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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO, CENTRAL DIVISION

DARRYL COTTON, an individual,
Petitioner/Plaintiff,
v.

STATE OF CALIFORNIA, a public entity; ROBERT BONTA, an individual acting under color of law; and DOES 1 through 200, inclusive,
Respondents/Defendants.

CASE NO. 37-2021-00053551-CU-WM-CTL

PETITION FOR PREEMPTORY WRIT OF MANDATE AND COMPLAINT [CODE CIV. PROC., § 1085]

(1) PREMPTORY WRIT OF MANDATE; AND
(2) INJUCTIVE RELIEF

RELATED CASES:
3:18-cv-00325-TWR-DEB
3:20-cv-00656-TWR-DEB
37-2017-00010073-CU-BC-CTL
37-2021-00050889-CU-AT-CTL

JURY TRIAL DEMANDED

PREFACE

1. Pursuant to Code of Civil Procedure § 1085, Petitioner/Plaintiff Darryl Cotton ("PLAINTIFF") seeks an alternative writ of mandate directing respondents/defendants State of California ("STATE") and Robert Bonta ("BONTA") to suspend all licensing activities that the STATE is engaging in under Proposition 64 (EXHIBIT 1) and any pendant subsequent, STATE and/or local law, regulation or code enacted pursuant to Senate Bill 94 ("SB 94") which would require PLAINTIFF, or any other interested party, to acquire a mandatory STATE and/or locally issued license, to engage in the possession, cultivation or processing or distribution of cannabis.

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2. The relief sought in paragraph 1 is proper because PLAINTIFF has no other plain, speedy or adequate legal remedy. The relief is necessary because the STATE has knowingly engaged in a system of licensing and taxing medical cannabis that forces PLAINTIFF, and any other prospective state licensee, to violate federal law as defined within the Controlled Substance Act ("CSA"). *(21 USC Section 801(1), (2))*

3. The relief sought in paragraph 1 is proper because the harm caused to PLAINTIFF, as cited in the RELATED CASES on page 1 of this PETITION AND COMPLAINT, have all occurred as a direct and proximate result of Prop 64 as enacted in SB 94.

JURISDICTION, VENUE AND PARTIES

4. The Court has jurisdiction over this petition pursuant to Code of Civil Procedure § 1085.

5. Venue is proper in this Court because the STATE is a public entity located in this judicial district and the issues PLAINTIFF brings before this Court are located in this judicial district.

6. Petitioner/Plaintiff is, and at all times mentioned herein, was an individual living and doing business in the County of San Diego.

7. Respondent/Defendant STATE is, and at all times mentioned herein, was a public entity organized and existing under the laws of California.

8. Respondent/Defendant BONTA, acting in his official capacity as the Attorney General for the STATE (its principal attorney) has, and at all times mentioned herein, had, a sworn fiduciary duty to oversee administration of STATE law(s) affecting those living and doing business within the STATE and the County of San Diego.

9. PLAINTIFF does not know the true names and capacities of the respondents/defendants named as DOES 1through 200 and therefore sues them by fictitious names. PLAINTIFF is informed and believes DOES 1 through 200 are in some way responsible for the events described in this petition or have been party to them. PLAINTIFF will seek leave to amend the complaint when the true names of these parties have been ascertained.

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INTRODUCTION

10. PLAINTIFF asserts that there has been an ongoing effort to enact a scheme that would be presented as allowing the STATE to regulate and tax for-profit commerce in cannabis, despite the incontrovertible fact that such a scheme would be in violation of both federal and international law.

11. PLAINTIFF further asserts that Prop 64, as enacted in SB 94 is an unlawful STATE cannabis licensing scheme that the Defendants, repeatedly, deliberately, and deceptively implied, that the passage of, would somehow immunize STATE licensees from federal criminal jeopardy by complying with federal law enforcement priorities as set forth in *Memorandums of Guidance* issued by several Attorneys General of the United States of America; thus, in some form PLAINTIFF would be "immunized" from federal legal jeopardy in the form of the CSA. Neither PLAINTIFF, nor any other STATE licensee, were "immunized" from federal prosecution under Prop 64.

12. PLAINTIFF brings this action pursuant to *42 U.S.C. §§ 1983, 1985,* and *1986* to redress the violation of his *Constitutional* protections secured to all citizens by, *inter alia,* the *First, Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments* to the *United States Constitution*, harm to his physical and psychological health and financial wellbeing, both under *color of* [state and local] *law* and/or otherwise, to seek injunctive relief and to be made whole from those harms.

13. PLAINTIFF will seek leave to amend this complaint pursuant to *§ 1983*, *1985* and *1986* because many of the Defendant DOES' actions, once discovered, give rise to an amended complaint, having been committed by STATE and/or local officials acting under c*olor of law.*

14. PLAINTIFF'S Constitutional protections, along with those of all California's citizens, under *Article I* of *California's Constitution*, and the *First*, *Fourth, Fifth, Sixth, Eighth* and *Fourteenth Amendments* to the *Constitution of the United States of America*, are subjected to violation when federal law conflicts with state law such that actions which are presented as legal within the state are, in point of fact, federal felonies.

15. PLAINTIFF'S case hinges, in large measure, on whether any state law regarding cannabis can override, or suspend, the *Controlled Substance Act (CSA),* or in some other manner, immunize state licensees from prosecution under federal law. To as great an extent as is possible, PLAINTIFF will use the language found in relevant case law and documents such as the *Memorandums of Guidance* issued to

US Attorneys, by Attorneys General of the United States of America, direct quotes of statutory language, current US House of Representatives legislative intent and language from a binding relevant international treaty to make his case.

QUESTIONS OF LAW

16. The majority of PLAINTIFF'S complaint is pendent upon the Court's findings with regard to several dispositive Questions of Law. Most of the Questions of Law to be resolved by the Court in this matter have already been visited by the Supreme Courts of both the United States of America and the State of California. PLAINTIFF respectfully asks the Court to concur with those Courts' *Findings* and *Rulings.*

a. Is there a positive conflict between federal laws regarding cannabis, in the form of the *CSA* and the schemes for regulation and taxation of *for-profit* commerce in cannabis set forth in California's MMRSA and Prop 64 as codified in SB 94?

b. If there is such a positive conflict as defined in Prop 64 Section 11, (EXHIBIT 2) is there any way in which California's legislative bodies could enact a law or regulation that overrides, or somehow suspends, the *Supremacy Clause* of the *Constitution of the United States of America* such as to render STATE Adult-Use ("recreational") licensees immune to prosecution under federal law?

c. Does a STATE's Attorney General, as that STATE's principal legal officer, have a fiduciary duty to stay abreast of such findings in state and federal courts as might impact the STATE and/or its citizens?

d. Does a STATE's Attorney General, as that STATE's principal legal officer, have a fiduciary duty to protect the citizens of that STATE from unwittingly committing federal felonies?

e. Does a STATE's Attorney General, as that STATE's principal legal officer, have a fiduciary duty to protect the citizens of that STATE from frivolous ballot measures, i.e., measures which, *prima facie* are, using the language of Prop 64, (page 13) Section 26001(2)(dd); ***"…unreasonably impracticable."*** (EXHIBIT 3)

f. If the Attorney General does have such a fiduciary duty and fails to fulfill it, is the State liable for harms such failure is the proximate cause of PLAINTIFF'S damages?

g. *When* this Court finds that the preponderance of evidence supports PLAINTIFF'S assertions that positive conflict **does** exist here, does this mean that, having knowingly concocted and advocated for the illegal-under-federal-law scheme to regulate and tax ***for-profit*** and ***financial gains*** commerce in cannabis, despite these two factors having been specifically mentioned as demonstrating non-compliance with US Attorneys' General *Guidelines* issued by several United States Attorneys General to enable US Attorneys to determine whether to tolerate ***MEDICAL*** cannabis operations operated within those guidelines in their Districts, that the Defendants are indictable for suborning violations of the *CSA under color of law*?

h. In 1996, voters passed *Proposition 215* (EXHIBIT 4) aka *The Compassionate Use Act of 1996 (CUA):*

"...which exempted certain patients and their primary care givers from criminal liability under state law for the possession and cultivation of marijuana for medical use.'

In 2003, the Legislature enacted additional legislation [Senate Bill 420 aka the Medical Marijuana Program Act (MMP), (See SB 420 filed with the CA Secretary State on October 12, 2003) relating to medical marijuana. [One of those statutes *§ 11362.81(d)] requires the Attorney General to adopt, 'guidelines to ensure the security and non-diversion of marijuana for medical use.'*

(Guidelines to Ensure the Security and Non-Diversion of Marijuana for Medical Use (Guidelines-2008), Introduction e.g., Pg.1, ¶ 1)

Does the language of SB 420 Section 11362.81(d) constitute a delegation to the Attorney General, of the Legislature's authority to enact law for the purpose of adopting *"...guidelines to ensure the security and non-diversion of marijuana for medical use?"*

i. If the language of Section 11362.81(d) is such a legislative delegation of authority, does the language used in *Guidelines-2008*, (EXHIBIT 5) instructing the reader as to a definition of *Collectives* and, ***"In applying this definition…"*** [emphasis added], constitute *adoption by reference* of that definition of the statutory entity—*Collectives*--referred to in SB 420 Section 1 (b)3, at least *by reference,* if not *by incorporation,* of that language which remains, 13 years later, as law?

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"*Collectives: California law does not define collectives, but the dictionary defines them as "a business, farm, etc., jointly owned and operated by the members of a group." (Random House Unabridged Dictionary; Random House, Inc. © 2006.)*

***Applying this definition**, a collective should be an organization that merely facilitates the collaborative efforts of patient and caregiver members – including the allocation of costs and revenues. As such, a collective is not a statutory entity, but as a practical matter it might have to organize as some form of business to carry out its activities. The collective should not purchase marijuana from, or sell to, non-members; instead, it should only provide a means for facilitating or coordinating transactions between members." (Guidelines-2008, Section IV(A)2)*

j. If so, is there not, from the publication of *Guidelines-2008* forward, until today, 13 years later, *de facto,* a statutory definition of entities referred to as *Collectives* in California law?

k. If so, does California Attorney General Xavier Becerra's ("BECERRA"), August 2019 repetition, 11 years later, in *Guidelines to Ensure the Security and Non-Diversion of Marijuana for Medical Use (Guidelines-2019)* (EXHIBIT 6) of the *Collectives* definition given in *Guidelines-2008,* elevate that definition's legal weight beyond *adoption by reference* to *adoption by incorporation?*

FACTS RELEVANT TO ALL CAUSES OF ACTION

17. Each of the Defendants has acted with purposeful intent, and/or willfully reckless negligence, and in doing so has, perpetrated, incited, condoned, allowed and/or exacerbated the irreparable and unlawful actions taken by Defendants, in violation of PLAINTIFF'S Constitutionally protected rights.

18. PLAINTIFF asserts that there has been an ongoing effort to enact a licensing scheme that would allow the STATE to regulate and tax for-profit commerce in Adult-Use (recreational) cannabis despite the incontrovertible fact that such a scheme would be in violation of both federal and international law.

19. PLAINTIFF'S Constitutional protections have been violated and his financial wellbeing, physical health, interpersonal relationships and mental stability have been harmed by certain Defendants, who in violation of their fiduciary responsibilities and contrary to their sworn oaths, while acting in their capacities as government officials under *color of law*, used the authority inherent in those official positions to deliberately and misleadingly create the impression that these STATE and local

laws would override or suspend the jeopardy of being prosecuted under the *CSA*. This was done despite that they knew, or should have known, that these laws and regulations were legally void in light of relevant *Memorandums* issued by Attorneys General of the United States of America, numerous state and federal court rulings derived from the *Supremacy Clause* of the *Constitution of the United States of America* and our nations obligations under international law.

20. PLAINTIFF alleges that whether this ongoing effort constituted a conspiracy in the strict legal definition of the term, or not, the failures of various government officials to fulfill their fiduciary duties to their constituents and the failures by numerous Defendants who, as *Officers of the Court,* have a *Duty of Candor* to exercise that *Duty* are the proximate cause(s) of the harm PLAINTIFF is before this *Court* seeking to be made whole from.

21. Certain Defendants ongoing efforts to enact federally illegal regulatory schemes for the purposes of taxing cannabis have resulted in harm to PLAINTIFF'S *First, Fourth, Fifth, Sixth, Eighth and Fourteenth Amendment* protections; and/or thereby harmed PLAINTIFF'S financial and personal wellbeing; and/or his mental and physical health.

22. PLAINTIFF will prove at trial that there is, *de facto* and *de jure,* a positive conflict which exists between state and federal law, despite deceptive language deliberately used by advocates of Prop 64, including, but not limited to, the Defendants, that falsely implies otherwise.

23. PLAINTIFF will prove at trial, that Defendants knew, or should have known, that even under California law, STATES' enactment of marijuana regulations does not affect the fact that the *CSA* prohibits marijuana. In a California Supreme Court decision, *Ross v. Raging Wire Telecoms*., Inc., 42 Cal. 4th 920, 926 (2008) *("No state law could completely legalize marijuana . . . because the drug remains illegal under federal law.").* **This was settled long before Prop 64 was written.** Thus, Prop 64 is, *prima facie,* unquestionably in conflict with higher federal law. Given that 8 years had passed since this decision was handed down and that certain Defendants, some of whom are attorneys, thus Officers of the Court, and their superiors, had a duty to not frivolously engage in creating regulations, law, or guidelines, they either knew, or should have known, were irremediably in positive conflict with higher federal law.

