of its order and may direct the bureau or licensing authority to take such further action as is specially enjoined upon it by law, but the order shall not limit or control in any way the discretion vested by law in the bureau or licensing authority.

26045.
Orders of the panel shall be subject to judicial review under Section 1094.5 of the Code of Civil Procedure upon petition by the bureau or licensing authority or any party aggrieved by such order.

Chapter 5. Licensing

26050.
(a) The license classification pursuant to this division shall, at a minimum, be as follows:
(1) Type 1 = Cultivation; Specialty outdoor; Small.
(2) Type 1A = Cultivation; Specialty indoor; Small.
(3) Type 1B = Cultivation; Specialty mixed-light; Small.
(4) Type 2 = Cultivation; Outdoor; Small.
(5) Type 2A = Cultivation; Indoor; Small.
(6) Type 2B = Cultivation; Mixed-light; Small.
(7) Type 3 = Cultivation; Outdoor; Medium.
(8) Type 3A = Cultivation; Indoor; Medium.
(9) Type 3B = Cultivation; Mixed-light; Medium.
(10) Type 4 = Cultivation; Nursery.
(11) Type 5 = Cultivation; Outdoor; Large.
(12) Type 5A =Cultivation; Indoor; Large.
(13) Type 5B = Cultivation; Mixed-light; Large.
(14) Type 6 = Manufacturer 1.
(15) Type 7 = Manufacturer 2.
(16) Type 8 = Testing.
(17) Type 10 = Retailer.
(18) Type 11 = Distributor.
(19) Type 12 =Microbusiness.
(b) All licenses issued under this division shall bear a clear designation indicating that the license is for commercial marijuana activity as distinct from commercial medical cannabis activity licensed under Chapter 3.5 of Division 8. Examples of such a designation include, but are not limited to, "Type 1 – Nonmedical," or "Type 1NM."
(c) A license issued pursuant to this division shall be valid for 12 months from the date of issuance. The license may be renewed annually.
(d) Each licensing authority shall establish procedures for the issuance and renewal of licenses.
(e) Notwithstanding subdivision (c), a licensing authority may issue a temporary license for a period of less than 12 months. This subdivision shall cease to be operable on January 1, 2019.

26051.
(a) In determining whether to grant, deny, or renew a license authorized under this division, a licensing authority shall consider factors reasonably related to the determination, including, but not limited to, whether it is reasonably foreseeable that issuance, denial, or renewal of the license could:
(1) allow unreasonable restrains on competition by creation or maintenance of unlawful monopoly power;
(2) perpetuate the presence of an illegal market for marijuana or marijuana products in the state or out of the state;
(3) encourage underage use or adult abuse of marijuana or marijuana products, or illegal diversion of marijuana or marijuana products out of the state;
(4) result in an excessive concentration of licensees in a given city, county, or both;

(5) present an unreasonable risk of minors being exposed to marijuana or marijuana products; or
(6) result in violations of any environmental protection laws.
(b) A licensing authority may deny a license or renewal of a license based upon the considerations in subdivision (a).
(c) For purposes of this section, "excessive concentration" means when the premises for a retail license, microbusiness license, or a license issued under Section 26070.5 is located in an area where either of the following conditions exist:
(1) The ratio of a licensee to population in the census tract or census division in which the applicant premises are located exceeds the ratio of licensees to population in the county in which the applicant premises are located, unless denial of the application would unduly limit the development of the legal market so as to perpetuate the illegal market for marijuana or marijuana products.
(2) The ratio of retail licenses, microbusiness licenses, or licenses under Section 26070.5 to population in the census tract, division or jurisdiction exceeds that allowable by local ordinance adopted under Section 26200.

26052.
(a) No licensee shall perform any of the following acts, or permit any such acts to be performed by any employee, agent, or contractor of such licensee:
(1) Make any contract in restraint of trade in violation of Section 16600;
(2) Form a trust or other prohibited organization in restraint of trade in violation of Section 16720;
(3) Make a sale or contract for the sale of marijuana or marijuana products, or to fix a price charged therefor, or discount from, or rebate upon, such price, on the condition, agreement or understanding that the consumer or purchaser thereof shall not use or deal in the goods, merchandise, machinery, supplies, commodities, or services of a competitor or competitors of such seller, where the effect of such sale, contract, condition, agreement or understanding may be to substantially lessen competition or tend to create a monopoly in any line of trade or commerce;
(4) Sell any marijuana or marijuana products at less than cost for the purpose of injuring competitors, destroying competition, or misleading or deceiving purchasers or prospective purchasers;
(5) Discriminate between different sections, communities, or cities or portions thereof, or between different locations in such sections, communities, cities or portions thereof in this state, by selling or furnishing marijuana or marijuana products at a lower price in one section, community, or city or any portion thereof, or in one location in such section, community, or city or any portion thereof, than in another, for the purpose of injuring competitors or destroying competition; or
(6) Sell any marijuana or marijuana products at less than the cost thereof to such vendor, or to give away any article or product for the purpose of injuring competitors or destroying competition.
(b) Any person who, either as director, officer or agent of any firm or corporation, or as agent of any person, violates the provisions of this chapter, assists or aids, directly or indirectly, in such violation is responsible therefor equally with the person, firm or corporation for which such person acts.

(c) A licensing authority may enforce this section by appropriate regulation.
(d) Any person or trade association may bring an action to enjoin and restrain any violation of this section for the recovery of damages.

26053.
(a) The bureau and licensing authorities may issue licenses under this division to persons or entities that hold licenses under Chapter 3.5 of Division 8.
(b) Notwithstanding subdivision (a), a person or entity that holds a state testing license under this division or Chapter 3.5 of Division 8 is prohibited from licensure for any other activity, except testing, as authorized under this division.
(c) Except as provided in subdivision (b), a person or entity may apply for and be issued more than one license under this division.

26054.
(a) A licensee shall not also be licensed as a retailer of alcoholic beverages under Division 9 or of tobacco products.
(b) No licensee under this division shall be located within a 600-foot radius of a school providing instruction in kindergarten or any grades 1 through 12, day care center, or youth center that is in existence at the time the license is issued, unless a licensing authority or a local jurisdiction specifies a different radius. The distance specified in this section shall be measured in the same manner as provided in paragraph (c) of Section 11362.768 of the Health and Safety Code unless otherwise provided by law.
(c) It shall be lawful under state and local law, and shall not be a violation of state or local law, for a business engaged in the manufacture of marijuana accessories to possess, transport, purchase or otherwise obtain small amounts of marijuana or marijuana products as necessary to conduct research and development related to such marijuana accessories, provided such marijuana and marijuana products are obtained from a person or entity licensed under this division or Chapter 3.5 of Division 8 permitted to provide or deliver such marijuana or marijuana products.

26054.1
(a) No licensing authority shall issue or renew a license to any person that cannot demonstrate continuous California residency from or before January 1, 2015. In the case of an applicant or licensee that is an entity, the entity shall not be considered a resident if any person controlling the entity cannot demonstrate continuous California residency from and before January 1, 2015.
(b) Subdivision (a) shall cease to be operable on December 31, 2019 unless reenacted prior thereto by the Legislature.

26054.2
(a) A licensing authority shall give priority in issuing licenses under this division to applicants that can demonstrate to the authority's satisfaction that the applicant operated in compliance with the Compassionate Use Act and its implementing laws before September 1, 2016, or currently operates in compliance with Chapter 3.5 of Division 8.
(b) The bureau shall request that local jurisdictions identify for the bureau potential applicants for licensure based on the applicants' prior operation in the local jurisdiction in compliance with state law, including the Compassionate Use Act and its implementing laws, and any

applicable local laws. The bureau shall make the requested information available to licensing authorities.
(c) In addition to or in lieu of the information described in subdivision (b), an applicant may furnish other evidence to demonstrate operation in compliance with the Compassionate Use Act or Chapter 3.5 of Division 8. The bureau and licensing authorities may accept such evidence to demonstrate eligibility for the priority provided for in subdivision (a).
(d) This section shall cease to be operable on December 31, 2019 unless otherwise provided by law.

26055.
(a) Licensing authorities may issue state licenses only to qualified applicants.
(b) Revocation of a state license issued under this division shall terminate the ability of the licensee to operate within California until the licensing authority reinstates or reissues the state license.
(c) Separate licenses shall be issued for each of the premises of any licensee having more than one location, except as otherwise authorized by law or regulation.
(d) After issuance or transfer of a license, no licensee shall change or alter the premises in a manner which materially or substantially alters the premises, the usage of the premises, or the mode or character of business operation conducted from the premises, from the plan contained in the diagram on file with the application, unless and until prior written assent of the licensing authority or bureau has been obtained. For purposes of this section, material or substantial physical changes of the premises, or in the usage of the premises, shall include, but not be limited to, a substantial increase or decrease in the total area of the licensed premises previously diagrammed, or any other physical modification resulting in substantial change in the mode or character of business operation.
(e) Licensing authorities shall not approve an application for a state license under this division if approval of the state license will violate the provisions of any local ordinance or regulation adopted in accordance with Section 26200.

26056.
An applicant for any type of state license issued pursuant to this division shall comply with the same requirements as set forth in Section 19322 of Chapter 3.5 of Division 8 unless otherwise provided by law, including electronic submission of fingerprint images, and any other requirements imposed by law or a licensing authority, except as follows:
(a) notwithstanding paragraph (2) of subdivision (a) of Section 19322 of Chapter 3.5 of Division 8, an applicant need not provide documentation that the applicant has obtained a license, permit or other authorization to operate from the local jurisdiction in which the applicant seeks to operate;
(b) an application for a license under this division shall include evidence that the proposed location meets the restriction in subdivision (b) of Section 26054; and
(c) for applicants seeking licensure to cultivate, distribute, or manufacture nonmedical marijuana or marijuana products, 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) The inventory process.
(5) Quality control procedures.
(6) The source or sources of water the applicant will use for the licensed activities, including a certification that the applicant may use that water legally under state law.
(d) The applicant shall provide a complete detailed diagram of the proposed premises wherein the license privileges will be exercised, with sufficient particularity to enable ready determination of the bounds of the premises, showing all boundaries, dimensions, entrances and exits, interior partitions, walls, rooms, and common or shared entryways, and include a brief statement or description of the principal activity to be conducted therein, and, for licenses permitting cultivation, measurements of the planned canopy including aggregate square footage and individual square footage of separate cultivation areas, if any.

26056.5.
The bureau shall devise protocols that each licensing authority shall implement to ensure compliance with state laws and regulations related to environmental impacts, natural resource protection, water quality, water supply, hazardous materials, and pesticide use in accordance with regulations, including but not limited to, the California Environmental Quality Act (Public Resources Code, Section 21000, et seq.), the California Endangered Species Act (Fish and Game Code, Section 2800 et. seq.), lake or streambed alteration agreements (Fish and Game Code, Section 1600 et. seq.), the Clean Water Act, the Porter-Cologne Water Quality Control Act, timber production zones, wastewater discharge requirements, and any permit or right necessary to divert water.

26057.
(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 division.
(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 division, any rule or regulation adopted pursuant to this division, or any requirement imposed to protect natural resources, including, but not limited to, protections for instream flow and water quality.
(2) Conduct that constitutes grounds for denial of licensure under Chapter 2 of Division 1.5, except as otherwise specified in this section and Section 26059.
(3) Failure to provide information required by the licensing authority.
(4) 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 violent felony conviction, as specified in subdivision (c) of Section 667.5 of the Penal Code.

(B) A serious felony conviction, as specified in subdivision (c) of Section 1192.7 of the Penal Code.
(C) A felony conviction involving fraud, deceit, or embezzlement.
(D) A felony conviction for hiring, employing, or using a minor in transporting, carrying, selling, giving away, preparing for sale, or peddling, any controlled substance to a minor; or selling, offering to sell, furnishing, offering to furnish, administering, or giving any controlled substance to a minor.
(E) A felony conviction for drug trafficking with enhancements pursuant to Sections 11370.4 or 11379.8.
(5) Except as provided in subparagraphs (D) and (E) of paragraph (4) and notwithstanding Chapter 2 of Division 1.5, a prior conviction, where the sentence, including any term of probation, incarceration, or supervised release, is completed, for possession of, possession for sale, sale, manufacture, transportation, or cultivation of a controlled substance is not considered substantially related, and shall not be the sole ground for denial of a license. Conviction for any controlled substance felony subsequent to licensure shall be grounds for revocation of a license or denial of the renewal of a license.
(6) 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 Sections 12025 or 12025.1 of the Fish and Game Code.
(7) 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 unauthorized commercial marijuana activities or commercial medical cannabis activities, has had a license revoked under this division or Chapter 3.5 of Division 8 in the three years immediately preceding the date the application is filed with the licensing authority, or has been sanctioned under Sections 12025 or 12025.1 of the Fish and Game Code.
(8) 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.
(9) Any other condition specified in law.

26058.
Upon the denial of any application for a license, the licensing authority shall notify the applicant in writing.

26059.
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 Sections 1203.4, 1203.4a, or 1203.41 of the Penal Code or any other provision allowing for dismissal of a conviction.