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24. PLAINTIFF will prove at trial that Defendants, some of whom are attorneys, possessing a sworn *Duty of Candor,* recognized that the language used in Prop 64 made it legally void, insofar as it would do nothing to change cannabis' legal status under federal law. They, nonetheless, for the sake of personal enrichment (i.e., billable hours), and/or personal political advancement, maliciously engaged in misrepresentations of the degree of legal jeopardy that licensees would remain in under the STATE-regulated system of commerce in cannabis subsequent to enactment of those laws.

25. PLAINTIFF further asserts Defendant attorneys, as Officers of the Court, were bound under *Res Judicata* and *Stare Decisis,* and when drafting and/or advocating for the passage of Prop 64, had a duty to consider the effects of the *Supremacy Clause* as follows:

> *The U.S. Supreme Court's cases have identified three different types of pre-emption—"conflict," "express," and "field" --but all of them work in the same way: Congress enacts a law that imposes restrictions or confers rights on private actors; a state law confers rights or imposes restrictions that conflict with the federal law; and* ***therefore, the federal law takes precedence, and the state law is pre-empted.*** [emphasis added]

26. PLAINTIFF'S rights are further irremediably harmed when it is mandated, under color of STATE law, that he **must** waive his *Fifth Amendment* protections against involuntary self-incrimination to obtain the STATE licensing, that was widely presented by Defendants as, in essence, immunizing him from legal jeopardy under current federal policy.

27. California's Compassionate Use Act of 1996 *(CUA), [Cal. Health & Safety Code §) 11362.5* (added by Initiative Measure, Prop 215, as approved by voters on Nov. 5, 1996)] gives a person who uses marijuana for medical purposes, on a physician's recommendation, a defense to certain state criminal charges on cannabis.

28. In 2004, the state legislature expanded the criminal immunities of the *CUA* through the Medical Marijuana Program Act (SB 420), [*Cal. Health & Safety Code § 11362.7 et seq.*], which implemented the *CUA.*

> *"…Nothing in this section shall authorize…any individual or group to cultivate of distribute marijuana for profit…" (SB 420 § 11362.765 (a)).*

29. The collective model was one of two forms the legislature, in SB 420, anticipated non-individual-to-individual, non-profit, transfer of medical marijuana might take.

"Section 1. (b) It is the intent of the Legislature, therefore, to do all of the following…(3) Enhance the access of patients and caregivers to medical marijuana through collective, cooperative cultivation projects…Qualified patients, persons with valid identification cards and the designated primary caregivers of qualified patients and persons with identification cards, who associate with the State of California in order to

collectively or cooperatively cultivate marijuana for medical purposes…" (SB 420 § 11362.775)

30. *Collectives* are distinguished from most businesses, in that most businesses are intended to make a profit through the exchange of goods or services for consideration. A *Collectives* members own all of its resources in common. The definition of a *Collective* and its functions, *adopted by reference* in *Guidelines-2008*, is the current definition of *Collectives* and their function. *Collectives* exist only for the purpose of *"…facilitating or coordinating transactions between members…"*

31. As set forth above, the *Collective* model is NOT a for-profit business and exists within SB 94, as to do so requires non-profit *Collectives* to operate as a financial loss by charging sales tax on disbursement of cannabis to a member, who because of the nature of *Collectives,* already owns it. This is equivalent to charging individuals sales or excise taxes when they move a belonging from one pocket to another. This is, more relevantly analogous to a parent company transferring assets to a subsidiary company or between subsidiaries. The appropriate classification for disbursals of cannabis from, and equitable reimbursement to, C*ollectives* as is provided for at *California Tax Code, Section 6006; Transactions between related entities*. The legal definition of "sell," as found in California Tax Code; *Section 6006,* does not include such transfers. As such *Collectives* are rightfully exempt from sales tax.

32. Alternatively, in requiring that these taxes be levied, the STATE becomes an accomplice, before the fact, in a federal felony thru its suborning violations of the CSA in order to profit by taxing behavior the STATE acknowledges is federally illegal. This is several orders of magnitude more severely immoral, unethical and federally illegal then when the STATE taxes criminal behavior it did not incite. PLAINTIFF reminds the COURT that both *profit* and *financial gain* were specifically proscribed in the *Ogden* and *Cole Memos* which were intended to be used for determining if a STATE program meets the Departments standards for reduced federal enforcement priorities.

33. In collecting sales tax, a collective would be forced to violate the federal 5th amendment protections of PLAINTIFF and every member of that collective.

34. At Section 11362.77(e) SB 420 reads as follows:

> *"The AG may recommend modifications to the possession or cultivation limits set forth in this section. These recommendations, if any, shall be made to the Legislature no later than December 1st, and may be made only after public comment and consultation with interested organizations, including, but not limited to, patients, health care professionals, researchers, law enforcement, and local governments. Any recommended modification* SHALL [emphasis added] *be consistent with the intent of this article and shall be based on currently available science."*

35. PLAINTIFF asserts the conspiracy's overt actions begin with then California Attorney General Edmund "Jerry" Brown's (BROWN) delay in introducing the *Guidelines-2008* that he had been directed by the Legislature to produce, *"no later than December 1, 2005."* (§ 11362.77(e). BROWN's failure to comply with that Legislative directive in a timely manner resulted in 3 additional years of regulatory chaos and a sense of urgency to adopt some/any form of clear regulatory policy.

36. In August 2008, BROWN acting in his official capacity as Attorney General, finally published, or caused to be published, *Guidelines-2008* including Section IV in which he cites § 11362.765(a) of SB 420 in which the Legislature **forbids for-profit commerce in cannabis**.

> *"Non-Profit Operation: Nothing in Proposition 215, or SB 420 authorizes Collectives, Cooperatives or Individuals to profit from the sale or distribution of marijuana. See e.g., § 11362.765(a) Nothing in this Section shall authorize…any individual or group to cultivate or distribute marijuana for profit." (Guidelines-2008 § IV (b) 1)*

37. BROWN used this extended delay to overreach the authority delegated to him by the Legislature. Despite the Legislature's clearly stated intent that medical cannabis be available through individuals, co-operatives and *Collectives,* to deny that *Collectives* ARE, by virtue of having been mentioned in *Section 1(b)3* and § 11362.775 and through his *adoption by reference*, witting or otherwise, of a definition of such entities in fact, a statutory entity. His instruction, subsequent to § IV (a)1 *"…in applying this definition…"* demonstrates *de facto* status as such. This deliberate attempt to force anyone seeking to provide medical cannabis as a co-operative or other taxable entity was directly contrary to the intent specifically stated by the Legislature.

> *"Collectives: California law does not define Collectives, but the dictionary defines them as 'a business, farm, etc., jointly opened and operated by the members of a group. (Random House Unabridged Dictionary; Random House, Inc. ©2006.)* ***In applying*** *this definition* [emphasis added], *a Collective should be an organization that merely facilitates the collaborative efforts of patient and caregiver members including the allocation of costs*

and revenues. As such, a Collective is not a statutory entity [BROWN is mistaken. At that point, *Collectives* are a statutory entity, by virtue of their mention in SB 420 as enacted, which he then goes on to define; and refer to.], *but as a practical matter it might have to organize as some form of business to carry out its activities. The Collective should not purchase marijuana from, or sell to, non-members; instead, it should only provide a means for facilitating or coordinating transactions between members," (Guidelines-2008 IV (a)1)*

While delayed, it is within *Guidelines-2008* that one can see, BROWN acknowledging, the very language in SB 420 his Guidelines violate in his attempts to erase *Collectives* as a statutory entity in favor of co-operatives or other taxable entities:

"Non-Profit Operation: Nothing in Proposition 215, or SB 420 authorizes Collectives, Cooperatives or Individuals to profit from the sale or distribution of marijuana. See e.g., § 11362.765(a) Nothing in this Section shall authorize…any individual or group to cultivate or distribute marijuana for profit." (Guidelines-2008 § IV (b) 1)

38. When considering the language in *Guidelines-2008*, what heightens the confusion regarding legal entities is that BROWN, repeatedly, refers to *Collectives* including in the second sentence of IV (a)2, where he writes, *"…applying this definition…"* after providing the definition which is still used 13 years later. PLAINTIFF asserts that in instructing the reader on *"…applying the definition…"* BROWN has further adopted that definition *by incorporation*.

39. That the language in *§ 11362.765(a)* is, at least, the creation of such a *statutory entity* through *adoption by reference,* is proven by BROWN'S *Guidelines-2008* citation of *§ 11362.765(a)* where BROWN makes reference to *Collectives* subsequent to *Guidelines Regarding Collectives and Cooperatives: IV(A)2;* and to *applying* this definition to *Collectives.* Despite any disclaimer to the contrary, if the Legislature through the authority delegated to BROWN in SB 420, ¶ *5,* have not just created such a *statutory entity* through their *adoption by reference,* what are BROWN referring to in *Guidelines-2008,* and BECERRA in *Guidelines-2019,* referring to as *Collectives*?

40. BROWN, knowing that federal law is preeminent, then goes on to instruct the reader to act like a *"Collective"* but to perform, *"as a practical matter"* as *"some form of business to carry out its activities...*" **thereby suborning violation of the *CSA,*** in an effort to enable taxation of the transfers between related entities…" which happen within a *Collective* and are NOT an exchange of

ownership for consideration of a type required to meet the definition of a "sale" found within *California Tax Code.*

41. PLAINTIFF will prove at trial that it is astronomically implausible, that in 2008, as Attorney General, BROWN would not be aware of the Supremacy Clause and federal court decisions specifically regarding the interplay of federal and STATE medical cannabis law and regulation since the passage of the CUA, 12 years earlier, in 1996.

42. PLAINTIFF will prove at trial that BROWN, and each Attorney General of the STATE, thereafter, has been derelict in the performance of their fiduciary duties. This dereliction reaches beyond incompetence all the way to willful negligence and possibly even into deliberate malfeasance. In any of these scenarios it remains true that the culmination of their cumulative dereliction has been the passage of Proposition 64 as enacted in Senate Bill 94. PLAINTIFF will, further, starting with BROWN, the STATE has been beyond derelict in enforcing, *de minimis,* the original intents of either CUA or SB 420 i.e., that patients, such as PLAINTIFF, needing medical cannabis, have legal access through non-profit, not-for-financial gain distribution.

43. PLAINTIFF will further prove at trial that the *"recommended modification[s]"* BROWN sets forth in *Guidelines-2008* are in positive conflict with federal and state law at the time and were only created in response to the widespread confusion and chaos stemming from the lack of specific regulations arising from BROWN's failure to provide recommendations in keeping with the Legislature's deadline of December 1, 2005.

44. On October 19, 2009, Deputy Attorney General David W. Ogden issued a *Memorandum (Ogden-2009)* (EXHIBIT 7) for selected United States Attorneys that set forth:

> ***Investigations and Prosecutions in States Authorizing the Medical Use of Marijuana.***
>
> *"This memorandum provides clarification and guidance to federal prosecutors in States that have enacted laws authorizing the medical use of marijuana…*
>
> *…this memorandum provides uniform guidance to focus federal investigations and prosecutions in these States on core federal enforcement priorities…*
>
> *The prosecution of significant traffickers of illegal drugs, including marijuana, and the disruption of illegal drug manufacturing and trafficking networks continues to be a core priority…*

prosecution of commercial enterprises that unlawfully market and sell marijuana ***for profit*** [emphasis added] *continues to be an enforcement priority of the Department.*
To be sure, claims of compliance with state or local law may mask operations inconsistent with the terms, conditions, or purposes of those laws, and federal law enforcement should not be deterred by such assertions when otherwise pursuing the Department's core enforcement priorities.

Typically, when any of the following characteristics are present, the conduct will not be in clear and unambiguous compliance with state law and may indicate illegal drug trafficking activity of potential federal interests…

…including evidence of money laundering and/or ***financial gains*** [emphasis added] ...
of course, no State can authorize violations of federal law, and the list of factors above is not intended to describe exhaustively when a federal prosecution may be warranted…
Nor does this guidance preclude investigation or prosecution, ***even when there is clear and unambiguous compliance with existing state law*** [emphasis added], *in particular circumstances where investigation or prosecution otherwise serves important federal interest."*

45. On June 29, 2011, Deputy Attorney General James M. Cole issued *Memorandum for All United States Attorneys: Guidance Regarding the Ogden Memo in Jurisdictions Seeking to Authorize Marijuana for Medical Use (Cole-2011).* (EXHIBIT 8)

"Over the last several months some of you [US Attorneys] *have requested the Department's assistance in responding to inquiries in State and local governments' seeking guidance about the Department's position on enforcement of the Controlled Substances Act (CSA) in jurisdictions that have under consideration, or have implemented, legislation that would sanction and regulate the commercial cultivation and distribution of marijuana purportedly for medical use…*

You may have seen letters responding to these inquiries by several United States Attorneys. Those letters are entirely consistent with the October 2009 memorandum issued by Deputy Attorney General David Ogden to federal prosecutors in States that have enacted laws enacting the medical use of marijuana (the "Ogden Memo…")
The Ogden Memorandum provides guidance [note use of "guidance" not "policy"] *to you in deploying your resources to enforce the CSA as part of* ***the exercise of the broad discretion you are given to address federal criminal matters within your districts*** [emphasis added].

A number of states have enacted some form of legislation relating to the medical use of marijuana. Accordingly, the Ogden Memo reiterated to you that prosecution of significant traffickers of…including marijuana, remains a core priority but advised that it is not an efficient use of federal resources in individuals with cancer or other serious illnesses who use marijuana…or their caregivers.

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The term "caregiver" as used in the memorandum meant just that: individuals providing care to individuals with cancer or other serious illnesses, not commercial operations cultivating, selling or distributing marijuana.

The Department's view of the efficient use of limited federal resources as articulated in the Ogden Memorandum has not changed. There has however been an increase in the scope of commercial, sale, distribution and use of marijuana for purported medical purposes…

The Ogden Memorandum was never intended to shield such activities from federal enforcement action and prosecution, even where those activities purport to comply with state law. ***Persons who are in the business of cultivating, selling, or distributing marijuana, and those who knowingly facilitate such activities, are in violation of the Controlled Substances Act, regardless of state law*** [emphasis added]." *Id.*

PLAINTIFF asserts that this language includes any and all government officials who have knowingly misrepresented the implications of several Attorneys General's *Memorandums* concerning the interplay of STATE and federal cannabis law. PLAINTIFF further asserts that this misrepresentation by certain STATE and local officials, under color of law, rises to the level of criminal fraud. Clearly, if *Ogden* is to be taken at face value, each of such officials should be charged with suborning commission of a federal felony and the STATE should be required to make every victim of their fraudulent actions, starting with PLAINTIFF, whole.

46. On August 29, 2013, Deputy Attorney General James M. Cole issued *Memorandum for All United States Attorneys: Guidance Regarding Marijuana Enforcement (Cole-2013).* (EXHIBIT 9)

"In furtherance of those objectives, as several states enacted laws relating to the use of marijuana for medical purposes, the Department in recent years has focused its efforts on certain enforcement priorities that are particularly important to the federal government:

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

These priorities will continue to drive the Department's enforcement against marijuana-related conduct. Thus, this memorandum serves as guidance to Department attorneys and law enforcement to focus their enforcement resources and efforts, including prosecution on persons or organizations whose conduct interferes with any one or more priorities, regardless of state law…

These enforcement priorities are listed in general terms; each encompasses a variety of conduct that may merit civil or criminal enforcement of the CSA." (Cole-2013)

47. PLAINTIFF asserts that the factors set forth by Deputy Attorney General Ogden constitute a test whereby US Attorneys were counseled to determine, in exercising their prosecutorial discretion, if federal prosecution is the best use of Departmental resources. As shown in sections of the above quote, to which emphasis has been added: ***"…even when there is clear and unambiguous compliance with existing state law…"*** some of the factors, e.g., ***for profit*** and ***financial gains,*** which Deputy Attorney General Ogden refers to **are** elements present in SB 94. Thus, SB 94 does not survive what is, *de facto,* what PLAINTIFF refers to as, above and hereafter, the *"Ogden/Cole Test."*

48. In May 2014, the United States Congress passed the *Rohrabacher–Farr Amendment* and later referred to as the *Rohrabacher–Blumenauer Amendment (Rohrabacher)* which represented the first time either chamber had voted to protect medical cannabis patients' rights, which stated:

"None of the funds made available in this Act to the Department of Justice may be used, with respect to the States of Alabama, Alaska, ***California*** [emphasis added], *Colorado, Connecticut, Delaware, District of Columbia, Florida, Hawaii, Illinois, Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, Oregon, Rhode Island, South Carolina, Tennessee, Utah, Vermont, Washington, and Wisconsin, to prevent such States from implementing their own State laws that authorize the use, distribution, possession, or cultivation of* ***medical marijuana*** [emphasis added*]."(H.R. 4660;H. Amdt. 748)*

49. While the passage of this amendment does not legalize medical cannabis federally, it does prohibit the Department of Justice from spending funds to interfere with the implementation of state medical cannabis laws and must be renewed every year to remain in effect. *Rohrabacher* has remained in effect uninterrupted since its original passage.

50. *Rohrabacher* protects only medical cannabis, and only in those STATES that have enacted medical cannabis laws.

51. *Rohrabacher* does not protect those STATES, contrary to deliberately misleading representation by advocates of Prop 64/SB 94, *Rohrabacher* provides no protection of any non-medical

commerce in cannabis. All attempts to include non-medical protection in the language of *Rohrabacher* have so far failed.

52. On January 4, 2018, Attorney General of the United States, Jeffery B. Sessions ("Sessions") issued a *Memorandum ("Sessions-2018")* (EXHIBIT 10) in which he rescinded the Ogden, Cole and Wilkinson (concerning cannabis law on Indigenous American properties) Memos.

53. *Sessions-2018* states *"In deciding which marijuana activities to prosecute under these laws…prosecutors should follow the well-established principals…Attorney General Benjamin Civiletti originally set forth…as reflected in 1980 as reflected in Chapter 9-27.000 of the US Attorneys' manual."* This returned federal enforcement policy to the same rules in effect throughout the era of *zero tolerance*.

54. While one can only speculate as to why this rescission wasn't followed by a nationwide federal crackdown on adult-use "recreational" cannabis, there is no room for speculation as to whether the tolerance for medical cannabis found in Ogden and Cole Memos, and relied on by a number of states in crafting their cannabis regulations remained in effect. It did not and does not.

55. *Sessions-2018* eliminates any official guidance towards the tolerance and protection that medical cannabis had under Ogden/Cole and **moved adult-use ("recreational") of cannabis even further into positive conflict with federal law.** It is unambiguous that, contrary to the false impression deliberately created by its advocates, who either knew, or should have known, the language in Prop 64 Section 11, provides, *prima facie,* **no immunization from federal prosecution** of for-profit commerce in cannabis.

56. When comparing the factors comprising the *Ogden/Cole Test* which were *adopted by reference* in *Cole-2011*, with the *general* factors set forth in *Cole-2013*, and the subsequent *Sessions Memorandum of 2018*, one must consider them in light of the United States of America's treaty obligations (see, *21 U.S.C. § 801 et seq.)* under international law, as set forth in the *United Nations: Single Convention on Narcotic Drugs, 1961* (as amended by the *1972 Protocol amending the United Nations: Single Convention on Narcotic Drugs, 1961*). ("SCND") (EXHIBIT 11) whereby scientific and medical usage is expressly allowed within the convention *(a convention being an agreement between multiple nations whereas a treaty is between two nations in which in either case all members agree to be held legally responsible, under international law for the terms and conditions set forth therein).* It is

unlikely that an Attorney General of the United States of America would be unfamiliar with the binding nature of International Treaties.

The *UN Commission on Narcotic Drugs* ("CND") (EXHIBIT 12) revisited this on December 2-4, 2020, whereby the United States chose to continue the previously imposed restrictions which read as follows:

> *"The use of cannabis for other than medical and scientific purposes must be discontinued as soon as possible but, in any case, within twenty-five years from the coming into force of this Convention as provided in ¶ 1 of article 41."* (SCND, Article 49, ¶ 2(f)

Thus, absent formal withdrawal by the United States from SCND, it is not within even the federal government's power to "legalize" any use of psychoactive cannabis for other than medical and/or scientific purposes.

> *These enforcement priorities are listed in* ***general terms*** [emphasis added]; *each encompasses a variety of conduct that may merit civil or criminal enforcement of the CSA." (Cole-2013, Pg. 2)*

Given that our treaty obligations have not changed, the use of this language, as it refers to the factors as being ***"general terms,"*** clearly demonstrates that his intent in listing factors in *Cole-2013* is not to replace the factors listed in *Ogden* but rather to further explicate them.

57. On, or about, July 22, 2015, four years into his first term as Lieutenant Governor, Gavin Newsom ("NEWSOM"), as Chairman of the Blue Ribbon Steering Committee issued the *Pathways Report: Policy Options for Regulating Marijuana in California* ("BRC"), (EXHIBIT 13) the stated purpose of which was:

> "*The goal of the BRC is to provide expert research and analysis to help the public and policy makers understand the range of policy issues and options to consider when drafting proposals to legalize, tax and regulate marijuana."*

58. As was the BRC's stated purpose and goals; Page II, Exec Summary: *This report is based on a recommendation that the process that the state would embark upon must be based on 4 Macro-level strategies operating concurrently:*

> *a.* ***Promote the public interest*** [bolded in original] *by ensuring that all legal and regulatory decisions around legalization are made with a focus on protecting California's youth and promoting public health and safety.*
>
> *b.* ***Reduce the size of the illicit market*** [bolded in original] *to the greatest extent possible. While it is not possible to eliminate the illicit market entirely, limiting its size will*

reduce some of the harms associated with the current illegal cultivation and sale of cannabis and is essential to creating a well-functioning regulated market that also generates tax revenue.

c. ***Offer legal protection to responsible actors*** [bolded in original] *in the marijuana industry who strive to work within the law. The new system must reward cooperation and compliance by responsible actors in the industry as an incentive toward responsible behavior. It must move current actors, current supply and current demand from the unregulated to the regulated market. And the new market will need to out-compete the illicit market over time.*

d. ***Capture and invest tax revenue*** [bolded in original] *through a fair system of taxation and regulation, and direct that revenue to programs aligned with the goals and needed policy strategies for safe legalization.*

59. Within the BRC, *Executive Summary, Goals of Legalization and Regulation,* it sets forth 9 goals of legalization and regulation as follows:

a. Promote the health, safety and wellbeing of California's youth, by providing better prevention, education and treatment in school and community settings and keeping youth out of the criminal justice system.

b. Public Safety: Ensure that our streets, schools and communities remain safe, while adopting measures to improve public safety.

c. Equity: Meet the needs of California's diverse populations and address racial and economic disparities, replacing criminalization with public health and economic development.

d. Public Health: Protect public health, strengthen treatment programs for help and educate the public about health issues associated with marijuana use.

e. Environment: Protect public lands, reduce the environmental harms of illegal marijuana production and restore habit and watersheds impacted by such destruction.

f. Medicine: Ensure continued access to marijuana for medical and therapeutic purposes for patients.

g. Consumer Protection: Provide protections for California consumers, including testing and labeling of cannabis products and offer information that helps consumers make informed decisions.

h. Work Force: Extend the same health, safety and labor protections to cannabis workers as other workers and provide for legal employment and economic opportunity for California's divers workforce.

i. Market Access: Ensure that small and midsize entities, especially responsible actors in the current market, have access to the new licensed market, and that the industry and regulatory system are not dominated by large corporate interests.

60. In BRC, NEWSOM relies heavily on the *"general terms"* found in *Cole-2013* to make a case for how the STATE can enact law that controls, regulates and taxes commerce in marijuana in a form which does not conflict with federal law under CSA, SCND and the Supremacy Clause. **It cannot.**

> *"This Constitution and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges, in every State, shall bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." (Article VI, Clause 2, Constitution of the United States of America)*

61. In BRC, NEWSOM artfully uses truth to tell a lie, both when he uses the term "most" in discussing contradictory state laws and in his failure to mention that the "*considerable autonomy"* he refers to, only exists *"...**unless there is a positive conflict between that provision of this subchapter and that State law so that the two cannot consistently stand together*** [emphasis added]." *(21 U.S.C. § 903)*

> *"While the Supremacy Clause of the U.S. Constitution provides that federal law trumps **most** [emphasis added] contradictory state laws, fundamental tenets of our federalist system of government and specific provisions of the federal Controlled Substances Act (CSA) grant the states considerable autonomy even if those state laws allow activities." (BRC, Pg., 15 ¶2)*

> *"No provision of this subchapter shall be construed as indicating an intent on the part of the Congress to occupy the field in which that provision operates, including criminal penalties, to the exclusion of any State law on the same subject matter which would otherwise be within the authority of the State**, unless there is a positive conflict between that provision of this subchapter and that State law so that the two cannot consistently stand together*** [emphasis added]**."** *(21 U.S.C. § 903).*

62. In BRC, in yet another example of NEWSOM using the truth to tell a lie we see him state:

> *"The result is that state laws legalizing marijuana are valid, yet at the same time the federal government can enforce its own laws prohibiting marijuana use even within the states that have legalized it under their own law." (BRC pg. 15, ¶ 2)*

With this language, we see the authors acknowledging that **positive conflict does exist,** yet they obfuscate that point by stating the state laws are "valid". This simply isn't true. As noted above, controlling law disagrees. The US Attorneys' Memos disagree. Even supporters of the legal mess that exists in subsequent California marijuana law as a direct result of this misinformation, differentiate a states "legalization" of cannabis from a state exempting certain people from prosecution for breaking that state's cannabis laws. **It does not.**

"…in adopting these laws, California exercised the state's reserved powers to not punish certain cannabis-related offenses under state law when a physician has recommended its use to treat a serious medical condition." (citation omitted) *(BRC Pg. 8 ¶2)*

63. PLAINTIFF will prove at trial, that the goals set forth by NEWSOM, et. al., while sounding benign, were instead, part of a Machiavellian scheme to tax and sell cannabis for other than medical and/or research purposes. As such they were, and remain, in direct positive conflict with both the CSA and the SCND. Furthermore, PLAINTIFF asserts that the language used in BRC which refers to the *"…current illegal cultivation and sale of cannabis…", (BRC, II ¶ 2)* is purposefully misleading as under the terms of the *CSA* ***there is no such thing as "legal" sales of cannabis.***

64. On October 09, 2015, SB-643, AB-266 and AB-243, collectively known as the *Medical Marijuana Regulation and Safety Act* ("MMRSA") (*See SB 643 filed with the CA Secretary State on October 09, 2015)* were signed into law *as (Bus. & Prof. Code, §§19300-19360.)* MMRSA was enacted to establish "*a state regulatory and licensing system for the cultivation, manufacturing, delivery and sale of medicinal cannabis as of January 1, 2016."* While MMRSA is closer to the intent shown in *CUA* and SB 420, i.e., non-profit transfer of MEDICAL cannabis, it nonetheless fails to comply with federal law in that it purportedly allows for-profit, commerce in MEDICAL cannabis. This is the first time the STATE enacts a law that allows for-profit commerce of MEDICAL cannabis.