Chapter 6. Licensed Cultivation Sites

26060.
(a) Regulations issued by the Department of Food and Agriculture governing the licensing of indoor, outdoor, and mixed-light cultivation sites shall apply to licensed cultivators under this division.
(b) Standards developed by the Department of Pesticide Regulation, in consultation with the Department of Food and Agriculture, for the use of pesticides in cultivation, and maximum tolerances for pesticides and other foreign object residue in harvested cannabis shall apply to licensed cultivators under this division.
(c) The Department of Food and Agriculture shall include conditions in each license requested by the Department of Fish and Wildlife and the State Water Resources Control Board to 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, and to otherwise protect fish, wildlife, fish and wildlife habitat, and water quality.
(d) The regulations promulgated by the Department of Food and Agriculture under this division shall, at a minimum, address in relation to commercial marijuana activity, the same matters described in subdivision (e) of Section 19332 of Chapter 3.5 of Division 8.
(e) 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, outdoor, or mixed light cultivation of marijuana meets standards equivalent to Division 6 (commencing with Section 11401) of the Food and Agricultural Code and its implementing regulations.

26061.
(a) The state cultivator license types to be issued by the Department of Food and Agriculture under this division shall include Type 1, Type 1A, Type 1B, Type 2, Type 2A, Type 2B, Type 3, Type 3A, Type 3B, Type 4, and Type 5, Type 5A, and Type 5B unless otherwise provided by law.
(b) Except as otherwise provided by law, Type 1, Type 1A, Type 1B, Type 2, Type 2A, Type 2B, Type 3, Type 3A, Type 3B and Type 4 licenses shall provide for the cultivation of marijuana in the same amount as the equivalent license type for cultivation of medical cannabis as specified in subdivision (g) of Section 19332 of Chapter 3.5 of Division 8.
(c) Except as otherwise provided by law:
(1) Type 5, or "outdoor," means for outdoor cultivation using no artificial lighting greater than one acre, inclusive, of total canopy size on one premises.
(2) Type 5A, or "indoor," means for indoor cultivation using exclusively artificial lighting greater than 22,000 square feet, inclusive, of total canopy size on one premises.
(3) Type 5B, or "mixed-light," means for cultivation using a combination of natural and supplemental artificial lighting at a maximum threshold to be determined by the licensing authority, greater than 22,000 square feet, inclusive, of total canopy size on one premises.
(d) No Type 5, Type 5A, or Type 5B cultivation licenses may be issued before January 1, 2023.
(e) Commencing on January 1, 2023, A Type 5, Type 5A, or Type 5B licensee may apply for and hold a Type 6 or Type 7 license and apply for and hold Type 10 license. A Type 5, Type 5A, or Type 5B licensee shall not eligible to apply for or hold a Type 8, Type 11, or Type 12 license.

26062.
The Department of Food and Agriculture, in conjunction with the bureau, shall establish a certified organic designation and organic certification program for marijuana and marijuana products in the same manner as provided in Section 19332.5 of Chapter 3.5 of Division 8.

26063.
(a) The bureau shall establish standards for recognition of a particular appellation of origin applicable to marijuana grown or cultivated in a certain geographical area in California.
(b) Marijuana shall not be marketed, labeled, or sold as grown in a California county when the marijuana was not grown in that county.
(c) The name of a California county shall not be used in the labeling, marketing, or packaging of marijuana products unless the marijuana contained in the product was grown in that county.

26064.
Each licensed cultivator shall ensure that the licensed premises do not pose an unreasonable risk of fire or combustion. Each cultivator shall ensure that all lighting, wiring, electrical and mechanical devices, or other relevant property is carefully maintained to avoid unreasonable or dangerous risk to the property or others.

26065.
An employee engaged in the cultivation of marijuana under this division shall be subject to Wage Order No. 4-2001 of the Industrial Welfare Commission.

26066.
Indoor and outdoor marijuana cultivation by persons and entities licensed under this division 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 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 marijuana cultivation and shall coordinate when appropriate with cities and counties and their law enforcement agencies in enforcement efforts.

26067.
(a) The Department of Food and Agriculture shall establish a Marijuana Cultivation Program to be administered by the secretary. The secretary shall administer this section as it pertains to the cultivation of marijuana. For purposes of this division, marijuana is an agricultural product.
(b) A person or entity shall not cultivate marijuana without first obtaining a state license issued by the department pursuant to this section.
(c)(1) The department, in consultation with, but not limited to, the bureau, the State Water Resources Control Board, and the Department of Fish and Wildlife, shall implement a unique identification program for 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. If a watershed cannot support additional cultivation, no new plant identifiers will be issued for that watershed.
(B) Cultivation will not negatively impact springs, riparian wetlands and aquatic habitats.
(2) The department shall establish a program for the identification of permitted marijuana plants at a cultivation site during the cultivation period. A unique identifier shall be issued for each marijuana plant. The department shall ensure that unique identifiers are issued as quickly as possible to ensure the implementation of this division. The unique identifier shall be attached at the base of each plant or as otherwise required by law or regulation.
(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 26170.
(C) The department may charge a fee to cover the reasonable costs of issuing the unique identifier and monitoring, tracking, and inspecting each 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.
(d) Unique identifiers and associated identifying information administered by local jurisdictions shall adhere to the requirements set by the department and be the equivalent to those administered by the department.
(e) (1) This section does not apply to the cultivation of marijuana in accordance with Section 11362.1 of the Health and Safety Code or the Compassionate Use Act.
(2) Subdivision (b) of this section does not apply to persons or entities licensed under either paragraph (3) of subdivision (a) of Section 26070 or subdivision (b) of Section 26070.5.
(f) "Department" for purposes of this section means the Department of Food and Agriculture.

Chapter 7. Retailers and Distributors

26070. Retailers and Distributors
(a) State licenses to be issued by the Department of Consumer Affairs are as follows:
(1) "Retailer," for the retail sale and delivery of marijuana or marijuana products to customers.
(2) "Distributor," for the distribution of marijuana and marijuana products. A distributor licensee shall be bonded and insured at a minimum level established by the licensing authority.
(3) "Microbusiness," for the cultivation of marijuana on an area less than 10,000 square feet and to act as a licensed distributor, Level 1 manufacturer, and retailer under this division, provided such licensee complies with all requirements imposed by this division on licensed cultivators, distributors, Level 1 manufacturers, and retailers to the extent the licensee engages in such activities. Microbusiness licenses that authorize cultivation of marijuana shall include conditions requested by the Department of Fish and Wildlife and the State Water Resources Control Board to 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 flow needed to maintain flow variability, and otherwise protect fish, wildlife, fish and wildlife habitat, and water quality.
(b) The bureau shall establish minimum security and transportation safety requirements for the commercial distribution and delivery of marijuana and marijuana products. The transportation

safety standards established by the bureau shall include, but not be limited to, minimum standards governing the types of vehicles in which marijuana and marijuana products may be distributed and delivered and minimum qualifications for persons eligible to operate such vehicles.
(c) Licensed retailers and microbusinesses, and licensed nonprofits under Section 26070.5, shall implement security measures reasonably designed to prevent unauthorized entrance into areas containing marijuana or marijuana products and theft of marijuana or marijuana products from the premises. These security measures shall include, but not be limited to, all of the following:
(1) Prohibiting individuals from remaining on the licensee's premises if they are not engaging in activity expressly related to the operations of the dispensary.
(2) Establishing limited access areas accessible only to authorized personnel.
(3) Other than limited amounts of marijuana used for display purposes, samples, or immediate sale, storing all finished marijuana and marijuana products in a secured and locked room, safe, or vault, and in a manner reasonably designed to prevent diversion, theft, and loss.

26070.5
(a) The bureau shall, by January 1, 2018, investigate the feasibility of creating one or more classifications of nonprofit licenses under this section. The feasibility determination shall be made in consultation with the relevant licensing agencies and representatives of local jurisdictions which issue temporary licenses pursuant to subdivision (b).
The bureau shall consider factors including, but not limited to, the following:
(1) Should nonprofit licensees be exempted from any or all state taxes, licensing fees and regulatory provisions applicable to other licenses in this division?
(2) Should funding incentives be created to encourage others licensed under this division to provide professional services at reduced or no cost to nonprofit licensees?
(3) Should nonprofit licenses be limited to, or prioritize those, entities previously operating on a not-for-profit basis primarily providing whole-plant marijuana and marijuana products and a diversity of marijuana strains and seed stock to low income persons?
(b) Any local jurisdiction may issue temporary local licenses to nonprofit entities primarily providing whole-plant marijuana and marijuana products and a diversity of marijuana strains and seed stock to low income persons so long as the local jurisdiction:
(1) confirms the license applicant's status as a nonprofit entity registered with the California Attorney General's Registry of Charitable Trusts and that the applicant is in good standing with all state requirements governing nonprofit entities;
(2) licenses and regulates any such entity to protect public health and safety, and so as to require compliance with all environmental requirements in this division;
(3) provides notice to the bureau of any such local licenses issued, including the name and location of any such licensed entity and all local regulations governing the licensed entity's operation, and;
(4) certifies to the bureau that any such licensed entity will not generate annual gross revenues in excess of two million dollars ($2,000,000).
(c) Temporary local licenses authorized under subdivision (b) shall expire after twelve months unless renewed by the local jurisdiction.
(d) The bureau may impose reasonable additional requirements on the local licenses authorized under subdivision (b).

(e) (1) No new temporary local licenses shall be issued pursuant to this section after the date the bureau determines that creation of nonprofit licenses under this division is not feasible, or if the bureau determines such licenses are feasible, after the date a licensing agency commences issuing state nonprofit licenses.
(2) If the bureau determines such licenses are feasible, no temporary license issued under subdivision (b) shall be renewed or extended after the date on which a licensing agency commences issuing state nonprofit licenses.
(3) If the bureau determines that creation of nonprofit licenses under this division is not feasible, the bureau shall provide notice of this determination to all local jurisdictions that have issued temporary licenses under subdivision (b). The bureau may, in its discretion, permit any such local jurisdiction to renew or extend on an annual basis any temporary license previously issued under subdivision (b).

Chapter 8. Distribution and Transport

26080.
(a) This division shall not be construed to authorize or permit a licensee to transport or distribute, or cause to be transported or distributed, marijuana or marijuana products outside the state, unless authorized by federal law.
(b) A local jurisdiction shall not prevent transportation of marijuana or marijuana products on public roads by a licensee transporting marijuana or marijuana products in compliance with this division.

Chapter 9. Delivery

26090.
(a) Deliveries, as defined in this division, may only be made by a licensed retailer or microbusiness, or a licensed nonprofit under Section 26070.5.
(b) A customer requesting delivery shall maintain a physical or electronic copy of the delivery request and shall make it available upon request by the licensing authority and law enforcement officers.
(c) A local jurisdiction shall not prevent delivery of marijuana or marijuana products on public roads by a licensee acting in compliance with this division and local law as adopted under Section 26200.

Chapter 10. Manufacturers and Testing Laboratories

26100.
The Department of Public Health shall promulgate regulations governing the licensing of marijuana manufacturers and testing laboratories. Licenses to be issued are as follows:
(a) "Manufacturing Level 1," for sites that manufacture marijuana products using nonvolatile solvents, or no solvents.
(b) "Manufacturing Level 2," for sites that manufacture marijuana products using volatile solvents.
(c) "Testing," for testing of marijuana and marijuana products. Testing licensees shall have their facilities or devices licensed according to regulations set forth by the Department. A testing

licensee shall not hold a license in another license category of this division and shall not own or have ownership interest in a non-testing facility licensed pursuant to this division.
(d) For purposes of this section, "volatile solvents" shall have the same meaning as in subdivision (d) of Section 11362.2 of the Health and Safety Code unless otherwise provided by law or regulation.

26101.
(a) Except as otherwise provided by law, no marijuana or marijuana products may be sold pursuant to a license provided for under this division unless a representative sample of such marijuana or marijuana product has been tested by a certified testing service to determine:
(1) Whether the chemical profile of the sample conforms to the labeled content of 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).
(2) That the presence of contaminants does not exceed the levels in the most current version of the American Herbal Pharmacopoeia monograph. For purposes of this paragraph, contaminants includes, but is not limited to, all of the following:
(A) Residual solvent or processing chemicals, including explosive gases, such as Butane, propane, O2 or H2, and poisons, toxins, or carcinogens, such as Methanol, Iso-propyl Alcohol, Methylene Chloride, Acetone, Benzene, Toluene, and Tri-chloro-ethylene.
(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.
(b) Residual levels of volatile organic compounds shall satisfy standards of the cannabis inflorescence monograph set by the United States Pharmacopeia (U.S.P. Chapter 467).
(c) The testing required by paragraph (a) shall be performed in a manner consistent with general requirements for the competence of testing and calibrations activities, including sampling, using standard methods established by the International Organization for Standardization, specifically ISO/IEC 17020 and ISO/IEC 17025 to test marijuana and marijuana products that are approved by an accrediting body that is a signatory to the International Laboratory Accreditation Cooperation Mutual Recognition Agreement.
(d) Any pre-sale inspection, testing transfer, or transportation of marijuana products pursuant to this section shall conform to a specified chain of custody protocol and any other requirements imposed under this division.