65. On June 27, 2016, pursuant to *SB 837, the Medical Marijuana Regulation and Safety Act* was renamed the *Medical Cannabis Regulation and Safety Act* ("MCRSA"). (*See SB 837 filed with the CA Secretary State on June 27, 2016).* MCRSA, had it been challenged, solely based on the *Supremacy Clause*, **would not** have survived that federal challenge.

66. On November 8, 2016, and most relevant to the issues presented herein, the California electorate passed Prop 64, which replaced MCRSA with yet another complex, for-profit, scheme to pseudo-legalize, tax, control, and regulate the possession, cultivation, and sale of nonmedical, "recreational" marijuana.

67. PLAINTIFF will prove at trial that Prop 64 was the product of a highly sophisticated conspiracy to enact law that on its surface appeared to be compliant with federal law, specifically the CSA, when in fact it is language within Prop 64 that demonstrates the initiative should not have been approved for placement on the November 2016 ballot.

68. On June 27, 2017, NEWSOM signed SB 94 (*See SB 94 filed with the CA Secretary State on June 27, 2017)* into effect. It directly contradicts the language in Section 4 of Prop 64 whereby H&S Safety Code Section 11362.1 would not be amended when SB 94 does exactly that by repealing *MCRSA* to consolidate the regulation of medical and non-medical cannabis activities pursuant to enacting a single state regulatory framework.

69. With the signing of SB 94, MCRSA was subsumed by SB 94, the *Medicinal and Adult Use Cannabis Regulation and Safety Act* ("MAUCRSA").

> *"MAUCRSA repealed the MCRSA and consolidated the state's medicinal and adult use cannabis regulatory systems. In general, the MAUCRSA imposed similar requirements on both commercial medicinal and adult use cannabis activity." (Guidelines-2019, Pg 3)*

70. Plaintiff will prove at trial that SB 94 violates the language and intents of CUA, MMP, CSA and SCND by creating yet another regulatory scheme which contains, indeed is based on, the for-profit, taxable sales of cannabis.

71. The gravamen in this case can be found in the Defendants' ongoing pattern of deliberate use of misleading language. For example, the language used in <u>*Prop 64 SECTION 11 states:*</u>

> "*…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 Controlled Substances Act, such that the provision or provisions of this Act and federal law cannot consistently stand together."*

Thus, the language in Prop 64 as the *AUMA SECTION 11*, which gives the false impression of creating a legally safe, federally compliant, regulatory framework, is entirely spurious, because what *SECTION 11* **means** is that it can only be legal under Prop 64 **<u>when it's federally legal. It is not.</u>**

72. In August 2019, did BECERRA, acting in his official capacity as Attorney General, who published or caused to be published, *Guidelines-2019*, Section IV of which is entitled, *Guidelines Regarding Collectives and Cooperatives.* It included the same definition of "*Collectives*" and how they function, as was given 11 years earlier, in *Guidelines-2008:*

> "*…a collective should be an organization that merely facilitates the collaborative efforts of patient and caregiver members—including the allocation of costs and revenues." (Random House unabridged dictionary; Random House, Inc. © 2006, as cited in Guidelines-2008, Section IV(A)(2)*

73. This clearly demonstrates two important facts. First, that BROWN's inclusion of the Random House Dictionary definition, eleven years earlier was interpreted by BECERRA as having

prima facie, been an *adoption by reference* of that definition. Second, that, subsequent to the passing of Prop 64, the state agency responsible for the administration of state cannabis law and regulation was the newly formed Bureau of Cannabis Control ("BCC") and its successor agency—the Department of Cannabis Control ("DCC") is maintaining, *de minimus*, the pretense that it is carrying out the will of the voters as expressed by the voters and their elected representatives in the passing of CUA, MMP, MCRSA and even, to a large degree, Prop 64 as passed, rather than as it has been butchered by the Legislature in SB 94 and *Amendments* thereto.

74. By "*de minimus"* PLAINTIFF, in this instance, means that if one goes to the link found on page 14 of *Guidelines-2019—As* they will be at a page entitled, *"Collectives and Cooperatives Fact Sheet."* wherein they will find: *"WHAT LEGAL REQUIREMENTS MUST BE SATISFIED TO CONTINUE OPERATING A CANNABIS COLLECTIVE OR COOPERATIVE,"* which reads, in part:

> *"…Cannabis collectives or cooperatives must:* O*nly acquire and provide cannabis to members and assure that no cannabis transactions occur with nonmembers.*
>
> *Only receive monetary* ***reimbursement*** [emphasis added] *from members in an amount necessary to cover overhead costs and operating expenses (e.g., not operate on a for-profit basis.)*
>
> *Possess, cultivate, and transport amounts of cannabis that are consistent with the aggregate limits provided for member patients and may be required to produce documentation to support the amounts of cannabis, possessed, cultivated, or transported…*
>
> *Obtain a seller's permit from the California Department of Tax and Fee Administration…*[PLAINTIFF further asserts that both *BOE* and *BCC* as *DCC* and *CDTFA* and *CDTFA* as successor agencies, knew or know that, by definition, as *adopted by reference,* a true medical cannabis collective is a true non-profit organization does Not make sale.]

75. PLAINTIFF further asserts that in taxing *Collectives* these state agencies are **directly** in violation of the US Attorney Generals' Memorandums which refer only to a discretionary policy guideline of allowing only **NON-PROFIT** distribution which is **NOT** ***"for gain."***

STATE LAW IN POSITIVE CONFLICT WITH FEDERAL LAW

76. The essence of due process informs the entire *supremacy* analysis because it violates the essence of due process to allow an action to be simultaneously lawful and unlawful.

77. PLAINTIFF will prove at trial, given the lack of ambiguity in federal law and Congress's intent, that marijuana is still classified as a Schedule I Controlled Substance under the CSA. Congress has made express findings that the intrastate distribution, cultivation, and possession of controlled substances, including marijuana, significantly affects interstate commerce, a domain entirely under Congress's control. Any state law created which does not conform with federal law is a violation of PLAINTIFF'S *Fourth* and *Fourteenth Amendment* Constitutional rights.

78. The *Supremacy Clause* unambiguously provides that if there is any conflict between federal and state law, federal law shall prevail:

> *"This Constitution and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges, in every State, shall bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." (Article VI, Clause 2, Constitution of the United States of America)*

79. PLAINTIFF relies on *Stare Decisis* and *Res Judicata* in this complaint. Long-settled law beginning with, and derived from, the *Supremacy Clause* of the *Constitution of the United States (Article VI, Clause 2)* requires that this court find California's AUMA/Prop 64, and MAUCRSA/SB 94, the subsequent legislation codifying it, is and always has been, void of the functional meaning its proponents have misrepresented it as having, e.g., that it allows the exchange of cannabis for consideration from one entity to another without either entity being in legal jeopardy under current federal policy, by stating:

> *"…the federal Controlled Substances Act (CSA) grant the states considerable autonomy to create their own drug laws even if those state laws allow activities prohibited by federal law. The result is that state laws legalizing marijuana are valid…"* (Pathways Report; Policy Options for Regulating Marijuana in California, Federal Compliance and Federal Changes Pg. 15, Blue Ribbon Commission on Marijuana Policy**)**

No, they do not; **21 U.S.C. § 903 contradicts this definitively:**

> *"No provision of this subchapter shall be construed as indicating an intent on the part of the Congress to occupy the field in which that provision operates, including criminal penalties, to the exclusion of any State law on the same subject matter which would otherwise be within the authority of the State**, unless there is a positive conflict between that provision of this subchapter and that State law so that the two cannot consistently stand together*** [emphasis added]***."*** *(21 U.S.C. § 903).*

The mere assertion by Defendants that there is no "*positive conflict"* is not sufficient to demonstrate that there is no such conflict; especially when there are a great number of federal and state court rulings to the contrary:

"Limiting the activity to marijuana possession and cultivation 'in accordance with state law' cannot serve to place respondents' activities beyond congressional reach." (Gonzales v. Raich, 545 U.S. 1, 29 (2005)

"It has long been established that 'a state statute is void to the extent that it actually conflicts with a valid federal statute.'" **(***Clark v. Coye*, 60 F.3d 600, 603 (9th Cir. 1995 (citing *Edgar v. Mite Corp.*, 457 U.S. 624, 631)

"[S]tate legalization of marijuana cannot overcome federal law." (*Feinberg v. Comm'r*, 916 F.3d 1330, 1338 n. 3 (10th Cir. 2019).

80. PLAINTIFF asserts that the proponents and advocates of *Proposition 64* ("Prop 64") aka the *Adult Use of Marijuana Act* ("AUMA") and its statutory enactment as *Senate Bill 94* ("SB 94"), aka the *Medical and Adult Use of Cannabis Regulation Act* ("MAUCRSA"), either knew, should have known and or should have made sure that their subordinates knew, that the scheme described therein is in positive conflict with the federal *Controlled Substances Act* ("CSA").

81. Under California law, a contract must have a "lawful object." (Civ. Code section *1550(3).) Contracts without a lawful object are void. (Id. § 1598.) Civil Code § 1667 elaborates* that "unlawful" means: "*1. Contrary to an express provision of law; [¶] 2. Contrary to the policy of express law, though not expressly prohibited; or, [¶] 3. Otherwise, contrary to good morals."* For purposes of illegality, the "law" includes statutes, local ordinances, and administrative regulations issued pursuant to the same. (*Kashani v. Tsann Kuen China Enterprise Co.* (2004) 118 Cal. App. 4th 531, 542). In addition, "*A contract,* [such as those pendant on Prop 64, SB 94 or any state or local cannabis license law, rule, regulation or application that relies on these objects] *that has been made for the purpose of furthering any matter prohibited by law, or to aid or assist any party in the violation of the law, is void*." *(Homami v. Iranzadi* (1989) 211 Cal.App.3d 1104, 1109). Thus, we see, that even under California Civil Code, Prop 64 as enacted in SB 94 is a legally void object.

82. *"California law includes federal law." (People ex. rel Happell v. Sischo (1943) 23 Cal. 2D 478, 491. 144 P.2d 785)* [Federal law is *"the supreme law of the land* (U.S. Const., art. VI, sec.2) *to the same extent as though expressly written into every state law"*]; 6A Corbin on Contracts, *supra,* § 1374, p. 7 *["Under our Constitution, national law is also the law of every separate State"*].) *Thus, a violation of federal law is a violation of law for purposes of determining whether or not a contract is*

unenforceable as contrary to the public policy of California." (Homami v. Iranzadi (1989) 211 Cal.App.3d 1104, 1109)

83. For Judicial Authority, PLAINTIFF relies extensively on statements issued by three federal judges, two of whom are Supreme Court Justices, writing about different cases, when providing their opinions on how state and federal law must be equally applied and/or how state legislatures must not create laws that are deliberately enacted in full knowledge that they are in positive conflict with federal laws.

84. On October 19, 2015, in *United States v. Marin Alliance For Medical Marijuana (MAMM)*, *139 F. Supp 3d 1039 (S.D. Cal. 2015),* District Judge Charles R. Breyer in his order to dissolve a permanent injunction stated:

> "…*However, the enforcement of said injunction must be consistent with the new directive of Congress in Section 538 of the Consolidated and Further Continuing Appropriations Act of 2015, Pub. L. 113–235, 128 Stat. 2130 (2014) ("2015 Appropriations Act"), which prohibits the Department of Justice from expending any funds in connection with the enforcement of any law that interferes with California's ability to "implement [its] own State law[ ] that authorize[s] the use, distribution, possession, or cultivation of medical marijuana." See 2015 Appropriations Act § 538.* ***As long as Congress precludes the Department of Justice from expending funds in this manner*** [emphasis added], *the permanent injunction will only be enforced against MAMM insofar as that organization is in violation of California* ***"State laws that authorize the use, distribution, possession, or cultivation of medical marijuana*** [emphasis added]." *See id.; Fed. R. Civ. P. 60(b). 1 1 Congress extended the force of Section 538 by passing the Continuing Appropriations Act of 2016 ("2016 Appropriations Act"), Pub. L. 114–53, § 103, 129 Stat. 502 (2015).*

It is PLAINTIFF'S position, that Kamala Harris ("HARRIS"), as Attorney General in 2016 had a fiduciary duty in the interplay between federal and California cannabis laws and regulation. This would include familiarity with the effects of *Rohrabacher* and any new developments in how it is to be interpreted as affecting federal enforcement in the Federal District in California. As such, she either knew or should have known that, per the MAMM decision, the tolerance created by *Rohrabacher* does not, and indeed cannot, legally, be applied to adult-use ("recreational") cannabis. Thus, for her to have allowed Prop 64, which by the language of Section 11, prima facie, is in positive conflict with the CSA AND cancels the tolerance for medical marijuana affirmed by Judge Breyer in MAMM on the ballot,

was an act ascribable to either incompetence or malfeasance. Given the august station she has reached in life, incompetence seems highly improbable.

85. On June 28, 2021, Supreme Court Justice Clarence Thomas, issued an opinion in *STANDING AKIMBO, LLC v. UNITED STATES, 141 S. Ct. 2236 (2021)* to the effect that federal marijuana laws *'are inconsistent and outdated'.* Justice Thomas recognized that marijuana is *tolerated*, in one way or another, under state law in 36 states, while noting that the 2005 ruling in *Gonzales v. Raich*, 545 U.S. 1, found that the federal government could enforce prohibition against intrastate violations of the *CSA.*

86. On December 10, 2021, in *Whole Woman's Health v. Jackson*, *595 U.S. 21-463 (2021),* Chief Justice Roberts stated:

> *"The clear purpose and actual effect of S. B. 8 has been to nullify this Court's rulings. It is, however, a basic principle that the Constitution is the "fundamental and paramount law of the nation," and "[i]t is emphatically the province and duty of the judicial department to say what the law is." Marbury v. Madison, 1 Cranch 137, 177 (1803). Indeed,* ***"[i]f the legislatures of the several states may, at will, annul the judgments of the courts of the United States, and destroy the rights acquired under those judgments, the constitution itself becomes a solemn mockery*****. [emphasis added]"** *United States v. Peters, 5 Cranch 115, 136 (1809).* ***The nature of the federal right infringed does not matter; it is the role of the Supreme Court in our constitutional system that is at stake*** **[emphasis added]".**

87. That the Supremacy Clause applies to California cannabis law and regulation has been definitively determined in both STATE and federal court. Per California's highest Court:

> *"No state law could completely legalize marijuana . . . because the drug remains illegal under federal law." (Ross v. Raging Wire Telecomms., Inc., 42 Cal.4th 920, California Supreme Court.)*

88. The United States Supreme Court has construed § 903 as *"explicitly contemplat[ing] a role for the States in regulating controlled substances."* (*Gonzalez v. Oregon*, 546 U.S. 243, 251, 126 S. Ct. 904, 163 L.Ed.2d 748 (2006). Under this construction, states may pass laws related to controlled substances (including marijuana) as long as they do not create a *"positive conflict"* such that state law and federal law *"…cannot stand consistently together."* (*Id)*

89. PLAINTIFF asserts that with the passage of Prop 64 and the enactment of SB 94 his constitutional protections have been violated and he suffered financial, physical, and emotional harm.

/////

90. PLAINTIFF further asserts that the harm he has suffered begins with BROWN's failure to obey the Legislatures directives in *§ 11362.765(a):*

> *"…nor shall anything in this section authorize any individual or group to cultivate or distribute marijuana for profit;"* and *§ 11362.77(e):* "*The Attorney General may recommend modifications to the possession or cultivation limits as set forth in this section. These recommendations, if any, shall be made to the Legislature nor later than December 1, 2005, and maybe made only after public comment and consultation with interested organizations, including, but not limited to patients, health care professionals, researchers, law enforcement, and local governments.* ***Any*** [emphasis added] *recommended modification* ***shall be consistent with the intent of this article*** [emphasis added**]**."

The harms from which PLAINTIFF seeks to be made whole are a direct result of the Defendants' deliberate misrepresentation by omission, in BRC, and subsequent advocacy of Prop 64 and SB 94, as creating a regulatory system allowing the exchange of cannabis, including adult-use ("recreational") cannabis for consideration which, as long as the licensee remains compliant with state cannabis regulations, purportedly acts to protect them from legal jeopardy under current federal policy.

91. As previously stated, PLAINTIFF relies extensively on statements made by Supreme Court Justice Clarence Thomas, who on June 28, 2021, issued a statement in *Standing Akimbo, LLC v. United States, 141 S. Ct. 2236 (2021)* to the effect that federal marijuana laws *'are inconsistent and outdated'*. Justice Thomas recognized that marijuana is *tolerated*, in one way or another, under state law in 36 states, while noting that the 2005 ruling in *Gonzales v. Raich*, 545 U.S. 1, found that the federal government could enforce prohibition against intrastate violations of the *CSA.*

When individuals are conducting activities which are legal under state law but are arrested for violating federal law, they have fallen into the ***"concealed trap for the unwary"*** [emphasis added] that Judge Thomas refers to. This legal dichotomy constitutes a violation of the *right to notice.*

92. PLAINTIFF is not saying that the abolition of Prop 64 would put California's cannabis laws and regulations in strict compliance with the CSA. However, such abolition would bring California's cannabis laws and regulations more in line with the tolerance Congress and the US Department of Justice have increasingly exhibited toward states with ***medical*** cannabis statutes. These states would then be within the United States' obligations under international law as it relates to limiting the acceptable use of cannabis to both ***medical*** and *scientific* purposes.

93. That the Supremacy Clause applies to California cannabis law and regulation has been definitively determined in both STATE and federal court. Per California's highest court:

> *"No state law could completely legalize marijuana . . . because the drug remains illegal under federal law." (Ross v. Raging Wire Telecomms., Inc., 42 Cal. 4th 920, California Supreme Court.)*

94. There is a *bright line* of cases, specifically including the *Raich* decision, in which it has been found that when Congress intends an outcome federal law **must** preempt state law. The Court, in *Raich*, soundly rejected the notion that the marijuana production and use at issue,

> "*...were not '...an essential part of a larger regulatory scheme' because they had been '...isolated by the State of California, [are] policed by the State of California,' and thus remain, 'entirely separated from the market.*" *"The notion that California law has surgically excised a discrete activity that is hermetically sealed off from the larger interstate marijuana market is a dubious proposition,"* concluded the Court, and one that one Congress rationally rejected when it enacted the CSA. "*In the end,"* concluded the Court, "*If California wished to legalize the growing, possession and use of marijuana, it would have to seek permission to do so 'in the halls of Congress." (Raich, at 33, 125 S. Ct. 2236, 2236 (2021)*
>
> *"The [Raich] Court stressed that Congress had decided, 'to prohibit both the possession or use of [marijuana]' and had 'designate[d] marijuana as contraband for any purpose. [emphasis added] (Justice Thomas citing Raich, at 24-27, 125 S. Ct. 2236, 2236 (2021)*

Justice Thomas then specifically addresses the positive conflict that currently exists between state and federal marijuana laws, and the harm that this *positive conflict* causes as follows:

> *"Whatever the merits of Raich when it was decided, federal policies of the past 16 years have greatly undermined its reasoning. Once comprehensive, the Federal Government's current approach is a half-in, half-out regime that simultaneously tolerates and forbids local use of marijuana. This contradictory and unstable state of affairs strains basic principles of federalism and conceals* ***traps for the unwary*** [emphasis added]*."*

95. Even further, the Ninth Circuit has made its own finding, not simply deferring to the mere existence of Congressional findings, in sustaining the CSA against Commerce Clause challenges. The Ninth Circuit has independently adjudged that Congress's findings that the intrastate distribution, cultivation, and possession of controlled substances substantially affect interstate commerce are rational. See *United States v. Visman*, 919 F.2d 1390, 1393 (9th Cir. 1990) (stating that, in *Rodriquez-Camacho*, 468 F.2d 1220 (9th Cir. 1972*) "[w]e concluded that Congress had a rational basis for making its findings"); United States v. Thornton*, 901 F.2d 738 , 741 (9th Cir. 1990) *"Congress has stated and we*

have confirmed that drug trafficking is a national concern which affects interstate commerce"; Rodriquez-Camacho, 46 8 F.2d at 1222 (recognizing that court was not required to defer to Congress's findings *if "'the relation of the subject to interstate commerce and its effect upon it are clearly nonexistent,'"* but holding that *"[s]uch is not the case as regards controlled substances. It is sufficient that Congress had a rational basis for making its findings."* (emphasis added, quoting *Stafford v. Wallace*, 258 U.S. 49 5, 521 (1922)).

96. Within that "*bright line"* of federal rulings from *Raich* through the recently decided, and published, *Iron Angel v. Kaplan,* the DOJ's position on how to interpret state versus federal cannabis under the *CSA* has been unambiguous. This line of rulings presents the federal courts' uniform and unwavering findings that a positive conflict clearly exists between state and federal cannabis law, such that it is literally impossible for a state to legalize any aspect of for-profit cannabis.

97. When considering positive conflict one need look no farther than the language in the *United States v. Steve McIntosh* 9th Circuit Court of Appeals (COA) defendants argued that the DOJ was preempted from enforcing federal law when it came to expending funds to prosecute that had been expressly prohibited under the *Rohrabacher-Farr Amendment*. The COA did not agree and decided that even when it came to state licensed medical cannabis laws, from a federal perspective, the following conditions must be taken into account:

> *"In light of the ordinary meaning of the terms of § 542 and the relationship between the relevant federal and state laws, we consider whether a superior authority, which prohibits certain conduct, can prevent a subordinate authority from implementing a rule that officially permits such conduct by punishing individuals who are engaged in the conduct officially permitted by the lower authority. We conclude that it can."* [beyond this] *"Nor does any state law legalize possession, distribution, or manufacture of marijuana. Under the Supremacy Clause of the Constitution, state laws cannot permit what federal law prohibits. U.S. Const. art VI, cl. 2. Thus, while the CSA remains in effect, states cannot actually authorize the manufacture, distribution, or possession of marijuana. Such activity remains prohibited by federal law."*
>
> [Beyond this,] *Given this context and the restriction of the relevant laws to those that authorize conduct, we conclude that § 542 prohibits the federal government only from preventing the implementation of those specific rules of state law that authorize the use, distribution, possession, or cultivation of medical marijuana.* ***DOJ does not prevent the implementation of rules authorizing conduct when it prosecutes individuals who engage in conduct unauthorized under state medical marijuana laws*** [emphasis added].

> *Individuals who do not strictly comply with all state-law conditions regarding the use, distribution, possession, and cultivation of medical marijuana have engaged in conduct that is unauthorized and prosecuting such individuals does not violate § 542. Congress could easily have drafted § 542 to prohibit interference with laws that address medical marijuana or those that regulate medical marijuana, but it did not. Instead, it chose to proscribe preventing states from implementing laws that authorize the use, distribution, possession, and cultivation of medical marijuana. (United States v. McIntosh, 833F. 3d 1163 (9th Cir. 2016)*

Nothing here could, nor should, be construed as allowing a state to enact a regulatory scheme for the exchange of adult-use ("recreational") cannabis consideration, from one entity to another, without both entities being in legal jeopardy under current federal policy.

98. PLAINTIFF asserts that his constitutional protections have been violated, and that he has suffered financial, physical and emotional harm through BROWN's failure to obey the Legislatures directives in *§ 11362.765(a):*

> *"…nor shall anything in this section authorize any individual or group to cultivate or distribute marijuana for profit;"* and *§ 11362.77(e):* "*The Attorney General may recommend modifications to the possession or cultivation limits as set forth in this section. These recommendations, if any, shall be made to the Legislature nor later than December 1, 2005, and maybe made only after public comment and consultation with interested organizations, including, but not limited to patients, health care professionals, researchers, law enforcement, and local governments.* ***Any*** [emphasis added] *recommended modification* ***shall be consistent with the intent of this article*** [emphasis added**]**."

As a direct result of the Defendants' deliberate misrepresentations, in BRC, and subsequent advocacy of Prop 64 and SB 94, as creating a regulatory system for the exchange of adult-use ("recreational") cannabis for consideration, without legal jeopardy under current federal policy.

99. When this court affirms that such positive conflict exists between STATE, local law and the CSA, the Court, implicitly has a duty to find that any state law or regulation licensing federally illegal activities, which purportedly insulates licensees under those STATE and local laws from legal jeopardy under federal law, is null and void.

100. Defendants knew, or should have known, these licensing laws and regulations would, in violating federal law, place state licensees in jeopardy of criminal charges and financial loss. PLAINTIFF will prove at trial these actions were deliberately and willfully reckless negligence perpetrated by the

Defendants, in pursuit of financial enrichment and/or personal political advancement. It thus falls upon the Court to hold STATE and local governments, and their elected representatives and appointed officials, accountable for their actions.

101. PLAINTIFF requests this Court consider the policy judgment Congress made in the CSA, relative to a state's enacting cannabis laws that conflict with federal law as follows:

> *"…that an exemption for such a significant segment of the total market would undermine the orderly enforcement of the entire regulatory scheme is entitled to a strong presumption of validity." (352 F. 3d 1222)* Nor, said the Court, can *"…limiting the activity to marijuana possession and cultivation 'in accordance with state law'. . . serve to place [California's law] beyond congressional reach." id.*

102. PLAINTIFF asserts, Prop 64 as enacted in SB 94, in light of the *Supremacy Clause* and *21 U.S.C. § 903,* could, and can, have no effect on the enforceability of federal law, or the criminal nature of marijuana possession, cultivation, or use under it.

> *"No provision of this subchapter shall be construed as indicating an intent on the part of the Congress to occupy the field in which that provision operates, including criminal penalties, to the exclusion of any State law on the same subject matter which would otherwise be within the authority of the State, unless there is a positive conflict between that provision of this subchapter and that State law so that the two cannot consistently stand together." (21 U.S.C. § 903).*

103. PLAINTIFF further asserts, the authors knew, or should have known, that the CSA would preempt STATE and/or LOCAL laws that affirmatively authorize the distribution, cultivation, or possession of marijuana under Prop 64, yet proceeded to promulgate an ostensibly legal measure they knew to be both *de facto* and *de jure,* void, and attempted to insulate themselves from liability by including the following language concerning *"unreasonably impracticable"* found in *AUMA Division 10, Chapter 1, General Provisions:*

> *"Unreasonably impracticable' means that the measures 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 businessperson*** [emphasis added]." *(§ 26001(2) (dd)*
>
> *"Regulations issued under this division shall…[not]* ***make compliance unreasonably impracticable*** [emphasis added]." *(§ 26013(c)*

> *"The bureau shall…**not impose such unreasonably impracticable barriers so as to perpetuate, rather than reduce and eliminate, the illicit market for marijuana**.* [emphasis added]." (§ 26014(a)

PLAINTIFF will prove at trial that in light of the *Supremacy Clause*, numerous state and federal court decisions and international law, virtually the entirety of Prop 64, is, in point of fact, *"unreasonably impracticable."*

104. Based on the preceding statements, PLAINTIFF will prove at trial that perhaps the most significant element of this case is Defendants' ongoing efforts to enact licensing schemes, that they either know or should have known do exactly what SECTION 11: CONSTRUCTION AND INTERPRETATION of Prop 64 what they may not do:

> "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 mam1er to create a positive conflict with federal law, including the federal Controlled Substances Act** [emphasis added], such that the provision or provisions of this Act and federal law cannot consistently stand together."