26102.
A licensed testing service shall not handle, test, or analyze marijuana or marijuana products unless the licensed testing laboratory meets the requirements of Section 19343 in Chapter 3.5 of Division 8 or unless otherwise provided by law.

26103.
A licensed testing service shall issue a certificate of analysis for each lot, with supporting data, to report the same information required in Section 19344 in Chapter 3.5 of Division 8 or unless otherwise provided by law.

26104.
(a) A licensed testing service shall, in performing activities concerning marijuana and marijuana products, comply with the requirements and restrictions set forth in applicable law and regulations.
(b) The Department of Public Health shall develop procedures to:
(1) ensure that testing of marijuana and marijuana products occurs prior to distribution to retailers, microbusinesses, or nonprofits licensed under Section 26070.5;
(2) specify how often licensees shall test marijuana and marijuana products, and that the cost of testing marijuana shall be borne by the licensed cultivators and the cost of testing marijuana products shall be borne by the licensed manufacturer, and that the costs of testing marijuana and marijuana products shall be borne a nonprofit licensed under Section 26070.5; and
(3) require destruction of harvested batches whose testing samples indicate noncompliance with health and safety standards promulgated by the Department of Public Health, unless remedial measures can bring the marijuana or marijuana products into compliance with quality assurance standards as promulgated by the Department of Public Health.

26105.
Manufacturing Level 2 licensees shall enact sufficient methods or procedures to capture or otherwise limit risk of explosion, combustion, or any other unreasonably dangerous risk to public safety created by volatile solvents. The Department of Public Health shall establish minimum standards concerning such methods and procedures for Level 2 licensees.

26106.
Standards for the production and labeling of all marijuana products developed by the Department of Public Health shall apply to licensed manufacturers and microbusinesses, and nonprofits licensed under Section 26070.5 unless otherwise specified by the Department of Public Health.

Chapter 11. Quality Assurance, Inspection, and Testing

26110.
(a) All marijuana and marijuana products shall be subject to quality assurance, inspection, and testing.
(b) All marijuana and marijuana products shall undergo quality assurance, inspection, and testing in the same manner as provided in Section 19326 in Chapter 3.5 of Division 8 except as otherwise provided in this division or by law.

Chapter 12. Packaging and Labeling

26120.
(a) Prior to delivery or sale at a retailer, marijuana and marijuana products shall be labeled and placed in a resealable, child resistant package.
(b) Packages and labels shall not be made to be attractive to children.
(c) All marijuana and marijuana product labels and inserts shall include the following information prominently displayed in a clear and legible fashion in accordance with the requirements, including font size, prescribed by the bureau or the Department of Public Health: ~~not less than 8 point font~~:
(1) Manufacture date and source.
(2) The following statements, in bold print:
(A) For marijuana: "GOVERNMENT WARNING: THIS PACKAGE CONTAINS MARIJUANA, A SCHEDULE I CONTROLLED SUBSTANCE. KEEP OUT OF REACH OF CHILDREN AND ANIMALS. MARIJUANA MAY ONLY BE POSSESSED OR CONSUMED BY PERSONS 21 YEARS OF AGE OR OLDER UNLESS THE PERSON IS A QUALIFIED PATIENT. MARIJUANA USE WHILE PREGNANT OR BREASTFEEDING MAY BE HARMFUL. CONSUMPTION OF MARIJUANA IMPAIRS YOUR ABILITY TO DRIVE AND OPERATE MACHINERY. PLEASE USE EXTREME CAUTION."
(B) For marijuana products: "GOVERNMENT WARNING: THIS PRODUCT CONTAINS MARIJUANA, A SCHEDULE I CONTROLLED SUBSTANCE. KEEP OUT OF REACH OF CHILDREN AND ANIMALS. MARIJUANA PRODUCTS MAY ONLY BE POSSESSED OR CONSUMED BY PERSONS 21 YEARS OF AGE OR OLDER UNLESS THE PERSON IS A QUALIFIED PATIENT. THE INTOXICATING EFFECTS OF MARIJUANA PRODUCTS MAY BE DELAYED UP TO TWO HOURS. MARIJUANA USE WHILE PREGNANT OR BREASTFEEDING MAY BE HARMFUL. CONSUMPTION OF MARIJUANA PRODUCTS IMPAIRS YOUR ABILITY TO DRIVE AND OPERATE MACHINERY. PLEASE USE EXTREME CAUTION."
(3) For packages containing only dried flower, the net weight of marijuana in the package.
(4) Identification of the source and date of cultivation, the type of marijuana or marijuana product and the date of manufacturing and packaging.
(5) The appellation of origin, if any.
(6) 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, and the potency of the marijuana or marijuana product by reference to the amount of tetrahydrocannabinol and cannabidiol in each serving.
(7) For marijuana products, a list of all ingredients and disclosure of nutritional information in the same manner as the federal nutritional labeling requirements in 21 C.F.R. section 101.9.
(8) A list of any solvents, nonorganic pesticides, herbicides, and fertilizers that were used in the cultivation, production, and manufacture of such marijuana or marijuana product.
(9) A warning if nuts or other known allergens are used.
(10) Information associated with the unique identifier issued by the Department of Food and Agriculture.
(11) Any other requirement set by the bureau or the Department of Public Health.

(d) Only generic food names may be used to describe the ingredients in edible marijuana products.
(e) In the event the bureau determines that marijuana is no longer a schedule I controlled substance under federal law, the label prescribed in subdivision (c) shall no longer require a statement that marijuana is a schedule I controlled substance.

Chapter 13. Marijuana Products

26130.
(a) Marijuana products shall be:
(1) Not designed to be appealing to children or easily confused with commercially sold candy or foods that do not contain marijuana.
(2) Produced and sold with a standardized dosage of cannabinoids not to exceed ten (10) milligrams tetrahydrocannabinol per serving.
(3) Delineated or scored into standardized serving sizes if the marijuana product contains more than one serving and is an edible marijuana product in solid form.
(4) Homogenized to ensure uniform disbursement of cannabinoids throughout the product.
(5) Manufactured and sold under sanitation standards established by the Department of Public Health, in consultation with the bureau, for preparation, storage, handling and sale of food products.
(6) Provided to customers with sufficient information to enable the informed consumption of such product, including the potential effects of the marijuana product and directions as to how to consume the marijuana product, as necessary.
(b) Marijuana, including concentrated cannabis, included in a marijuana product manufactured in compliance with law is not considered an adulterant under state law.

Chapter 14. Protection of Minors

26140.
(a) No licensee shall:
(1) Sell marijuana or marijuana products to persons under 21 years of age.
(2) Allow any person under 21 years of age on its premises.
(3) Employ or retain persons under 21 years of age.
(4) Sell or transfer marijuana or marijuana products unless the person to whom the marijuana or marijuana product is to be sold first presents documentation which reasonably appears to be a valid government-issued identification card showing that the person is 21 years of age or older.
(b) Persons under 21 years of age may be used by peace officers in the enforcement of this division and to apprehend licensees, or employees or agents of licensees, or other persons who sell or furnish marijuana to minors. Notwithstanding any provision of law, any person under 21 years of age who purchases or attempts to purchase any marijuana while under the direction of a peace officer is immune from prosecution for that purchase or attempt to purchase marijuana. Guidelines with respect to the use of persons under 21 years of age as decoys shall be adopted and published by the bureau in accordance with the rulemaking portion of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

(c) Notwithstanding subdivision (a), a licensee that is also a dispensary licensed under Chapter 3.5 of Division 8 may:
(1) Allow on the premises any person 18 years of age or older who possesses a valid identification card under Section 11362.71 of the Health and Safety Code and a valid government-issued identification card;
(2) Sell marijuana, marijuana products, and marijuana accessories to a person 18 years of age or older who possesses a valid identification card under Section 11362.71 of the Health and Safety Code and a valid government-issued identification card.

Chapter 15. Advertising and Marketing Restrictions

26150.
For purposes of this chapter:
(a) "Advertise" means the publication or dissemination of an advertisement.
(b) "Advertisement" includes any written or verbal statement, illustration, or depiction which is calculated to induce sales of marijuana or marijuana products, including any written, printed, graphic, or other material, billboard, sign, or other outdoor display, public transit card, other periodical literature, publication, or in a radio or television broadcast, or in any other media; except that such term shall not include:
(1) Any label affixed to any marijuana or marijuana products, or any individual covering, carton, or other wrapper of such container that constitutes a part of the labeling under provisions of this division.
(2) Any editorial or other reading material (e.g., news release) in any periodical or publication or newspaper for the publication of which no money or valuable consideration is paid or promised, directly or indirectly, by any licensee, and which is not written by or at the direction of the licensee.
(c) "Advertising sign" is any sign, poster, display, billboard, or any other stationary or permanently-affixed advertisement promoting the sale of marijuana or marijuana products which are not cultivated, manufactured, distributed, or sold on the same lot.
(d) "Health-related statement" means any statement related to health, and includes statements of a curative or therapeutic nature that, expressly or by implication, suggest a relationship between the consumption of marijuana or marijuana products and health benefits, or effects on health.
(e) "Market" or "Marketing" means any act or process of promoting or selling marijuana or marijuana products, including but not limited to, sponsorship of sporting events, point of sale advertising, development of products specifically designed to appeal to certain demographics, etc.

26151.
(a) All advertisements and marketing shall accurately and legibly identify the licensee responsible for its content.
(b) Any advertising or marketing placed in broadcast, cable, radio, print and digital communications shall only be displayed where at least 71.6 percent of the audience is reasonably expected to be 21 years of age or older, as determined by reliable, up-to-date audience composition data.

(c) Any advertising or marketing involving direct, individualized communication or dialogue controlled by the licensee shall utilize a method of age affirmation to verify that the recipient is 21 years of age or older prior to engaging in such communication or dialogue controlled by the licensee. For purposes of this section, such method of age affirmation may include user confirmation, birth date disclosure, or other similar registration method.
(d) All advertising shall be truthful and appropriately substantiated.

26152.
No licensee shall:
(a) Advertise or market in a manner that is false or untrue in any material particular, or that, irrespective of falsity, directly, or by ambiguity, omission, or inference, or by the addition of irrelevant, scientific or technical matter tends to create a misleading impression;
(b) Publish or disseminate advertising or marketing containing any statement concerning a brand or product that is inconsistent with any statement on the labeling thereof;
(c) Publish or disseminate advertising or marketing containing any statement, design, device, or representation which tends to create the impression that the marijuana originated in a particular place or region, unless the label of the advertised product bears an appellation of origin, and such appellation of origin appears in the advertisement;
(d) Advertise or market on a billboard or similar advertising device located on an Interstate Highway or State Highway which crosses the border of any other state;
(e) Advertise or market marijuana or marijuana products in a manner intended to encourage persons under the age of 21 years to consume marijuana or marijuana products;
(f) Publish or disseminate advertising or marketing containing symbols, language, music, gestures, cartoon characters or other content elements known to appeal primarily to persons below the legal age of consumption; or
(g) Advertise or market marijuana or marijuana products on an advertising sign within 1,000 feet of a day care center, school providing instruction in kindergarten or any grades 1 through 12, playground, or youth center.

26153.
No licensee shall give away any amount of marijuana or marijuana products, or any marijuana accessories, as part of a business promotion or other commercial activity.

26154.
No licensee shall publish or disseminate advertising or marketing containing any health-related statement that is untrue in any particular manner or tends to create a misleading impression as to the effects on health of marijuana consumption.

26155.
(a) The provisions of subsection (g) of section 26152 shall not apply to the placement of advertising signs inside a licensed premises and which are not visible by normal unaided vision from a public place, provided that such advertising signs do not advertise marijuana or marijuana products in a manner intended to encourage persons under the age of 21years to consume marijuana or marijuana products.
(b) This chapter does not apply to any noncommercial speech.

Chapter 16. Records

26160.
(a) A licensee shall keep accurate records of commercial marijuana activity.
(b) All records related to commercial marijuana 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 division. 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 division.
(f) If a licensee, or an agent or 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 up to thirty thousand dollars ($30,000) per individual violation.

26161.
(a) Every sale or transport of marijuana or marijuana products from one licensee to another licensee must be recorded on a sales invoice or receipt. Sales invoices and receipts may be maintained electronically and must be filed in such manner as to be readily accessible for examination by employees of the bureau or Board of Equalization and shall not be commingled with invoices covering other commodities.
(b) Each sales invoice required by subdivision (a) shall include the name and address of the seller and shall include the following information:
(1) Name and address of the purchaser.
(2) Date of sale and invoice number.
(3) Kind, quantity, size, and capacity of packages of marijuana or marijuana products sold.
(4) The cost to the purchaser, together with any discount applied to the price as shown on the invoice.
(5) The place from which transport of the marijuana or marijuana product was made unless transport was made from the premises of the licensee.
(6) Any other information specified by the bureau or the licensing authority.