105. As previously stated, the mere assertion by Defendants that there is no "*positive conflict"* is not sufficient to demonstrate that there is no such conflict; especially when there are a great number of federal and state court rulings to the contrary:

> *"Limiting the activity to marijuana possession and cultivation 'in accordance with state law' cannot serve to place respondents' activities beyond congressional reach." (Gonzales v. Raich*, 545 U.S. 1, 29 (2005)

> *"It has long been established that 'a state statute is void to the extent that it actually conflicts with a valid federal statute.'***" (***Clark v. Coye*, 60 F.3d 600, 603 (9th Cir. 1995 (citing *Edgar v. Mite Corp.*, 457 U.S. 624, 631)

> *"[S]tate legalization of marijuana cannot overcome federal law."* (*Feinberg v. Comm'r*, 916 F.3d 1330, 1338 n. 3 (10th Cir. 2019).

106. PLAINTIFF requests that this Court consider, notwithstanding the long and myriad mixed signals that have just been described insofar as the history of cannabis law in California or the perpetual tug of war that exists between the will of the people and that of federal and state actors cannabis policy and regulation, that **positive conflict does indeed exist between state and federal cannabis law.** For that reason alone PLAINTIFF relies on this Court to bring clarity to his mission and decide that the clear direction as set forth in the SCND which allows member nations cannabis use for medical and scientific

purposes and the *Rohrabacher* amendment that tolerates state medical cannabis rights by not funding any DOJ activities that would prosecute those engaged in medical cannabis in those states that have adopted medical cannabis law and regulation, would grant PLAINTIFF his request for a PREEMPTORY WRIT OF MANDATE and allow a jury to consider and decide on the issues that would be set forth by PLAINTIFF in his amended complaint.

FIRST CAUSE OF ACTION
PETITION FOR PREMPTORY WRIT OF MANDATE
(AGAINST ALL RESPONDENTS/DEFENDANTS)

107. PLAINTIFF incorporates as set forth herein in full the allegations contained in Paragraphs 1-106 above.

108. The Respondents had a ministerial duty to adhere to, follow and enforce the applicable law as had been set forth with Prop 215 and SB 420.

109. The Respondents had and have a ministerial duty to comply with their own duly promulgated rules, regulations and procedures in, *inter alia,* awarding licenses under Prop 64 that require completion of a California Environmental Quality Act (CEQA) application approving the license for that specific location. That procedure has been ignored with the granting of provisional licenses that do not require, *inter alia,* CEQA applications being submitted and approved by that licensee.

110. To the extent Respondents may claim they had discretion in the creation, implementation, interpretation and/or alteration of the requirements set forth in SB 94 and/or the BCC Application Procedures, PLAINTIFF contends they abused that discretion, that their actions and determinations on such matters were/are arbitrary, capricious, unfair, unlawful, corrupt, and against the overwhelming weight of facts and evidence available to the STATE at the time, and/or were the result of "unreasonable" policies and procedures that were not legally permissible. *See Common Cause v. Bd. of Supervisors*, 49 Cal. 3d 432, 442 (1989) ("Mandamus may issue, however, to compel an official both to exercise discretion (if he is required by law to do so) and to exercise it under a proper interpretation of the applicable law"); *Anderson v. Philips*, 13 Cal. 3d 733, 737 (1975) (where mandamus respondent refuses to act based on interpretation of law, "the writ will lie if that determination is erroneous"); *Inglin v. Hoppin*, 156 Cal. 483, 491 (1909) (mandamus "will lie to correct abuses of discretion, and will lie to

force a particular action by the inferior tribunal or officer, when the law clearly establishes the petitioner's right to such action").

111. There is no plain, speedy or adequate remedy in the ordinary course of law available to PLAINTIFF, it has a substantial and direct beneficial interest in enforcing the STATE's ministerial duties and/or correcting its abuses of discretion which is pendant on void law that is Prop 64 and SB 94.

112. There are no applicable administrative appeal procedures for PLAINTIFF to exhaust with the STATE or any agency, such as the BCC, that address the legally flawed licensing process they maintain. Written correspondence to BONTA has been ignored (EXHIBIT 14) and there is no administrative process afforded PLAINTIFF that might provide a forum to address the fundamental legal failure of the STATE's licensing scheme. Even if there were, PLAINTIFF does not believe there is an administrative process that would properly and objectively adhere to the governing law and procedures as set forth in this Petition. As such, PLAINTIFF has been left with no other choice but to seek redress via this Petition.

SECOND CAUSE OF ACTION
INJUNCTIVE RELIEF
(AGAINST ALL RESPONDENTS/DEFENDANTS)

113. PLAINTIFF incorporates as set forth herein in full the allegations contained in Paragraphs 1-112 above.

114. PLAINTIFF seeks an injunction immediately preventing the STATE from the continued processing and award of cannabis licenses.

115. That, pending the outcome at trial, the STATE be directed to return all licensing enforcement to pre-Prop 64 conditions as enacted by the Senate in SB 420 (original form), and NOT as altered by Brown's Guidance 2008 in direct contradiction of specific statutory instruction by illegally taxing non-profit medical cannabis within collectives and cooperatives.

116. Upon completion of a jury trial, the STATE may be ordered to maintain licensed medical cannabis controls as defined within the Restoration Act or may seek, through the legislative process, to adopt law and regulations that are in accordance with the original form intent of SB 420 and/or the language that is provided for in the Restoration Act.

117. PLAINTIFF does not seek to burden the Court with unnecessary information that may not be required for this decision and apologizes to the court if he has done so. PLAINTIFF respectfully

requests the Courts patience in recognizing that as a pro se litigant he may have given the Court more information then would have been normally provided by an attorney familiar with these filings.

118. PLAINTIFF would like to inform the court that at this time the licensed cannabis industry is in the midst of a crises that increasingly portends the collapse of the industry. PLAINTIFF does not assert that all these market conditions are a result of the passage of Prop 64 but it is noteworthy that many of those quoted in the 12/19/20 Modesto Bee article (EXHIBIT 15) who supported the passage of Prop 64 now find themselves arguing that the regulations and taxation is burdensome to the point they will all go out of business if the STATE does not relax their taxes and regulations.

119. With the Courts suspension of Prop 64 and SB 94, PLAINTIFF requests that the STATE be ordered to adopt temporary regulations that are in accordance with SB 420 in its original form. PLAINTIFF offers the Restoration Act (EXHIBIT 16) as a way to return to the not-for-profit tenets that were held in the original SB 420 language but includes a regulatory framework that culls language from subsequent law and regulation that, *inter alia*, protects the environment, caps the expunges cannabis related sentences and offers a licensing pathway to legacy farmers.

120. The Court may also wish to consider that PLAINTIFF has received approximately 200 names who have signed PLAINTIFF'S petition to REPEAL PROP 64 as void law. (EXHIBIT 17)

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INDEX OF EXHIBITS

Exhibit	Description
1	Prop 64 – The Adult Use of Marijuana Act (AUMA)
2	AUMA Section 11: Excerpt - "No Positive Conflict"
3	AUMA Section 26001(2)(dd) Excerpt – "Unreasonably Impracticable"
4	Prop 215 – Compassionate Use of Marijuana (CUA)
5	CA-AG Edmund Brown - Guidelines-2008
6	CA-AG Xavier Becerra - Guidelines-2019
7	US-AG David W. Ogden – Ogden Memo-2009
8	US-AG James M. Cole – Cole Memo-2011
9	US-AG James M. Cole- Cole Memo-2013
10	US-AG Jeffrey B. Sessions-Sessions-2018
11	Single Convention on Narcotic Drugs (SCND)
12	UN Commission on Narcotic Drugs (CND-2020)
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14	Wildstar Letter to AG Bonta
15	12/19/21 Modesto Bee Article: The Impending Cannabis Industry Crash
16	The Restoration Act
17	Petition Signatures to Repeal Prop 64

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PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF prays for judgment against the Respondents/Defendants as follows:

ON ALL CAUSES OF ACTION

1. For a writ of mandate be issued under Code of Civil Procedure section 1085,
2. In an alternative, for an order to show cause directed to the respondents as to why the Court should not issue such a writ; and
3. For such other or further relief, the Court deems just.

DATED: December 21, 2021

Plaintiff: DARRYL COTTON
In Pro Se

EXHIBIT 1

15 - 0 1 0 3 Amdt. # |

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December 7, 2015

RECEIVED
DEC 07 2015
INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

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
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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 (~~e~~*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.

EXHIBIT 2

EXCERPT FROM THE ADULT USE OF MARIJUANA ACT

PROP 64 November 2016

SECTION 11: POSITIVE CONFLICT

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.

EXHIBIT 3

EXCERPT FROM THE ADULT USE OF MARIJUANA ACT

PROP 64 November 2016

Unreasonably impracticable, Section 26001(2)(dd)

(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.

EXHIBIT 4

Proposition 215

Compassionate Use Act (11362.5 H&S)

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

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

(A) To ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief.

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

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

(2) Nothing in this section shall be construed to supersede

legislation prohibiting persons from engaging in conduct that endangers others, nor to condone the diversion of marijuana for nonmedical purposes.

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

(d) Section 11357, relating to the possession of marijuana, and Section 11358, relating to the cultivation of marijuana, shall not apply to a patient, or to a patient's primary caregiver, who possesses or cultivates marijuana for the personal medical purposes of the patient upon the written or oral recommendation or approval of a physician.

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

SEC. 2. If any provision of this measure or the application thereof to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of the measure that can be given effect without the invalid provision or application, and to this end the provisions of this measure are severable. Sec. 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.

11357. (a) EXCEPT AS AUTHORIZED BY LAW, EVERY PERSON WHO POSSESSES ANY CONCENTRATED CANNABIS shall be punished by imprisonment in the county jail for a period of not more than one year or by a fine of not more than five hundred dollars ($500), or by both such fine and imprisonment, or shall be punished by imprisonment in the state prison. (emphasis added)

(b) Except as authorized by law, every person who possesses not more than 28.5 grams of marijuana, other than concentrated cannabis, is guilty of a misdemeanor and shall be punished by a fine of not more than one hundred dollars ($100). Notwithstanding other provisions of law, if such person has been previously convicted three or more times of an offense described in this subdivision during the two-year period immediately preceding the date of commission of the violation to be charged, the previous convictions shall also be charged in the accusatory pleading and, if found to be true by the jury upon a jury trial or by the court upon a court trial or if admitted by the person, the provisions of Sections 1000.1 and 1000.2 of the Penal Code shall be applicable to him, and the court shall divert and refer him for education, treatment, or rehabilitation, without a court hearing or determination or the concurrence of the district attorney, to an appropriate community program which will accept him. If the person is so diverted and referred he shall not be subject to the fine specified in this subdivision. If no community program will accept him, the person shall be subject to the fine specified in this subdivision. In any case in which a person is arrested for a violation of this subdivision and does not demand to be

taken before a magistrate, such person shall be released by the arresting officer upon presentation of satisfactory evidence of identity and giving his written promise to appear in court, as provided in Section 853.6 of the Penal Code, and shall not be subjected to booking.

(c) Except as authorized by law, every person who possesses more than 28.5 grams of marijuana, other than concentrated cannabis, shall be punished by imprisonment in the county jail for a period of not more than six months or by a fine of not more than five hundred dollars ($500), or by both such fine and imprisonment.

(d) Except as authorized by law, every person 18 years of age or over who possesses not more than 28.5 grams of marijuana, other than concentrated cannabis, upon the grounds of, or within, any school providing instruction in kindergarten or any of grades 1 through 12 during hours the school is open for classes or school-related programs is guilty of a misdemeanor and shall be punished by a fine of not more than five hundred dollars ($500), or by imprisonment in the county jail for a period of not more than 10 days, or both.

(e) Except as authorized by law, every person under the age of 18 who possesses not more than 28.5 grams of marijuana, other than concentrated cannabis, upon the grounds of, or within, any school providing instruction in kindergarten or any of grades 1 through 12 during hours the school is open for classes or school-related programs is guilty of a misdemeanor and shall be 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. Every person who plants, cultivates, harvests, dries, or PROCESSES any marijuana or any part thereof, EXCEPT AS OTHERWISE PROVIDED BY LAW, shall be punished by imprisonment in the state prison. (emphasis added).