Chapter 17. Track and Trace System

26170.
(a) The Department of Food and Agriculture, in consultation with the bureau and the State Board of Equalization, shall expand the track and trace program provided for under Article 7.5 to include the reporting of the movement of marijuana and marijuana products throughout the distribution chain and provide, at a minimum, the same level of information for marijuana and marijuana products as required to be reported for medical cannabis and medical cannabis

products, and in addition, the amount of the cultivation tax due pursuant to Part 14.5 of the Revenue and Taxation Code. The expanded track and trace program shall include an electronic seed to sale software tracking system with data points for the different stages of commercial activity including, but not limited to, cultivation, harvest, processing, distribution, inventory, and sale.
(b) The Department, in consultation with the bureau, shall ensure that licensees under this division are allowed to use third-party applications, programs and information technology systems to comply with the requirements of the expanded track and trace program described in subdivision (a) to report the movement of marijuana and marijuana products throughout the distribution chain and communicate such information to licensing agencies as required by law.
(c) Any software, database or other information technology system utilized by the Department to implement the expanded track and trace program shall support interoperability with third-party cannabis business software applications and allow all licensee-facing system activities to be performed through a secure application programming interface (API) or comparable technology which is well documented, bi-directional, and accessible to any third-party application that has been validated and has appropriate credentials. The API or comparable technology shall have version control and provide adequate notice of updates to third-party applications. The system should provide a test environment for third-party applications to access that mirrors the production environment.

Chapter 18. License Fees

26180.
Each licensing authority shall establish a scale of application, licensing, and renewal fees, based upon the cost of enforcing this division, 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 division. The licensure fee may vary depending upon the varying costs associated with administering the various regulatory requirements of this division 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 26170, but shall not exceed the reasonable regulatory costs to the licensing authority.
(b) The total fees assessed pursuant to this division shall be set at an amount that will fairly and proportionately generate sufficient total revenue to fully cover the total costs of administering this division.
(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 Marijuana Control Fund. Moneys in the licensing authority fee accounts shall be used, upon appropriation by the Legislature, by the designated licensing authority for the administration of this division.

26181.
The State Water Resources Control Board, the Department of Fish and Wildlife, and other agencies may establish fees to cover the costs of their marijuana regulatory programs.

Chapter 19. Annual Reports; Performance Audit

26190.
Beginning on March 1, 2020, and on or before March 1 of each year thereafter, each licensing authority shall prepare and submit to the Legislature an annual report on the authority's activities concerning commercial marijuana activities and post the report on the authority's website. The report shall include, but not be limited to, the same type of information specified in Section 19353, and a detailed list of the petitions for regulatory relief or rulemaking changes received by the office from licensees requesting modifications of the enforcement of rules under this division.

26191.
(a) Commencing January 1, 2019, and by January 1 of each year thereafter, the Bureau of State Audits shall conduct a performance audit of the bureau's activities under this division, and shall report its findings to the bureau and the Legislature by July 1 of that same year. The report shall include, but not be limited to, the following:
(1) The actual costs of the program.
(2) The overall effectiveness of enforcement programs.
(3) Any report submitted pursuant to this section shall be submitted in compliance with Section 9795 of the Government Code.
(b) The Legislature shall provide sufficient funds to the Bureau of State Audits to conduct the annual audit required by this section.

Chapter 20. Local Control

26200.
(a) Nothing in this division shall be interpreted to supersede or limit the authority of a local jurisdiction to adopt and enforce local ordinances to regulate businesses licensed under this division, including, but not limited to, local zoning and land use requirements, business license requirements, and requirements related to reducing exposure to second hand smoke, or to completely prohibit the establishment or operation of one or more types of businesses licensed under this division within the local jurisdiction.
(b) Nothing in this division shall be interpreted to require a licensing authority to undertake local law enforcement responsibilities, enforce local zoning requirements, or enforce local licensing requirements.
(c) A local jurisdiction shall notify the bureau upon revocation of any local license, permit, or authorization for a licensee to engage in commercial marijuana activity within the local jurisdiction. Within ten (10) days of notification, the bureau shall inform the relevant licensing authorities. Within ten (10) days of being so informed by the bureau, the relevant licensing authorities shall commence proceedings under Chapter 3 of this Division to determine whether a license issued to the licensee should be suspended or revoked.
(d) Notwithstanding paragraph (1) of subdivision (a) of Section 11362.3 of the Health and Safety Code, a local jurisdiction may allow for the smoking, vaporizing, and ingesting of marijuana or marijuana products on the premises of a retailer or microbusiness licensed under this division if:
(1) Access to the area where marijuana consumption is allowed is restricted to persons 21 years of age and older;

(2) Marijuana consumption is not visible from any public place or non-age restricted area; and
(3) Sale or consumption of alcohol or tobacco is not allowed on the premises.

26201.
Any standards, requirements, and regulations regarding health and safety, environmental protection, testing, security, food safety, and worker protections established by the state shall be the minimum standards for all licensees under this division statewide. A local jurisdiction may establish additional standards, requirements, and regulations.

26202.
(a) A local jurisdiction may enforce this division and the regulations promulgated by the bureau or any licensing authority if delegated the power to do so by the bureau or a licensing authority.
(b) The bureau or any licensing authority shall implement the delegation of enforcement authority in subdivision (a) through a memorandum of understanding between the bureau or licensing authority and the local jurisdiction to which enforcement authority is to be delegated.

Chapter 21. Funding

26210.
(a) The Medical Marijuana Regulation and Safety Act Fund established in Section 19351 of Chapter 3.5 of Division 8 is hereby renamed the Marijuana Control Fund.
(b) Upon the effective date of this section, whenever "Medical Marijuana Regulation and Safety Act Fund" appears in any statute, regulation, or contract, or in any other code, it shall be construed to refer to the Marijuana Control Fund.

26211.
(a) Funds for the initial establishment and support of the regulatory activities under this division, including the public information program described in subdivision (c), and for the activities of the Board of Equalization under Part 14.5 of Division 2 of the Revenue and Taxation Code until July 1, 2017, or until the 2017 Budget Act is enacted, whichever occurs later, shall be advanced from the General Fund and shall be repaid by the initial proceeds from fees collected pursuant to this division, any rule or regulation adopted pursuant to this division, or revenues collected from the tax imposed by Sections 34011 and 34012 of the Revenue and Taxation Code, by January 1, 2025.
(1) 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 division, and to the Board of Equalization, as necessary, to implement the provisions of Part 14.5 of Division 2 of the Revenue and Taxation Code.
(2) Within 45 days of this section becoming operative:
(A) The Director of Finance shall determine an amount of the initial advance from the General Fund to the Marijuana Control Fund that does not exceed thirty million dollars ($30,000,000); and
(B) There shall be advanced a sum of five million dollars ($5,000,000) from the General Fund to the Department of Health Care Services to provide for the public information program described in subdivision (c).

(b) Notwithstanding subdivision (a), the Legislature shall provide sufficient funds to the Marijuana Control Fund to support the activities of the bureau, state licensing authorities under this division, and the Board of Equalization to support its activities under Part 14.5 of Division 2 of the Revenue and Taxation Code. It is anticipated that this funding will be provided annually beginning on July 1, 2017.
(c) The Department of Health Care Services shall establish and implement a public information program no later than September 1, 2017. This public information program shall, at a minimum, describe the provisions of the Control, Regulate, and Tax Adult Use of Marijuana Act of 2016, the scientific basis for restricting access of marijuana and marijuana products to persons under the age of 21 years, describe the penalties for providing access to marijuana and marijuana products to persons under the age of 21 years, provide information regarding the dangers of driving a motor vehicle, boat, vessel, aircraft, or other vehicle used for transportation while impaired from marijuana use, the potential harms of using marijuana while pregnant or breastfeeding, and the potential harms of overusing marijuana or marijuana products.

Section 147.6 of the Labor Code is hereby added as follows:

147.6.
(a) By March 1, 2018, 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 licensees under Division 10 of the Business and Professions Code, including but not limited to, whether specific requirements are needed to address exposure to second-hand marijuana smoke by employees at facilities where on-site consumption of marijuana is permitted under subdivision (d) of Section 26200 of the Business and Professions Code, and whether specific requirements are needed to address the potential risks of combustion, inhalation, armed robberies or repetitive strain injuries.
(b) By October 1, 2018, the advisory committee shall present to the board its findings and recommendations for consideration by the board. By October 1, 2018, the board shall render a decision regarding the adoption of industry-specific regulations pursuant to this section.

Section 13276 of the Water Code is amended 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 commercial marijuana cultivation under Division 10 of the Business and Profession Code* 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.

SECTION 7. MARIJUANA TAX.

Part 14.5 (commencing with Section 34010) is added to Division 2 of the Revenue and Taxation Code, to read:

Part 14.5. Marijuana Tax

34010.
For purposes of this part:
(a) "Board" shall mean the Board of Equalization or its successor agency.
(b) "Bureau" shall mean the Bureau of Marijuana Control within the Department of Consumer Affairs.
(c) "Tax Fund" means the California Marijuana Tax Fund created by Section 34018.
(d) "Marijuana" shall have the same meaning as set forth in Section 11018 of the Health and Safety Code and shall also mean medical cannabis.
(e) "Marijuana products" shall have the same meaning as set forth in Section 11018.1 of the Health and Safety Code and shall also mean medical concentrates and medical cannabis products.
(f) "Marijuana flowers" shall mean the dried flowers of the marijuana plant as defined by the Board.
(g) "Marijuana leaves" shall mean all parts of the marijuana plant other than marijuana flowers that are sold or consumed.
(h) "Gross receipts" shall have the same meaning as set forth in Section 6012.
(i) "Retail sale" shall have the same meaning as set forth in Section 6007.
(j) "Person" shall have the same meaning as set for in section 6005.
(k) "Microbusiness" shall have the same meaning as set for in Section 26070(a)(3) of the Business and Professions Code.
(l) "Nonprofit" shall have the same meaning as set for in Section 26070.5 of the Business and Professions Code.

34011.
(a) Effective January 1, 2018, a marijuana excise tax shall be imposed upon purchasers of marijuana or marijuana products sold in this state at the rate of fifteen percent (15%) of the gross receipts of any retail sale by a dispensary or other person required to be licensed pursuant to Chapter 3.5 of Division 8 of the Business and Professions Code or a retailer, microbusiness,

nonprofit, or other person required to be licensed pursuant to Division 10 of the Business and Professions Code to sell marijuana and marijuana products directly to a purchaser.
(b) Except as otherwise provided by regulation, the tax levied under this section shall apply to the full price, if non-itemized, of any transaction involving both marijuana or marijuana products and any other otherwise distinct and identifiable goods or services, and the price of any goods or services, if a reduction in the price of marijuana or marijuana products is contingent on purchase of those goods or services.
(c) A dispensary or other person required to be licensed pursuant to Chapter 3.5 of Division 8 of the Business and Professions Code or a retailer, microbusiness, nonprofit, or other person required to be licensed pursuant to Division 10 of the Business and Professions Code shall be responsible for collecting this tax and remitting it to the board in accordance with rules and procedures established under law and any regulations adopted by the board.
(d) The excise tax imposed by this section shall be in addition to the sales and use tax imposed by the state and local governments.
(e) Gross receipts from the sale of marijuana or marijuana products for purposes of assessing the sales and use tax under Part 1 of this division shall include the tax levied pursuant to this section.
(f) No marijuana or marijuana products may be sold to a purchaser unless the excise tax required by law has been paid by the purchaser at the time of sale.
(g) The sales and use tax imposed by Part 1 of this division shall not apply to retail sales of medical cannabis, medical cannabis concentrate, edible medical cannabis products or topical cannabis as those terms are defined in Chapter 3.5 of Division 8 of the Business and Professions Code when a qualified patient (or primary caregiver for a qualified patient) provides his or her card issued under Section 11362.71 of the Health and Safety Code and a valid government-issued identification card.

34012.
(a) Effective January 1, 2018, there is hereby imposed a cultivation tax on all harvested marijuana that enters the commercial market upon all persons required to be licensed to cultivate marijuana pursuant to Chapter 3.5 of Division 8 of the Business and Professions Code or Division 10 of the Business and Professions Code. The tax shall be due after the marijuana is harvested.
(1) The tax for marijuana flowers shall be nine dollars and twenty five cents ($9.25) per dry-weight ounce.
(2) The tax for marijuana leaves shall be set at two dollars and seventy five cents ($2.75) per dry-weight ounce.
(b) The board may adjust the tax rate for marijuana leaves annually to reflect fluctuations in the relative price of marijuana flowers to marijuana leaves.
(c) The board may from time to time establish other categories of harvested marijuana, categories for unprocessed or frozen marijuana or immature plants, or marijuana that is shipped directly to manufacturers. These categories shall be taxed at their relative value compared with marijuana flowers.
(d) The board may prescribe by regulation a method and manner for payment of the cultivation tax that utilizes tax stamps or state-issued product bags that indicate that all required tax has been paid on the product to which the tax stamp is affixed or in which the marijuana is packaged.

(e) The tax stamps and product bags shall be of the designs, specifications and denominations as may be prescribed by the board and may be purchased by any licensee under Chapter 3.5 of Division 8 of the Business and Professions Code or under Division 10 of the Business and Professions Code.
(f) Subsequent to the establishment of a tax stamp program, the board may by regulation provide that no marijuana may be removed from a licensed cultivation facility or transported on a public highway unless in a state-issued product bag bearing a tax stamp in the proper denomination.
(g) The tax stamps and product bags shall be capable of being read by a scanning or similar device and must be traceable utilizing the track and trace system pursuant to Section 26170 of the Business and Professions Code.
(h) Persons required to be licensed to cultivate marijuana pursuant to Chapter 3.5 of Division 8 of the Business and Professions Code or Division 10 of the Business and Professions Code shall be responsible for payment of the tax pursuant to regulations adopted by the board. No marijuana may be sold unless the tax has been paid as provided in this part.
(i) All marijuana removed from a cultivator's premises, except for plant waste, shall be presumed to be sold and thereby taxable under this section.
(j) The tax imposed by this section shall be imposed on all marijuana cultivated in the state pursuant to rules and regulations promulgated by the board, but shall not apply to marijuana cultivated for personal use under Section 11362.1 of the Health and Safety Code or cultivated by a qualified patient or primary caregiver in accordance with the Compassionate Use Act.
(k) Beginning January 1, 2020, the rates set forth in subdivisions (a), (b), and (c) shall be adjusted by the board annually thereafter for inflation.

34013.
(a) The board shall administer and collect the taxes imposed by this part pursuant to the Fee Collection Procedures Law (Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code). For purposes of this part, the references in the Fee Collection Procedures Law to "fee" shall include the tax imposed by this part, and references to "feepayer" shall include a person required to pay or collect the tax imposed by this part.
(b) The board may prescribe, adopt, and enforce regulations relating to the administration and enforcement of this part, including, but not limited to, collections, reporting, refunds, and appeals.
(c) The board shall adopt necessary rules and regulations to administer the taxes in this part. Such rules and regulations may include methods or procedures to tag marijuana or marijuana products, or the packages thereof, to designate prior tax payment.
(d) The board may prescribe, adopt, and enforce any emergency regulations as necessary to implement, administer and enforce its duties under this division. 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. Notwithstanding any other provision of law, the emergency regulations adopted by the board may remain in effect for two years from adoption.
(e) Any person who fails to pay the taxes imposed under this part shall, in addition to owing the taxes not paid, be subject to a penalty of at least one-half the amount of the taxes not paid, and

shall be subject to having its license revoked pursuant to Section 26031 of the Business and Professions Code or pursuant to Chapter 3.5 of Division 8 of the Business and Professions Code.
(f) The board may bring such legal actions as are necessary to collect any deficiency in the tax required to be paid, and, upon the board's request, the Attorney General shall bring the actions.

34014.
(a) All persons required to be licensed involved in the cultivation and retail sale of marijuana or marijuana products must obtain a separate permit from the board pursuant to regulations adopted by the board. No fee shall be charged to any person for issuance of the permit. Any person required to obtain a permit who engages in business as a cultivator, dispensary, retailer, microbusiness or nonprofit pursuant to Chapter 3.5 of Division 8 of the Business and Professions Code or Division 10 of the Business and Professions Code without a permit or after a permit has been canceled, suspended, or revoked, and each officer of any corporation which so engages in business, is guilty of a misdemeanor.
(b) The board may require every licensed dispensary, cultivator, microbusiness, nonprofit, or other person required to be licensed, to provide security to cover the liability for taxes imposed by state law on marijuana produced or received by the cultivator, microbusiness, nonprofit, or other person required to be licensed in accordance with procedures to be established by the board. Notwithstanding anything herein to the contrary, the board may waive any security requirement it imposes for good cause, as determined by the board. "Good cause" includes, but is not limited to, the inability of a cultivator, microbusiness, nonprofit, or other person required to be licensed to obtain security due to a lack of service providers or the policies of service providers that prohibit service to a marijuana business. A person may not commence or continue any business or operation relating to marijuana cultivation until any surety required by the board with respect to the business or operation have been properly prepared, executed and submitted under this part.
(c) In fixing the amount of any security required by the board, the board shall give consideration to the financial hardship that may be imposed on licensees as a result of any shortage of available surety providers.

34015.
(a)The marijuana excise tax and cultivation tax imposed by this part is due and payable to the board quarterly on or before the last day of the month following each quarterly period of three months. On or before the last day of the month following each quarterly period, a return for the preceding quarterly period shall be filed with the board by each person required to be licensed for cultivation or retail sale under Divisions 8 or 10 of the Business and Professions Code using electronic media. Returns shall be authenticated in a form or pursuant to methods as may be prescribed by the board. If the cultivation tax is paid by stamp pursuant to section 34012(d) the board may by regulation determine when and how the tax shall be paid.
(b) The board may require every person engaged in the cultivation, distribution or retail sale of marijuana and marijuana products required to be licensed pursuant to Chapter 3.5 of Division 8 of the Business or Professions Code or Division 10 of the Business and Professions Code to file, on or before the 25th day of each month, a report using electronic media respecting the person's inventory, purchases, and sales during the preceding month and any other information as the board may require to carry out the purposes of this part. Reports shall be authenticated in a form or pursuant to methods as may be prescribed by the board.

34016.
(a) Any peace officer, or board employee granted limited peace officer status pursuant to paragraph (6) of subdivision (a) of Section 830.11 of the Penal Code, upon presenting appropriate credentials, is authorized to enter any place as described in paragraph (3) and to conduct inspections in accordance with the following paragraphs, inclusive.
(1) Inspections shall be performed in a reasonable manner and at times that are reasonable under the circumstances, taking into consideration the normal business hours of the place to be entered.
(2) Inspections may be at any place at which marijuana or marijuana products are sold to purchasers, cultivated, or stored, or at any site where evidence of activities involving evasion of tax may be discovered.
(3) Inspections shall be requested or conducted no more than once in a 24-hour period.
(b) Any person who fails or refuses to allow an inspection shall be subject to a misdemeanor. Each offense shall be punished by a fine not to exceed five thousand dollars ($5,000), or imprisonment not exceeding one year in a county jail, or both the fine and imprisonment. The court shall order any fines assessed be deposited in the California Marijuana Tax Fund.
(c) Upon discovery by the board or a law enforcement agency that a licensee or any other person possesses, stores, owns, or has made a retail sale of marijuana or marijuana products, without evidence of tax payment or not contained in secure packaging, the board or the law enforcement agency shall be authorized to seize the marijuana or marijuana products. Any marijuana or marijuana products seized by a law enforcement agency or the board shall within seven days be deemed forfeited and the board shall comply with the procedures set forth in Sections 30436 through 30449, inclusive.
(d) Any person who renders a false or fraudulent report is guilty of a misdemeanor and subject to a fine not to exceed one thousand dollars ($1,000) for each offense.
(e) Any violation of any provisions of this part, except as otherwise provided, is a misdemeanor and is punishable as such.
(f) All moneys remitted to the board under this part shall be credited to the California Marijuana Tax Fund.

34017.
The Legislative Analyst's Office shall submit a report to the Legislature by January 1, 2020, with recommendations to the Legislature for adjustments to the tax rate to achieve the goals of undercutting illicit market prices and discouraging use by persons younger than 21 years of age while ensuring sufficient revenues are generated for the programs identified in Section 34019.

34018.
(a) The California Marijuana Tax Fund is hereby created in the State Treasury. The Tax Fund shall consist of all taxes, interest, penalties, and other amounts collected and paid to the board pursuant to this part, less payment of refunds.
(b) Notwithstanding any other law, the California Marijuana Tax Fund is a special trust fund established solely to carry out the purposes of the Control, Regulate and Tax Adult Use of Marijuana Act and all revenues deposited into the Tax Fund, together with interest or dividends earned by the fund, are hereby continuously appropriated for the purposes of the Control,

Regulate and Tax Adult Use of Marijuana Act without regard to fiscal year and shall be expended only in accordance with the provisions of this part and its purposes.
(c) Notwithstanding any other law, the taxes imposed by this part and the revenue derived therefrom, including investment interest, shall not be considered to be part of the General Fund, as that term is used in Chapter 1 (commencing with section 16300) of Part 2 of Division 4 of the Government Code, shall not be considered General Fund revenue for purposes of Section 8 of Article XVI of the California Constitution and its implementing statutes, and shall not be considered "moneys" for purposes of subdivisions (a) and (b) of Section 8 of Article XVI of the California Constitution and its implementing statutes.

34019.
(a) Beginning with fiscal year 2017-2018 the Department of Finance shall estimate revenues to be received pursuant to sections 34011 and 34012 and provide those estimates to the Controller no later than June 15 of each year. The Controller shall use these estimates when disbursing funds pursuant to this section. Before any funds are disbursed pursuant to subdivisions (b), (c), (d), and (e) of this section the Controller shall disburse from the Tax Fund to the appropriate account, without regard to fiscal year, the following:
(1) Reasonable costs incurred by the board for administering and collecting the taxes imposed by this part; provided, however, such costs shall not exceed four percent (4%) of tax revenues received.
(2) Reasonable costs incurred by the Bureau, the Department of Consumer Affairs, the Department of Food and Agriculture, and the Department of Public Health for implementing, administering, and enforcing Chapter 3.5 of Division 8 of the Business and Professions Code and Division 10 of the Business and Professions Code to the extent those costs are not reimbursed pursuant to Section 26180 of the Business and Professions Code or pursuant to Chapter 3.5 of Division 8 of the Business and Professions Code. This paragraph shall remain operative through fiscal year 2022-2023.
(3) Reasonable costs incurred by the Department of Fish and Wildlife, the State Water Resources Control Board, and the Department of Pesticide Regulation for carrying out their respective duties under Chapter 3.5 of Division 8 of the Business and Professions Code or Division 10 of the Business and Professions Code to the extent those costs are not otherwise reimbursed.
(4) Reasonable costs incurred by the Controller for performing duties imposed by the Control, Regulate and Tax Adult Use of Marijuana Act, including the audit required by Section 34020.
(5) Reasonable costs incurred by the State Auditor for conducting the performance audit pursuant to Section 26191 of the Business and Professions Code.
(6) Reasonable costs incurred by the Legislative Analyst's Office for performing duties imposed by Section 34017.
(7) Sufficient funds to reimburse the Division of Labor Standards Enforcement and Occupational Safety and Health within the Department of Industrial Relations and the Employment Development Department for the costs of applying and enforcing state labor laws to licensees under Chapter 3.5 of Division 8 of the Business and Professions Code and Division 10 of the Business and Professions Code.
(b) The Controller shall next disburse the sum of ten million dollars ($10,000,000) to a public university or universities in California annually beginning with fiscal year 2018-2019 until fiscal year 2028-2029 to research and evaluate the implementation and effect of the Control, Regulate and Tax Adult Use of Marijuana Act, and shall, if appropriate, make recommendations to the

Legislature and Governor regarding possible amendments to the Control, Regulate and Tax Adult Use of Marijuana Act. The recipients of these funds shall publish reports on their findings at a minimum of every two years and shall make the reports available to the public. The Bureau shall select the universities to be funded. The research funded pursuant to this subdivision shall include but not necessarily be limited to:
(1) Impacts on public health, including health costs associated with marijuana use, as well as whether marijuana use is associated with an increase or decrease in use of alcohol or other drugs.
(2) The impact of treatment for maladaptive marijuana use and the effectiveness of different treatment programs.
(3) Public safety issues related to marijuana use, including studying the effectiveness of the packaging and labeling requirements and advertising and marketing restrictions contained in the Act at preventing underage access to and use of marijuana and marijuana products, and studying the health-related effects among users of varying potency levels of marijuana and marijuana products.
(4) Marijuana use rates, maladaptive use rates for adults and youth, and diagnosis rates of marijuana-related substance use disorders.
(5) Marijuana market prices, illicit market prices, tax structures and rates, including an evaluation of how to best tax marijuana based on potency, and the structure and function of licensed marijuana businesses.
(6) Whether additional protections are needed to prevent unlawful monopolies or anti-competitive behavior from occurring in the nonmedical marijuana industry and, if so, recommendations as to the most effective measures for preventing such behavior.
(7) The economic impacts in the private and public sectors, including but not necessarily limited to, job creation, workplace safety, revenues, taxes generated for state and local budgets, and criminal justice impacts, including, but not necessarily limited to, impacts on law enforcement and public resources, short and long term consequences of involvement in the criminal justice system, and state and local government agency administrative costs and revenue.
(8) Whether the regulatory agencies tasked with implementing and enforcing the Control, Regulate and Tax Adult Use of Marijuana Act are doing so consistent with the purposes of the Act, and whether different agencies might do so more effectively. (9) Environmental issues related to marijuana production and the criminal prohibition of marijuana production.
(10) The geographic location, structure, and function of licensed marijuana businesses, and demographic data, including race, ethnicity, and gender, of license holders.
(11) The outcomes achieved by the changes in criminal penalties made under the Control, Regulate, and Tax Adult Use of Marijuana Act for marijuana-related offenses, and the outcomes of the juvenile justice system, in particular, probation-based treatments and the frequency of up-charging illegal possession of marijuana or marijuana products to a more serious offense.
(c) The Controller shall next disburse the sum of three million dollars ($3,000,000) annually to the Department of the California Highway Patrol beginning fiscal year 2018-2019 until fiscal year 2022-2023 to establish and adopt protocols to determine whether a driver is operating a vehicle while impaired, including impairment by the use of marijuana or marijuana products, and to establish and adopt protocols setting forth best practices to assist law enforcement agencies. The department may hire personnel to establish the protocols specified in this subdivision. In addition, the department may make grants to public and private research