Health & Safety Code Section 11375-11362.9 From California State Senate

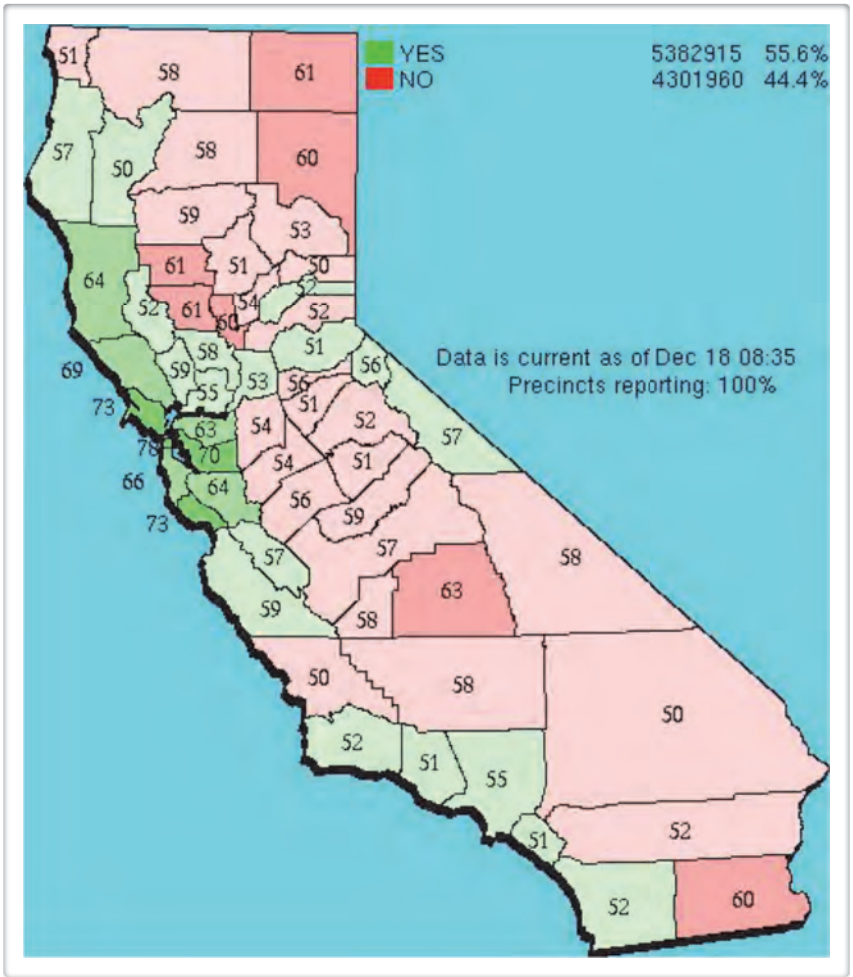

EXHIBIT 5

EDMUND G. BROWN JR.
Attorney General

DEPARTMENT OF JUSTICE
State of California

GUIDELINES FOR THE SECURITY AND NON-DIVERSION OF MARIJUANA GROWN FOR MEDICAL USE

August 2008

In 1996, California voters approved an initiative that exempted certain patients and their primary caregivers from criminal liability under state law for the possession and cultivation of marijuana. In 2003, the Legislature enacted additional legislation relating to medical marijuana. One of those statutes requires the Attorney General to adopt "guidelines to ensure the security and nondiversion of marijuana grown for medical use." (Health & Saf. Code, § 11362.81(d).[1]) To fulfill this mandate, this Office is issuing the following guidelines to (1) ensure that marijuana grown for medical purposes remains secure and does not find its way to non-patients or illicit markets, (2) help law enforcement agencies perform their duties effectively and in accordance with California law, and (3) help patients and primary caregivers understand how they may cultivate, transport, possess, and use medical marijuana under California law.

I. SUMMARY OF APPLICABLE LAW

A. California Penal Provisions Relating to Marijuana.

The possession, sale, cultivation, or transportation of marijuana is ordinarily a crime under California law. (See, e.g., § 11357 [possession of marijuana is a misdemeanor]; § 11358 [cultivation of marijuana is a felony]; Veh. Code, § 23222 [possession of less than 1 oz. of marijuana while driving is a misdemeanor]; § 11359 [possession with intent to sell any amount of marijuana is a felony]; § 11360 [transporting, selling, or giving away marijuana in California is a felony; under 28.5 grams is a misdemeanor]; § 11361 [selling or distributing marijuana to minors, or using a minor to transport, sell, or give away marijuana, is a felony].)

B. Proposition 215 - The Compassionate Use Act of 1996.

On November 5, 1996, California voters passed Proposition 215, which decriminalized the cultivation and use of marijuana by seriously ill individuals upon a physician's recommendation. (§ 11362.5.) Proposition 215 was enacted to "ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana," and to "ensure that patients and their primary caregivers who obtain and use marijuana for

[1] Unless otherwise noted, all statutory references are to the Health & Safety Code.

medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction." (§ 11362.5(b)(1)(A)-(B).)

The Act further states that "Section 11357, relating to the possession of marijuana, and Section 11358, relating to the cultivation of marijuana, shall not apply to a patient, or to a patient's primary caregiver, who possesses or cultivates marijuana for the personal medical purposes of the patient upon the written or verbal recommendation or approval of a physician." (§ 11362.5(d).) Courts have found an implied defense to the transportation of medical marijuana when the "quantity transported and the method, timing and distance of the transportation are reasonably related to the patient's current medical needs." (*People v. Trippet* (1997) 56 Cal.App.4th 1532, 1551.)

C. Senate Bill 420 - The Medical Marijuana Program Act.

On January 1, 2004, Senate Bill 420, the Medical Marijuana Program Act (MMP), became law. (§§ 11362.7-11362.83.) The MMP, among other things, requires the California Department of Public Health (DPH) to establish and maintain a program for the voluntary registration of qualified medical marijuana patients and their primary caregivers through a statewide identification card system. Medical marijuana identification cards are intended to help law enforcement officers identify and verify that cardholders are able to cultivate, possess, and transport certain amounts of marijuana without being subject to arrest under specific conditions. (§§ 11362.71(e), 11362.78.)

It is mandatory that all counties participate in the identification card program by (a) providing applications upon request to individuals seeking to join the identification card program; (b) processing completed applications; (c) maintaining certain records; (d) following state implementation protocols; and (e) issuing DPH identification cards to approved applicants and designated primary caregivers. (§ 11362.71(b).)

Participation by patients and primary caregivers in the identification card program is voluntary. However, because identification cards offer the holder protection from arrest, are issued only after verification of the cardholder's status as a qualified patient or primary caregiver, and are immediately verifiable online or via telephone, they represent one of the best ways to ensure the security and non-diversion of marijuana grown for medical use.

In addition to establishing the identification card program, the MMP also defines certain terms, sets possession guidelines for cardholders, and recognizes a qualified right to collective and cooperative cultivation of medical marijuana. (§§ 11362.7, 11362.77, 11362.775.)

D. Taxability of Medical Marijuana Transactions.

In February 2007, the California State Board of Equalization (BOE) issued a Special Notice confirming its policy of taxing medical marijuana transactions, as well as its requirement that businesses engaging in such transactions hold a Seller's Permit. (http://www.boe.ca.gov/news/pdf/medseller2007.pdf.) According to the Notice, having a Seller's Permit does not allow individuals to make unlawful sales, but instead merely provides a way to remit any sales and use taxes due. BOE further clarified its policy in a

June 2007 Special Notice that addressed several frequently asked questions concerning taxation of medical marijuana transactions. (http://www.boe.ca.gov/news/pdf/173.pdf.)

E. Medical Board of California.

The Medical Board of California licenses, investigates, and disciplines California physicians. (Bus. & Prof. Code, § 2000, et seq.) Although state law prohibits punishing a physician simply for recommending marijuana for treatment of a serious medical condition (§ 11362.5(c)), the Medical Board can and does take disciplinary action against physicians who fail to comply with accepted medical standards when recommending marijuana. In a May 13, 2004 press release, the Medical Board clarified that these accepted standards are the same ones that a reasonable and prudent physician would follow when recommending or approving any medication. They include the following:

1. Taking a history and conducting a good faith examination of the patient;
2. Developing a treatment plan with objectives;
3. Providing informed consent, including discussion of side effects;
4. Periodically reviewing the treatment's efficacy;
5. Consultations, as necessary; and
6. Keeping proper records supporting the decision to recommend the use of medical marijuana.

(http://www.mbc.ca.gov/board/media/releases_2004_05-13_marijuana.html.)

Complaints about physicians should be addressed to the Medical Board (1-800-633-2322 or www.mbc.ca.gov), which investigates and prosecutes alleged licensing violations in conjunction with the Attorney General's Office.

F. The Federal Controlled Substances Act.

Adopted in 1970, the Controlled Substances Act (CSA) established a federal regulatory system designed to combat recreational drug abuse by making it unlawful to manufacture, distribute, dispense, or possess any controlled substance. (21 U.S.C. § 801, et seq.; *Gonzales v. Oregon* (2006) 546 U.S. 243, 271-273.) The CSA reflects the federal government's view that marijuana is a drug with "no currently accepted medical use." (21 U.S.C. § 812(b)(1).) Accordingly, the manufacture, distribution, or possession of marijuana is a federal criminal offense. (*Id.* at §§ 841(a)(1), 844(a).)

The incongruity between federal and state law has given rise to understandable confusion, but no legal conflict exists merely because state law and federal law treat marijuana differently. Indeed, California's medical marijuana laws have been challenged unsuccessfully in court on the ground that they are preempted by the CSA. (*County of San Diego v. San Diego NORML* (July 31, 2008) --- Cal.Rptr.3d ---, 2008 WL 2930117.) Congress has provided that states are free to regulate in the area of controlled substances, including marijuana, provided that state law does not positively conflict with the CSA. (21 U.S.C. § 903.) Neither Proposition 215, nor the MMP, conflict with the CSA because, in adopting these laws, California did not "legalize" medical marijuana, but instead exercised the state's reserved powers to not punish certain marijuana offenses under state law when a physician has recommended its use to treat a serious medical condition. (See *City of Garden Grove v. Superior Court* (*Kha*) (2007) 157 Cal.App.4th 355, 371-373, 381-382.)

In light of California's decision to remove the use and cultivation of physician-recommended marijuana from the scope of the state's drug laws, this Office recommends that state and local law enforcement officers not arrest individuals or seize marijuana under federal law when the officer determines from the facts available that the cultivation, possession, or transportation is permitted under California's medical marijuana laws.

II. DEFINITIONS

A. **Physician's Recommendation:** Physicians may not prescribe marijuana because the federal Food and Drug Administration regulates prescription drugs and, under the CSA, marijuana is a Schedule I drug, meaning that it has no recognized medical use. Physicians may, however, lawfully issue a verbal or written recommendation under California law indicating that marijuana would be a beneficial treatment for a serious medical condition. (§ 11362.5(d); *Conant v. Walters* (9th Cir. 2002) 309 F.3d 629, 632.)

B. **Primary Caregiver:** A primary caregiver is a person who is designated by a qualified patient and "has consistently assumed responsibility for the housing, health, or safety" of the patient. (§ 11362.5(e).) California courts have emphasized the consistency element of the patient-caregiver relationship. Although a "primary caregiver who consistently grows and supplies . . . medicinal marijuana for a section 11362.5 patient is serving a health need of the patient," someone who merely maintains a source of marijuana does not automatically become the party "who has consistently assumed responsibility for the housing, health, or safety" of that purchaser. (*People ex rel. Lungren v. Peron* (1997) 59 Cal.App.4th 1383, 1390, 1400.) A person may serve as primary caregiver to "more than one" patient, provided that the patients and caregiver all reside in the same city or county. (§ 11362.7(d)(2).) Primary caregivers also may receive certain compensation for their services. (§ 11362.765(c) ["A primary caregiver who receives compensation for actual expenses, including reasonable compensation incurred for services provided . . . to enable [a patient] to use marijuana under this article, or for payment for out-of-pocket expenses incurred in providing those services, or both, . . . shall not, on the sole basis of that fact, be subject to prosecution" for possessing or transporting marijuana].)

C. **Qualified Patient:** A qualified patient is a person whose physician has recommended the use of marijuana to treat a serious illness, including cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief. (§ 11362.5(b)(1)(A).)

D. **Recommending Physician:** A recommending physician is a person who (1) possesses a license in good standing to practice medicine in California; (2) has taken responsibility for some aspect of the medical care, treatment, diagnosis, counseling, or referral of a patient; and (3) has complied with accepted medical standards (as described by the Medical Board of California in its May 13, 2004 press release) that a reasonable and prudent physician would follow when recommending or approving medical marijuana for the treatment of his or her patient.

III. GUIDELINES REGARDING INDIVIDUAL QUALIFIED PATIENTS AND PRIMARY CAREGIVERS

A. State Law Compliance Guidelines.

1. **Physician Recommendation**: Patients must have a written or verbal recommendation for medical marijuana from a licensed physician. (§ 11362.5(d).)

2. **State of California Medical Marijuana Identification Card**: Under the MMP, qualified patients and their primary caregivers may voluntarily apply for a card issued by DPH identifying them as a person who is authorized to use, possess, or transport marijuana grown for medical purposes. To help law enforcement officers verify the cardholder's identity, each card bears a unique identification number, and a verification database is available online (www.calmmp.ca.gov). In addition, the cards contain the name of the county health department that approved the application, a 24-hour verification telephone number, and an expiration date. (§§ 11362.71(a); 11362.735(a)(3)-(4); 11362.745.)

3. Proof of Qualified Patient Status: Although verbal recommendations are technically permitted under Proposition 215, patients should obtain and carry written proof of their physician recommendations to help them avoid arrest. A state identification card is the best form of proof, because it is easily verifiable and provides immunity from arrest if certain conditions are met (see section III.B.4, below). The next best forms of proof are a city- or county-issued patient identification card, or a written recommendation from a physician.