institutions for the purpose of developing technology for determining when a driver is operating a vehicle while impaired, including impairment by the use of marijuana or marijuana products.
(d) The Controller shall next disburse the sum of ten million dollars ($10,000,000) beginning fiscal year 2018-2019 and increasing ten million dollars ($10,000,000) each fiscal year thereafter until fiscal year 2022-2023, at which time the disbursement shall be fifty million dollars ($50,000,000) each year thereafter, to the Governor's Office of Business and Economic Development, in consultation with the Labor and Workforce Development Agency and the Department of Social Services, to administer a Community Reinvestments grants program to local health departments and at least fifty-percent to qualified community-based nonprofit organizations to support job placement, mental health treatment, substance use disorder treatment, system navigation services, legal services to address barriers to reentry, and linkages to medical care for communities disproportionately affected by past federal and state drug policies. The Office shall solicit input from community-based job skills, job placement, and legal service providers with relevant expertise as to the administration of the grants program. In addition, the Office shall periodically evaluate the programs it is funding to determine the effectiveness of the programs, shall not spend more than four percent (4%) for administrative costs related to implementation, evaluation and oversight of the programs, and shall award grants annually, beginning no later than January 1, 2020.
(e) The Controller shall next disburse the sum of two million dollars ($2,000,000) annually to the University of California San Diego Center for Medicinal Cannabis Research to further the objectives of the Center including the enhanced understanding of the efficacy and adverse effects of marijuana as a pharmacological agent.
(f) By July 15 of each fiscal year beginning in fiscal year 2018-2019, the Controller shall, after disbursing funds pursuant to subdivisions (a), (b), (c), (d), and (e), disburse funds deposited in the Tax Fund during the prior fiscal year into sub-trust accounts, which are hereby created, as follows:
(1) Sixty percent (60%) shall be deposited in the Youth Education, Prevention, Early Intervention and Treatment Account, and disbursed by the Controller to the Department of Health Care Services for programs for youth that are designed to educate about and to prevent substance use disorders and to prevent harm from substance use. The Department of Health Care services shall enter into inter-agency agreements with the Department of Public Health and the Department of Education to implement and administer these programs. The programs shall emphasize accurate education, effective prevention, early intervention, school retention, and timely treatment services for youth, their families and caregivers. The programs may include, but are not limited to, the following components:
(A) Prevention and early intervention services including outreach, risk survey and education to youth, families, caregivers, schools, primary care health providers, behavioral health and substance use disorder service providers, community and faith-based organizations, foster care providers, juvenile and family courts, and others to recognize and reduce risks related to substance use, and the early signs of problematic use and of substance use disorders.
(B) Grants to schools to develop and support Student Assistance Programs, or other similar programs, designed to prevent and reduce substance use, and improve school retention and performance, by supporting students who are at risk of dropping out of school and promoting alternatives to suspension or expulsion that focus on school retention, remediation, and professional care. Schools with higher than average dropout rates should be prioritized for grants.

(C) Grants to programs for outreach, education and treatment for homeless youth and out-of-school youth with substance use disorders.
(D) Access and linkage to care provided by county behavioral health programs for youth, and their families and caregivers, who have a substance use disorder or who are at risk for developing a substance use disorder.
(E) Youth-focused substance use disorder treatment programs that are culturally and gender competent, trauma-informed, evidence-based and provide a continuum of care that includes screening and assessment (substance use disorder as well as mental health), early intervention, active treatment, family involvement, case management, overdose prevention, prevention of communicable diseases related to substance use, relapse management for substance use and other co-occurring behavioral health disorders, vocational services, literacy services, parenting classes, family therapy and counseling services, medication-assisted treatments, psychiatric medication and psychotherapy. When indicated, referrals must be made to other providers.
(F) To the extent permitted by law and where indicated, interventions shall utilize a two-generation approach to addressing substance use disorders with the capacity to treat youth and adults together. This would include supporting the development of family-based interventions that address substance use disorders and related problems within the context of families, including parents, foster parents, caregivers and all their children.
(G) Programs to assist individuals, as well as families and friends of drug using young people, to reduce the stigma associated with substance use including being diagnosed with a substance use disorder or seeking substance use disorder services. This includes peer-run outreach and education to reduce stigma, anti-stigma campaigns, and community recovery networks.
(H) Workforce training and wage structures that increase the hiring pool of behavioral health staff with substance use disorder prevention and treatment expertise. Provide ongoing education and coaching that increases substance use treatment providers' core competencies and trains providers on promising and evidenced-based practices.
(I) Construction of community-based youth treatment facilities.
(J) The departments may contract with each county behavioral health program for the provision of services.
(K) Funds shall be allocated to counties based on demonstrated need, including the number of youth in the county, the prevalence of substance use disorders among adults, and confirmed through statistical data, validated assessments or submitted reports prepared by the applicable county to demonstrate and validate need.
(L) The departments shall periodically evaluate the programs they are funding to determine the effectiveness of the programs.
(M) The departments may use up to four percent (4%) of the moneys allocated to the Youth Education, Prevention, Early Intervention and Treatment Account for administrative costs related to implementation, evaluation and oversight of the programs.
(N) If the Department of Finance ever determines that funding pursuant to marijuana taxation exceeds demand for youth prevention and treatment services in the state, the departments shall provide a plan to the Department of Finance to provide treatment services to adults as well as youth using these funds.
(O) The departments shall solicit input from volunteer health organizations, physicians who treat addiction, treatment researchers, family therapy and counseling providers, and professional education associations with relevant expertise as to the administration of any grants made pursuant to this paragraph.

(2) Twenty percent (20%) shall be deposited in the Environmental Restoration and Protection Account, and disbursed by the Controller as follows:
(A) To the Department of Fish and Wildlife and the Department of Parks and Recreation for the cleanup, remediation, and restoration of environmental damage in watersheds affected by marijuana cultivation and related activities including, but not limited to, damage that occurred prior to enactment of this part, and to support local partnerships for this purpose. The Department of Fish and Wildlife and the Department of Parks and Recreation may distribute a portion of the funds they receive from the Environmental Restoration and Protection Account through grants for purposes specified in this paragraph.
(B) To the Department of Fish and Wildlife and the Department of Parks and Recreation for the stewardship and operation of state-owned wildlife habitat areas and state park units in a manner that discourages and prevents the illegal cultivation, production, sale and use of marijuana and marijuana products on public lands, and to facilitate the investigation, enforcement and prosecution of illegal cultivation, production, sale, and use of marijuana or marijuana products on public lands.
(C) To the Department of Fish and Wildlife to assist in funding the watershed enforcement program and multiagency task force established pursuant to subdivisions (b) and (c) of Section 12029 of the Fish and Game Code to facilitate the investigation, enforcement, and prosecution of these offenses and to ensure the reduction of adverse impacts of marijuana cultivation, production, sale, and use on fish and wildlife habitats throughout the state.
(D) For purposes of this paragraph, the Secretary of the Natural Resources Agency shall determine the allocation of revenues between the departments. During the first five years of implementation, first consideration should be given to funding purposes specified in subparagraph (A).
(E) Funds allocated pursuant to this paragraph shall be used to increase and enhance activities described in subparagraphs (A), (B), and (C), and not replace allocation of other funding for these purposes. Accordingly, annual General Fund appropriations to the Department of Fish and Wildlife and the Department of Parks and Recreation shall not be reduced below the levels provided in the Budget Act of 2014 (Chapter 25 of Statutes of 2014).
(3) Twenty percent (20%) shall be deposited into the State and Local Government Law Enforcement Account and disbursed by the Controller as follows:
(A) To the Department of the California Highway Patrol for conducting training programs for detecting, testing and enforcing laws against driving under the influence of alcohol and other drugs, including driving under the influence of marijuana. The Department may hire personnel to conduct the training programs specified in this subparagraph.
(B) To the Department of the California Highway Patrol to fund internal California Highway Patrol programs and grants to qualified nonprofit organizations and local governments for education, prevention and enforcement of laws related to driving under the influence of alcohol and other drugs, including marijuana; programs that help enforce traffic laws, educate the public in traffic safety, provide varied and effective means of reducing fatalities, injuries and economic losses from collisions; and for the purchase of equipment related to enforcement of laws related to driving under the influence of alcohol and other drugs, including marijuana.
(C) To the Board of State and Community Corrections for making grants to local governments to assist with law enforcement, fire protection, or other local programs addressing public health and safety associated with the implementation of the Control, Regulate and Tax Adult Use of Marijuana Act. The Board shall not make any grants to local governments which have banned

the cultivation, including personal cultivation under Section 11362.2(b)(3) of the Health and Safety Code, or retail sale of marijuana or marijuana products pursuant to Section 26200 of the Business and Professions Code or as otherwise provided by law.
(D) For purposes of this paragraph the Department of Finance shall determine the allocation of revenues between the agencies; provided, however, beginning in fiscal year 2022-2023 the amount allocated pursuant to subparagraph (A) shall not be less than ten million dollars ($10,000,000) annually and the amount allocated pursuant to subparagraph (B) shall not be less than forty million dollars ($40,000,000) annually. In determining the amount to be allocated before fiscal year 2022-2023 pursuant to this paragraph, the Department of Finance shall give initial priority to subparagraph (A).
(g) Funds allocated pursuant to subdivision (f) shall be used to increase the funding of programs and purposes identified and shall not be used to replace allocation of other funding for these purposes.
(h) Effective July 1, 2028, the Legislature may amend this section by majority vote to further the purposes of the Control, Regulate and Tax Adult Use of Marijuana Act, including allocating funds to programs other than those specified in subdivisions (d) and (f) of this section. Any revisions pursuant to this subdivision shall not result in a reduction of funds to accounts established pursuant to subdivisions (d) and (f) in any subsequent year from the amount allocated to each account in fiscal year 2027-2028. Prior to July 1, 2028, the Legislature may not change the allocations to programs specified in subdivisions (d) and (f) of this section.

34020.
The Controller shall periodically audit the Tax Fund to ensure that those funds are used and accounted for in a manner consistent with this part and as otherwise required by law.

34021.
(a) The taxes imposed by this Part shall be in addition to any other tax imposed by a city, county, or city and county.

34021.5
(a) (1) A county may impose a tax on the privilege of cultivating, manufacturing, producing, processing, preparing, storing, providing, donating, selling, or distributing marijuana or marijuana products by a licensee operating under Chapter 3.5 of Division 8 of the Business and Professions Code or Division 10 of the Business and Professions Code.
(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.

SECTION 8. CRIMINAL OFFENSES, RECORDS, AND RESENTENCING.

Sections 11357, 11358, 11359, 11360 and 11361.5 of the Health and Safety Code are amended, and Sections 11361.1 and 11361.8 are added to read as follows:

11357. Possession
~~(a) Except as authorized by law, every person who possesses any concentrated cannabis shall be punished by imprisonment in the county jail for a period of not more than one year or by a fine of not more than five hundred dollars ($500), or by both such fine and imprisonment, except that such person may instead be punished pursuant to subdivision (h) of Section 1170 of the Penal Code if that person has one or more prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 of the Penal Code or for an offense requiring registration pursuant to subdivision (c) of Section 290 of the Penal Code.~~
(~~b~~*a*) Except as authorized by law, ~~every person who~~ possesses*sion of* not more than 28.5 grams of marijuana, ~~other than~~ *or not more than four grams of* concentrated cannabis, ~~is guilty of an infraction punishable by a fine of not more than one hundred dollars ($100).~~ *or both, shall be punished or adjudicated as follows:*
(1) Persons under the age of 18 shall be guilty of an infraction and shall be required to:
(A) Upon a finding that a first offense has been committed, complete four hours of drug education or counseling and up to 10 hours of community service over a period not to exceed 60 days.
(B) Upon a finding that a second offense or subsequent offense has been committed, complete six hours of drug education or counseling and up to 20 hours of community service over a period not to exceed 90 days.
(2) Persons at least 18 years of age but less than 21 years of age shall be guilty of an infraction and punishable by a fine of not more than one hundred dollars ($100).
(~~c~~*b*) Except as authorized by law, ~~every person who~~ possesses*sion of* more than 28.5 grams of marijuana, *or more than four grams of* ~~other than~~ concentrated cannabis, shall be punished *as follows:*
(1) Persons under the age of 18 who possess more than 28.5 grams of marijuana or more than four grams of concentrated cannabis, or both, shall be guilty of an infraction and shall be required to:

(A) Upon a finding that a first offense has been committed, complete eight hours of drug education or counseling and up to 40 hours of community service over a period not to exceed 90 days.
(B) Upon a finding that a second or subsequent offense has been committed, complete 10 hours of drug education or counseling and up to 60 hours of community service over a period not to exceed 120 days.
(2) Persons 18 years of age or over who possess more than 28.5 grams of marijuana, or more than four grams of concentrated cannabis, or both, shall be punished by imprisonment in a county jail for a period of not more than six months or by a fine of not more than five hundred dollars ($500), or by both such fine and imprisonment.
(~~d~~*c*) Except as authorized by law, every person 18 years of age or over who possesses not more than 28.5 grams of marijuana, *or not more than four grams of* ~~other than~~ concentrated cannabis, upon the grounds of, or within, any school providing instruction in kindergarten or any of grades 1 through 12 during hours the school is open for classes or school-related programs is guilty of a misdemeanor and shall be punished ~~by a~~ *as follows:*
(1) A fine of not more than two hundred fifty dollars ($250), upon a finding that a first offense has been committed.
(2) A fine of not more than five hundred dollars ($500), or by imprisonment in a county jail for a period of not more than 10 days, or both*, upon a finding that a second or subsequent offense has been committed.*
(~~e~~*d*) Except as authorized by law, every person under the age of 18 who possesses not more than 28.5 grams of marijuana, *or not more than four grams of* ~~other than~~ concentrated cannabis, upon the grounds of, or within, any school providing instruction in kindergarten or any of grades 1 through 12 during hours the school is open for classes or school-related programs is guilty of ~~a misdemeanor~~ *an infraction* and shall be *punished in the same manner provided in paragraph (1) of subdivision (b) of this section.* ~~subject to the following dispositions:~~
~~(1) A fine of not more than two hundred fifty dollars ($250), upon a finding that a first offense has been committed.~~
~~(2) A fine of not more than five hundred dollars ($500), or commitment to a juvenile hall, ranch, camp, forestry camp, or secure juvenile home for a period of not more than 10 days, or both, upon a finding that a second or subsequent offense has been committed.~~

11358. Planting, harvesting, or processing
Every person who plants, cultivates, harvests, dries, or processes ~~any~~ marijuana *plants,* or any part thereof, except as otherwise provided by law, *shall be punished as follows:*
(a) Every person under the age of 18 who plants, cultivates, harvests, dries, or processes any marijuana plants shall be punished in the same manner provided in paragraph (1) of subdivision (b) of section 11357.
(b) Every person at least 18 years of age but less than 21 years of age who plants, cultivates, harvests, dries, or processes not more than six living marijuana plants shall be guilty of an infraction and a fine of not more than one hundred dollars ($100).
(c) Every person 18 years of age or over who plants, cultivates, harvests, dries, or processes more than six living marijuana plants shall be punished by imprisonment in a county jail for a period of not more than six months or by a fine of not more than five hundred dollars ($500), or by both such fine and imprisonment.

(d) Notwithstanding subdivision (c), a person 18 years of age or over who plants, cultivates, harvests, dries, or processes more than six living marijuana plants, or any part thereof, except as otherwise provided by law, ~~shall~~ *may* be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code *if:*
(1) the person has one or more prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 of the Penal Code or for an offense requiring registration pursuant to subdivision (c) of Section 290 of the Penal Code;
(2) the person has two or more prior convictions under subdivision (c); or
(3) the offense resulted in any of the following:
(A) violation of Section 1052 of the Water Code relating to illegal diversion of water;
(B) violation of Section 13260, 13264, 13272, or 13387 of the Water Code relating to discharge of waste;
(C) violation of Fish and Game Code Section 5650 or Section 5652 of the Fish and Game Code relating to waters of the state;
(D) violation of Section 1602 of the Fish and Game Code relating to rivers, streams and lakes;
(E) violation of Section 374.8 of the Penal Code relating to hazardous substances or Sections 25189.5, 25189.6, or 25189.7 of the Health and Safety Code relating to hazardous waste;
(F) violation of Section 2080 of the Fish and Game Code relating to endangered and threatened species or Section 3513 of the Fish and Game Code relating to the Migratory Bird Treaty Act; or
(G) intentionally or with gross negligence causing substantial environmental harm to public lands or other public resources.

11359. Possession for sale
Every person who possesses for sale any marijuana, except as otherwise provided by law, shall be punished *as follows:*
(a) Every person under the age of 18 who possesses marijuana for sale shall be punished in the same manner provided in paragraph (1) of subdivision (b) of section 11357.
(b) Every person 18 years of age or over who possesses marijuana for sale shall be punished by imprisonment in a county jail for a period of not more than six months or by a fine of not more than five hundred dollars ($500), or by both such fine and imprisonment.
(c) Notwithstanding subdivision (b), a person 18 years of age or over who possesses marijuana for sale may be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code *if:*
(1) the person has one or more prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 of the Penal Code or for an offense requiring registration pursuant to subdivision (c) of Section 290 of the Penal Code;
(2) the person has two or more prior convictions under subdivision (b); or
(3) the offense occurred in connection with the knowing sale or attempted sale of marijuana to a person under the age of 18 years.
(d) Notwithstanding subdivision (b), a person 21 years of age or over who possesses marijuana for sale may be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code if the offense involves knowingly hiring, employing, or using a person 20 years of age or younger in unlawfully cultivating, transporting, carrying, selling, offering to sell, giving away, preparing for sale, or peddling any marijuana.

11360. Unlawful transportation, importation, sale, or gift
(a) Except as otherwise provided by this section or as authorized by law, every person who transports, imports into this state, sells, furnishes, administers, or gives away, or offers to transport, import into this state, sell, furnish, administer, or give away, or attempts to import into this state or transport any marijuana shall be punished *as follows:*
(1)Persons under the age of 18 years shall be punished in the same manner as provided in paragraph (1) of subdivision (b) of section 11357.
(2) Persons 18 years of age or over shall be punished by imprisonment in a county jail for a period of not more than six months or by a fine of not more than five hundred dollars ($500), or by both such fine and imprisonment.
(3) Notwithstanding paragraph (2), a person 18 years of age or over may be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for a period two, three, or four years *if:*
(A) the person has one or more prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 of the Penal Code or for an offense requiring registration pursuant to subdivision (c) of Section 290 of the Penal Code;
(B) the person has two or more prior convictions under paragraph (2);
(C) the offense involved the knowing sale, attempted sale, or the knowing offer to sell, furnish, administer or give away marijuana to a person under the age of 18 years; or
(D) the offense involved the import, offer to import, or attempted import into this state, or the transport for sale, offer to transport for sale, or attempted transport for sale out of this state, of more than 28.5 grams of marijuana or more than four grams of concentrated cannabis.
(b) Except as authorized by law, every person who gives away, offers to give away, transports, offers to transport, or attempts to transport not more than 28.5 grams of marijuana, other than concentrated cannabis, is guilty of a*n infraction* ~~misdemeanor~~ and shall be punished by a fine of not more than one hundred dollars ($100). In any case in which a person is arrested for a violation of this subdivision and does not demand to be taken before a magistrate, such person shall be released by the arresting officer upon presentation of satisfactory evidence of identity and giving his *or her* written promise to appear in court, as provided in Section 853.6 of the Penal Code, and shall not be subjected to booking.
(c) For purposes of this section, "transport" means to transport for sale.
(d) This section does not preclude or limit prosecution for any aiding and abetting or conspiracy offenses.

11361.1.
(a) The drug education and counseling requirements under sections 11357, 11358, 11359, and 11360 shall be:
(1) mandatory, unless the court finds that such drug education or counseling is unnecessary for the person, or that a drug education or counseling program is unavailable;
(2) free to participants, and the drug education provide at least four hours of group discussion or instruction based on science and evidence-based principles and practices specific to the use and abuse of marijuana and other controlled substances.
(b) For good cause, the court may grant an extension of time not to exceed 30 days for a person to complete the drug education and counseling required under sections 11357, 11358, 11359; and 11360.

Subdivision (a) of Section 11361.5 of the Health and Safety Code is amended to read:

11361.5. Destruction of arrest and conviction records; Procedure; Exceptions
(a) Records of any court of this state, any public or private agency that provides services upon referral under Section 1000.2 of the Penal Code, or of any state agency pertaining to the arrest or conviction of any person for a violation of ~~subdivision (b), (c), (d), or (e) of~~ Section 11357 or subdivision (b) of Section 11360, *or pertaining to the arrest or conviction of any person under the age of 18 for a violation of any provision of this article except Section 11357.5,* shall not be kept beyond two years from the date of the conviction, or from the date of the arrest if there was no conviction, except with respect to a violation of subdivision (~~c~~*d*) of Section 11357*, or any other violation by a person under the age of 18 occurring upon the grounds of, or within, any school providing instruction in kindergarten or any of grades 1 through 12 during hours the school is open for classes or school-related programs,* the records shall be retained until the offender attains the age of 18 years at which time the records shall be destroyed as provided in this section. Any court or agency having custody of the records*, including the statewide criminal databases,* shall provide for the timely destruction of the records in accordance with subdivision (c)*, and such records must also be purged from the statewide criminal databases. As used in this subdivision, "records pertaining to the arrest or conviction" shall include records of arrests resulting in the criminal proceeding and records relating to other offenses charged in the accusatory pleading, whether defendant was acquitted or charges were dismissed. The two-year period beyond which records shall not be kept pursuant to this subdivision shall not apply to any person who is, at the time at which this subdivision would otherwise require record destruction, incarcerated for an offense subject to this subdivision. For such persons, the two-year period shall begin to run from the date the person is released from custody.* The requirements of this subdivision do not apply to records of any conviction occurring prior to January 1, 1976, or records of any arrest not followed by a conviction occurring prior to that date*, or records of any arrest for an offense specified in subdivision (c) of Section 1192.7, or subdivision (c) of Section 667.5 of the Penal Code.*

Section 11361.8 is added to the Health and Safety Code to read:

11361.8
(a) A person currently serving a sentence for a conviction, whether by trial or by open or negotiated plea, who would not have been guilty of an offense or who would have been guilty of a lesser offense under the Control, Regulate and Tax Adult Use of Marijuana Act had that Act been in effect at the time of the offense may petition for a recall or dismissal of sentence before the trial court that entered the judgment of conviction in his or her case to request resentencing or dismissal in accordance with Sections 11357, 11358, 11359, 11360, 11362.1, 11362.2, 11362.3, and 11362.4 as those sections have been amended or added by this Act.
(b) Upon receiving a petition under subdivision (a), the court shall presume the petitioner satisfies the criteria in subdivision (a) unless the party opposing the petition proves by clear and convincing evidence that the petitioner does not satisfy the criteria. If the petitioner satisfies the criteria in subdivision (a), the court shall grant the petition to recall the sentence or dismiss the sentence because it is legally invalid unless the court determines that granting the petition would pose an unreasonable risk of danger to public safety.

(1) In exercising its discretion, the court may consider, but shall not be limited to evidence provided for in subdivision (b) of Section 1170.18 of the Penal Code.
(2) As used in this section, "unreasonable risk of danger to public safety" has the same meaning as provided in subdivision (c) of Section 1170.18 of the Penal Code.
(c) A person who is serving a sentence and resentenced pursuant to subdivision (b) shall be given credit for any time already served and shall be subject to supervision for one year following completion of his or her time in custody or shall be subject to whatever supervision time he or she would have otherwise been subject to after release, whichever is shorter, unless the court, in its discretion, as part of its resentencing order, releases the person from supervision. Such person is subject to parole supervision under Penal Code Section 3000.08 or post-release community supervision under subdivision (a) of Section 3451 of the Penal Code by the designated agency and the jurisdiction of the court in the county in which the offender is released or resides, or in which an alleged violation of supervision has occurred, for the purpose of hearing petitions to revoke supervision and impose a term of custody.
(d) Under no circumstances may resentencing under this section result in the imposition of a term longer than the original sentence, or the reinstatement of charges dismissed pursuant to a negotiated plea agreement.
(e) A person who has completed his or her sentence for a conviction under Sections 11357, 11358, 11359, and 11360, whether by trial or open or negotiated plea, who would not have been guilty of an offense or who would have been guilty of a lesser offense under the Control, Regulate and Tax Adult Use of Marijuana Act had that Act been in effect at the time of the offense, may file an application before the trial court that entered the judgment of conviction in his or her case to have the conviction dismissed and sealed because the prior conviction is now legally invalid or redesignated as a misdemeanor or infraction in accordance with Sections 11357, 11358, 11359, 11360, 11362.1, 11362.2, 11362.3, and 11362.4 as those sections have been amended or added by this Act.
(f) The court shall presume the petitioner satisfies the criteria in subdivision (e) unless the party opposing the application proves by clear and convincing evidence that the petitioner does not satisfy the criteria in subdivision (e). Once the applicant satisfies the criteria in subdivision (e), the court shall redesignate the conviction as a misdemeanor or infraction or dismiss and seal the conviction as legally invalid as now established under the Control, Regulate and Tax Adult Use of Marijuana Act.
(g) Unless requested by the applicant, no hearing is necessary to grant or deny an application filed under subdivision (e).
(h) Any felony conviction that is recalled and resentenced under subdivision (b) or designated as a misdemeanor or infraction under subdivision (f) shall be considered a misdemeanor or infraction for all purposes. Any misdemeanor conviction that is recalled and resentenced under subdivision (b) or designated as an infraction under subdivision (f) shall be considered an infraction for all purposes.
(i) If the court that originally sentenced the petitioner is not available, the presiding judge shall designate another judge to rule on the petition or application.
(j) Nothing in this section is intended to diminish or abrogate any rights or remedies otherwise available to the petitioner or applicant.
(k) Nothing in this and related sections is intended to diminish or abrogate the finality of judgments in any case not falling within the purview of the Control, Regulate and Tax Adult Use of Marijuana Act.

(l) A resentencing hearing ordered under this act shall constitute a "post-conviction release proceeding" under paragraph (7) of subdivision (b) of Section 28 of Article I of the California Constitution (Marsy's Law).
(m) The provisions of this section shall apply equally to juvenile delinquency adjudications and dispositions under Section 602 of the Welfare and Institutions Code if the juvenile would not have been guilty of an offense or would have been guilty of a lesser offense under the Control, Regulate and Tax Adult Use of Marijuana Act.
(l) The Judicial Council shall promulgate and make available all necessary forms to enable the filing of the petitions and applications provided in this section.

SECTION 9. INDUSTRIAL HEMP.

Section 11018.5 of the Health and Safety Code is amended to read as follows:

11018.5. *Industrial hemp*
(a) "Industrial hemp" means a fiber or oilseed crop, or both, that is limited to ~~nonpsychoactive~~ types of the plant Cannabis sativa L. ~~and the seed produced therefrom,~~ having no more than three-tenths of 1 percent tetrahydrocannabinol (THC) contained in the dried flowering tops, *whether growing or not;* ~~and that is cultivated and processed exclusively for the purpose of producing the mature stalks of the plant, fiber produced from the stalks, oil or cake made from~~ the seeds of the plant;~~,~~ *the resin extracted from any part of the plant; and* ~~or any other~~ *every* compound, manufacture, salt, derivative, mixture, or preparation of the *plant, its seeds or* ~~mature stalks, except the~~ resin ~~or flowering tops extracted~~ *produced* therefrom~~, fiber, oil, or cake, or the sterilized seed, or any component of the seed, of the plant that is incapable of germination~~.
(b) The possession, use, purchase, sale, cultivation, processing, manufacture, packaging, labeling, transporting, storage, distribution, use and transfer of industrial hemp shall not be subject to the provisions of this Division or of Division 10 of the Business and Professions Code, but instead shall be regulated by the Department of Food and Agriculture in accordance with the provisions of Division 24 of the Food and Agricultural Code, inclusive.

Sections 81000, 81006, 81008, and 81010 of the Food and Agricultural Code are amended to read, and Section 81007 of the Food and Agricultural Code is repealed as follows:

81000. Definitions
For purposes of this division, the following terms have the following meanings:
(a) "Board" means the Industrial Hemp Advisory Board.
(b) "Commissioner" means the county agricultural commissioner.
(c) "Established agricultural research institution" means ~~a public or private institution or organization that maintains land for agricultural research, including colleges, universities, agricultural research centers, and conservation research centers.~~
any institution that is either:
(1) a public or private institution or organization that maintains land or facilities for agricultural research, including colleges, universities, agricultural research centers, and conservation research centers; or
(2) an institution of higher education (as defined in Section 1001 of the Higher Education Act of 1965 (20 U.S.C. 1001)) that grows, cultivates or manufactures industrial hemp for

purposes of research conducted under an agricultural pilot program or other agricultural or academic research.
(d) "Industrial hemp" has the same meaning as that term is defined in Section 11018.5 of the Health and Safety Code.
(e) "Secretary" means the Secretary of Food and Agriculture.
(f) "Seed breeder" means an individual or public or private institution or organization that is registered with the commissioner to develop seed cultivars intended for sale or research.
(g) "Seed cultivar" means a variety of industrial hemp.
(h) "Seed development plan" means a strategy devised by a seed breeder, or applicant seed breeder, detailing his or her planned approach to growing and developing a new seed cultivar for industrial hemp.

81006. Industrial hemp growth limitations; Prohibitions; Imports; Laboratory testing
(a)(1) Except when grown by an established agricultural research institution or a registered seed breeder, industrial hemp shall be grown only as a densely planted fiber or oilseed crop, or both, in acreages of not less than ~~five acres~~ *one-tenth of an acre* at the same time, ~~and no portion of an acreage of industrial hemp shall include plots of less than one contiguous acre~~.
(2) Registered seed breeders, for purposes of seed production, shall only grow industrial hemp as a densely planted crop in acreages of not less than *one-tenth of an* ~~two~~ acres at the same time, ~~and no portion of the acreage of industrial hemp shall include plots of less than one contiguous acre~~.
(3) Registered seed breeders, for purposes of developing a new California seed cultivar, shall grow industrial hemp as densely as possible in dedicated acreage of not less than one-*tenth of an* acre and in accordance with the seed development plan. The entire area of the dedicated acreage is not required to be used for the cultivation of the particular seed cultivar.
(b) Ornamental and clandestine cultivation of industrial hemp is prohibited. All plots shall have adequate signage indicating they are industrial hemp.
(c) Pruning and tending of individual industrial hemp plants is prohibited, except when grown by an established agricultural research institution or when the action is necessary to perform the tetrahydrocannabinol (THC) testing described in this section.
(d) Culling of industrial hemp is prohibited, except when grown by an established agricultural research institution, when the action is necessary to perform the THC testing described in this section, or for purposes of seed production and development by a registered seed breeder.
(e) Industrial hemp shall include products imported under the Harmonized Tariff Schedule of the United States (2013) of the United States International Trade Commission, including, but not limited to, hemp seed, per subheading 1207.99.03, hemp oil, per subheading 1515.90.80, oilcake, per subheading 2306.90.01, true hemp, per heading 5302, true hemp yarn, per subheading 5308.20.00, and woven fabrics of true hemp fibers, per subheading 5311.00.40.
(f) Except when industrial hemp is grown by an established agricultural research institution, a registrant that grows industrial hemp under this section shall, before the harvest of each crop and as provided below, obtain a laboratory test report indicating the THC levels of a random sampling of the dried flowering tops of the industrial hemp grown.
(1) Sampling shall occur as soon as practicable when the THC content of the leaves surrounding the seeds is at its peak and shall commence as the seeds begin to mature, when the first seeds of approximately 50 percent of the plants are resistant to compression.

(2) The entire fruit-bearing part of the plant including the seeds shall be used as a sample. The sample cut shall be made directly underneath the inflorescence found in the top one-third of the plant.
(3) The sample collected for THC testing shall be accompanied by the following documentation:
(A) The registrant's proof of registration.
(B) Seed certification documentation for the seed cultivar used.
(C) The THC testing report for each certified seed cultivar used.
(4) The laboratory test report shall be issued by a laboratory registered with the federal Drug Enforcement Administration, shall state the percentage content of THC, shall indicate the date and location of samples taken, and shall state the Global Positioning System coordinates and total acreage of the crop. If the laboratory test report indicates a percentage content of THC that is equal to or less than three-tenths of 1 percent, the words "PASSED AS CALIFORNIA INDUSTRIAL HEMP" shall appear at or near the top of the laboratory test report. If the laboratory test report indicates a percentage content of THC that is greater than three-tenths of 1 percent, the words "FAILED AS CALIFORNIA INDUSTRIAL HEMP" shall appear at or near the top of the laboratory test report.
(5) If the laboratory test report indicates a percentage content of THC that is equal to or less than three-tenths of 1 percent, the laboratory shall provide the person who requested the testing not less than 10 original copies signed by an employee authorized by the laboratory and shall retain one or more original copies of the laboratory test report for a minimum of two years from its date of sampling.
(6) If the laboratory test report indicates a percentage content of THC that is greater than three-tenths of 1 percent and does not exceed 1 percent, the registrant that grows industrial hemp shall submit additional samples for testing of the industrial hemp grown.
(7) A registrant that grows industrial hemp shall destroy the industrial hemp grown upon receipt of a first laboratory test report indicating a percentage content of THC that exceeds 1 percent or a second laboratory test report pursuant to paragraph (6) indicating a percentage content of THC that exceeds three-tenths of 1 percent but is less than 1 percent. If the percentage content of THC exceeds 1 percent, the destruction shall take place within 48 hours after receipt of the laboratory test report. If the percentage content of THC in the second laboratory test report exceeds three-tenths of 1 percent but is less than 1 percent, the destruction shall take place as soon as practicable, but no later than 45 days after receipt of the second test report.
(8) A registrant that intends to grow industrial hemp and who complies with this section shall not be prosecuted for the cultivation or possession of marijuana as a result of a laboratory test report that indicates a percentage content of THC that is greater than three-tenths of 1 percent but does not exceed 1 percent.
(9) Established agricultural research institutions shall be permitted to cultivate or possess industrial hemp with a laboratory test report that indicates a percentage content of THC that is greater than three-tenths of 1 percent if that cultivation or possession contributes to the development of types of industrial hemp that will comply with the three-tenths of 1 percent THC limit established in this division.
(10) Except for an established agricultural research institution, a registrant that grows industrial hemp shall retain an original signed copy of the laboratory test report for two years from its date of sampling, make an original signed copy of the laboratory test report available to the department, the commissioner, or law enforcement officials or their designees upon request, and shall provide an original copy of the laboratory test report to each person purchasing,

transporting, or otherwise obtaining from the registrant that grows industrial hemp the fiber, oil, cake, or seed, or any component of the seed, of the plant.
(g) If, in the Attorney General's opinion issued pursuant to Section 8 of the act that added this division, it is determined that the provisions of this section are not sufficient to comply with federal law, the department, in consultation with the board, shall establish procedures for this section that meet the requirements of federal law.

~~81007. Prohibitions; De minimis considerations~~
~~(a) Except as provided in subdivision (b) or as necessary to perform testing pursuant to subdivision (f) of Section 81006, the possession, outside of a field of lawful cultivation, of resin, flowering tops, or leaves that have been removed from the hemp plant is prohibited.~~
~~(b) The presence of a de minimis amount, or insignificant number, of hemp leaves or flowering tops in hemp bales that result from the normal and appropriate processing of industrial hemp shall not constitute possession of marijuana.~~

81008. Attorney General reports; Requirements
(a) Not later than January 1, 2019, ~~or five years after the provisions of this division are authorized under federal law, whichever is later,~~ the Attorney General shall report to the Assembly and Senate Committees on Agriculture and the Assembly and Senate Committees on Public Safety the reported incidents, if any, of the following:
(1) A field of industrial hemp being used to disguise marijuana cultivation.
(2) Claims in a court hearing by persons other than those exempted in subdivision (f) of Section 81006 that marijuana is industrial hemp.
(b) A report submitted pursuant to subdivision (a) shall be submitted in compliance with Section 9795 of the Government Code.
(c) Pursuant to Section 10231.5 of the Government Code, this section is repealed on January 1, 2023, or four years after the date that the report is due, whichever is later.

81010. Operation of division
(a) This division, *and Section 221 of the Food and Agricultural Code,* shall ~~not~~ become operative ~~unless authorized under federal law~~ *on January 1, 2017.*
(b) The possession, use, purchase, sale, production, manufacture, packaging, labeling, transporting, storage, distribution, use, and transfer of industrial hemp shall be regulated in accordance with this division. The Bureau of Marijuana Control has authority to regulate and control plants and products that fit within the definition of industrial hemp but that are produced, processed, manufactured, tested, delivered, or otherwise handled pursuant to a license issued under Division 10 of the Business and Professions Code.

SECTION 10. AMENDMENT.

This Act shall be broadly construed to accomplish its purposes and intent as stated in Section 3. The Legislature may by majority vote amend the provisions of this Act contained in Sections 5 and 6 to implement the substantive provisions of those sections, provided that such amendments are consistent with and further the purposes and intent of this Act as stated in Section 3. Amendments to this Act that enact protections for employees and other workers of licensees under Section 6 of this Act that are in addition to the protections provided for in this Act or that

otherwise expand the legal rights of such employees or workers of licensees under Section 6 of this Act shall be deemed to be consistent with and further the purposes and intent of this Act. The Legislature may by majority vote amend, add, or repeal any provisions to further reduce the penalties for any of the offenses addressed by this Act. Except as otherwise provided, the provisions of the Act may be amended by a two-thirds vote of the Legislature to further the purposes and intent of the Act.

SECTION 11. CONSTRUCTION AND INTEPRETATION.

The provisions of this Act shall be liberally construed to effectuate the purposes and intent of the Control, Regulate and Tax the Adult Use of Marijuana Act; provided, however, no provision or provisions of this Act shall be interpreted or construed in a manner to create a positive conflict with federal law, including the federal Controlled Substances Act, such that the provision or provisions of this Act and federal law cannot consistently stand together.

SECTION 12. SEVERABILITY.

If any provision in this Act, or part thereof, or the application of any provision or part to any person or circumstance is held for any reason to be invalid or unconstitutional, the remaining provisions and parts shall not be affected, but shall remain in full force and effect, and to this end the provisions of this Act are severable.

SECTION 13. CONFLICTING INITIATIVES.

In the event that this measure and another measure or measures concerning the control, regulation, and taxation of marijuana, medical marijuana, or industrial hemp appear on the same statewide election ballot, the provisions of the other measure or measures shall be deemed to be in conflict with this measure. In the event that this measure receives a greater number of affirmative votes, the provisions of this measure shall prevail in their entirety, and the provisions of the other measure shall be null and void.