4. **Possession Guidelines**:

a) **MMP**:[2] Qualified patients and primary caregivers who possess a state-issued identification card may possess 8 oz. of dried marijuana, and may maintain no more than 6 mature or 12 immature plants per qualified patient. (§ 11362.77(a).) But, if "a qualified patient or primary caregiver has a doctor's recommendation that this quantity does not meet the qualified patient's medical needs, the qualified patient or primary caregiver may possess an amount of marijuana consistent with the patient's needs." (§ 11362.77(b).) Only the dried mature processed flowers or buds of the female cannabis plant should be considered when determining allowable quantities of medical marijuana for purposes of the MMP. (§ 11362.77(d).)

b) **Local Possession Guidelines:** Counties and cities may adopt regulations that allow qualified patients or primary caregivers to possess

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[2] On May 22, 2008, California's Second District Court of Appeal severed Health & Safety Code § 11362.77 from the MMP on the ground that the statute's possession guidelines were an unconstitutional amendment of Proposition 215, which does not quantify the marijuana a patient may possess. (See *People v. Kelly* (2008) 163 Cal.App.4th 124, 77 Cal.Rptr.3d 390.) The Third District Court of Appeal recently reached a similar conclusion in *People v. Phomphakdy* (July 31, 2008) --- Cal.Rptr.3d ---, 2008 WL 2931369. The California Supreme Court has granted review in *Kelly* and the Attorney General intends to seek review in *Phomphakdy*.

medical marijuana in amounts that exceed the MMP's possession guidelines. (§ 11362.77(c).)

c) **Proposition 215**: Qualified patients claiming protection under Proposition 215 may possess an amount of marijuana that is "reasonably related to [their] current medical needs." (*People v. Trippet* (1997) 56 Cal.App.4th 1532, 1549.)

B. **Enforcement Guidelines**.

1. **Location of Use**: Medical marijuana may not be smoked (a) where smoking is prohibited by law, (b) at or within 1000 feet of a school, recreation center, or youth center (unless the medical use occurs within a residence), (c) on a school bus, or (d) in a moving motor vehicle or boat. (§ 11362.79.)

2. **Use of Medical Marijuana in the Workplace or at Correctional Facilities:** The medical use of marijuana need not be accommodated in the workplace, during work hours, or at any jail, correctional facility, or other penal institution. (§ 11362.785(a); *Ross v. RagingWire Telecomms., Inc.* (2008) 42 Cal.4th 920, 933 [under the Fair Employment and Housing Act, an employer may terminate an employee who tests positive for marijuana use].)

3. **Criminal Defendants, Probationers, and Parolees:** Criminal defendants and probationers may request court approval to use medical marijuana while they are released on bail or probation. The court's decision and reasoning must be stated on the record and in the minutes of the court. Likewise, parolees who are eligible to use medical marijuana may request that they be allowed to continue such use during the period of parole. The written conditions of parole must reflect whether the request was granted or denied. (§ 11362.795.)

4. **State of California Medical Marijuana Identification Cardholders**: When a person invokes the protections of Proposition 215 or the MMP and he or she possesses a state medical marijuana identification card, officers should:

a) Review the identification card and verify its validity either by calling the telephone number printed on the card, or by accessing DPH's card verification website (http://www.calmmp.ca.gov); and

b) If the card is valid and not being used fraudulently, there are no other indicia of illegal activity (weapons, illicit drugs, or excessive amounts of cash), and the person is within the state or local possession guidelines, the individual should be released and the marijuana should not be seized. Under the MMP, "no person or designated primary caregiver in possession of a valid state medical marijuana identification card shall be subject to arrest for possession, transportation, delivery, or cultivation of medical marijuana." (§ 11362.71(e).) Further, a "state or local law enforcement agency or officer shall not refuse to accept an identification card issued by the department unless the state or local law enforcement agency or officer

has reasonable cause to believe that the information contained in the card is false or fraudulent, or the card is being used fraudulently." (§ 11362.78.)

5. **Non-Cardholders:** When a person claims protection under Proposition 215 or the MMP and only has a locally-issued (i.e., non-state) patient identification card, or a written (or verbal) recommendation from a licensed physician, officers should use their sound professional judgment to assess the validity of the person's medical-use claim:

a) Officers need not abandon their search or investigation. The standard search and seizure rules apply to the enforcement of marijuana-related violations. Reasonable suspicion is required for detention, while probable cause is required for search, seizure, and arrest.

b) Officers should review any written documentation for validity. It may contain the physician's name, telephone number, address, and license number.

c) If the officer reasonably believes that the medical-use claim is valid based upon the totality of the circumstances (including the quantity of marijuana, packaging for sale, the presence of weapons, illicit drugs, or large amounts of cash), and the person is within the state or local possession guidelines or has an amount consistent with their current medical needs, the person should be released and the marijuana should not be seized.

d) Alternatively, if the officer has probable cause to doubt the validity of a person's medical marijuana claim based upon the facts and circumstances, the person may be arrested and the marijuana may be seized. It will then be up to the person to establish his or her medical marijuana defense in court.

e) Officers are not obligated to accept a person's claim of having a verbal physician's recommendation that cannot be readily verified with the physician at the time of detention.

6. **Exceeding Possession Guidelines**: If a person has what appears to be valid medical marijuana documentation, but exceeds the applicable possession guidelines identified above, all marijuana may be seized.

7. **Return of Seized Medical Marijuana:** If a person whose marijuana is seized by law enforcement successfully establishes a medical marijuana defense in court, or the case is not prosecuted, he or she may file a motion for return of the marijuana. If a court grants the motion and orders the return of marijuana seized incident to an arrest, the individual or entity subject to the order must return the property. State law enforcement officers who handle controlled substances in the course of their official duties are immune from liability under the CSA. (21 U.S.C. § 885(d).) Once the marijuana is returned, federal authorities are free to exercise jurisdiction over it. (21 U.S.C. §§ 812(c)(10), 844(a); *City of Garden Grove v. Superior Court* (*Kha*) (2007) 157 Cal.App.4th 355, 369, 386, 391.)

IV. GUIDELINES REGARDING COLLECTIVES AND COOPERATIVES

Under California law, medical marijuana patients and primary caregivers may "associate within the State of California in order collectively or cooperatively to cultivate marijuana for medical purposes." (§ 11362.775.) The following guidelines are meant to apply to qualified patients and primary caregivers who come together to collectively or cooperatively cultivate physician-recommended marijuana.

A. Business Forms: Any group that is collectively or cooperatively cultivating and distributing marijuana for medical purposes should be organized and operated in a manner that ensures the security of the crop and safeguards against diversion for non-medical purposes. The following are guidelines to help cooperatives and collectives operate within the law, and to help law enforcement determine whether they are doing so.

1. **Statutory Cooperatives:** A cooperative must file articles of incorporation with the state and conduct its business for the mutual benefit of its members. (Corp. Code, § 12201, 12300.) No business may call itself a "cooperative" (or "co-op") unless it is properly organized and registered as such a corporation under the Corporations or Food and Agricultural Code. (*Id.* at § 12311(b).) Cooperative corporations are "democratically controlled and are not organized to make a profit for themselves, as such, or for their members, as such, but primarily for their members as patrons." (*Id.* at § 12201.) The earnings and savings of the business must be used for the general welfare of its members or equitably distributed to members in the form of cash, property, credits, or services. (*Ibid.*) Cooperatives must follow strict rules on organization, articles, elections, and distribution of earnings, and must report individual transactions from individual members each year. (See *id.* at § 12200, et seq.) Agricultural cooperatives are likewise nonprofit corporate entities "since they are not organized to make profit for themselves, as such, or for their members, as such, but only for their members as producers." (Food & Agric. Code, § 54033.) Agricultural cooperatives share many characteristics with consumer cooperatives. (See, e.g., *id.* at § 54002, et seq.) Cooperatives should not purchase marijuana from, or sell to, non-members; instead, they should only provide a means for facilitating or coordinating transactions between members.

2. **Collectives:** California law does not define collectives, but the dictionary defines them as "a business, farm, etc., jointly owned and operated by the members of a group." (*Random House Unabridged Dictionary*; Random House, Inc. © 2006.) Applying this definition, a collective should be an organization that merely facilitates the collaborative efforts of patient and caregiver members – including the allocation of costs and revenues. As such, a collective is not a statutory entity, but as a practical matter it might have to organize as some form of business to carry out its activities. The collective should not purchase marijuana from, or sell to, non-members; instead, it should only provide a means for facilitating or coordinating transactions between members.

B. **Guidelines for the Lawful Operation of a Cooperative or Collective:** Collectives and cooperatives should be organized with sufficient structure to ensure security, non-diversion of marijuana to illicit markets, and compliance with all state and local laws. The following are some suggested guidelines and practices for operating collective growing operations to help ensure lawful operation.

1. **Non-Profit Operation**: Nothing in Proposition 215 or the MMP authorizes collectives, cooperatives, or individuals to profit from the sale or distribution of marijuana. (See, e.g., § 11362.765(a) ["nothing in this section shall authorize . . . any individual or group to cultivate or distribute marijuana for profit"].

2. **Business Licenses, Sales Tax, and Seller's Permits**: The State Board of Equalization has determined that medical marijuana transactions are subject to sales tax, regardless of whether the individual or group makes a profit, and those engaging in transactions involving medical marijuana must obtain a Seller's Permit. Some cities and counties also require dispensing collectives and cooperatives to obtain business licenses.

3. **Membership Application and Verification**: When a patient or primary caregiver wishes to join a collective or cooperative, the group can help prevent the diversion of marijuana for non-medical use by having potential members complete a written membership application. The following application guidelines should be followed to help ensure that marijuana grown for medical use is not diverted to illicit markets:

a) Verify the individual's status as a qualified patient or primary caregiver. Unless he or she has a valid state medical marijuana identification card, this should involve personal contact with the recommending physician (or his or her agent), verification of the physician's identity, as well as his or her state licensing status. Verification of primary caregiver status should include contact with the qualified patient, as well as validation of the patient's recommendation. Copies should be made of the physician's recommendation or identification card, if any;

b) Have the individual agree not to distribute marijuana to non-members;

c) Have the individual agree not to use the marijuana for other than medical purposes;

d) Maintain membership records on-site or have them reasonably available;

e) Track when members' medical marijuana recommendation and/or identification cards expire; and

f) Enforce conditions of membership by excluding members whose identification card or physician recommendation are invalid or have expired, or who are caught diverting marijuana for non-medical use.

4. **Collectives Should Acquire, Possess, and Distribute Only Lawfully Cultivated Marijuana**: Collectives and cooperatives should acquire marijuana only from their constituent members, because only marijuana grown by a qualified patient or his or her primary caregiver may lawfully be transported by, or distributed to, other members of a collective or cooperative. (§§ 11362.765, 11362.775.) The collective or cooperative may then allocate it to other members of the group. Nothing allows marijuana to be purchased from outside the collective or cooperative for distribution to its members. Instead, the cycle should be a closed-circuit of marijuana cultivation and consumption with no purchases or sales to or from non-members. To help prevent diversion of medical marijuana to non-medical markets, collectives and cooperatives should document each member's contribution of labor, resources, or money to the enterprise. They also should track and record the source of their marijuana.

5. **Distribution and Sales to Non-Members are Prohibited**: State law allows primary caregivers to be reimbursed for certain services (including marijuana cultivation), but nothing allows individuals or groups to sell or distribute marijuana to non-members. Accordingly, a collective or cooperative may not distribute medical marijuana to any person who is not a member in good standing of the organization. A dispensing collective or cooperative may credit its members for marijuana they provide to the collective, which it may then allocate to other members. (§ 11362.765(c).) Members also may reimburse the collective or cooperative for marijuana that has been allocated to them. Any monetary reimbursement that members provide to the collective or cooperative should only be an amount necessary to cover overhead costs and operating expenses.

6. **Permissible Reimbursements and Allocations:** Marijuana grown at a collective or cooperative for medical purposes may be:

a) Provided free to qualified patients and primary caregivers who are members of the collective or cooperative;
b) Provided in exchange for services rendered to the entity;
c) Allocated based on fees that are reasonably calculated to cover overhead costs and operating expenses; or
d) Any combination of the above.

7. **Possession and Cultivation Guidelines**: If a person is acting as primary caregiver to more than one patient under section 11362.7(d)(2), he or she may aggregate the possession and cultivation limits for each patient. For example, applying the MMP's basic possession guidelines, if a caregiver is responsible for three patients, he or she may possess up to 24 oz. of marijuana (8 oz. per patient) and may grow 18 mature or 36 immature plants. Similarly, collectives and cooperatives may cultivate and transport marijuana in aggregate amounts tied to its membership numbers. Any patient or primary caregiver exceeding individual possession guidelines should have supporting records readily available when:

a) Operating a location for cultivation;
b) Transporting the group's medical marijuana; and
c) Operating a location for distribution to members of the collective or cooperative.

8. **Security**: Collectives and cooperatives should provide adequate security to ensure that patients are safe and that the surrounding homes or businesses are not negatively impacted by nuisance activity such as loitering or crime. Further, to maintain security, prevent fraud, and deter robberies, collectives and cooperatives should keep accurate records and follow accepted cash handling practices, including regular bank runs and cash drops, and maintain a general ledger of cash transactions.

C. **Enforcement Guidelines**: Depending upon the facts and circumstances, deviations from the guidelines outlined above, or other indicia that marijuana is not for medical use, may give rise to probable cause for arrest and seizure. The following are additional guidelines to help identify medical marijuana collectives and cooperatives that are operating outside of state law.

1. **Storefront Dispensaries:** Although medical marijuana "dispensaries" have been operating in California for years, dispensaries, as such, are not recognized under the law. As noted above, the only recognized group entities are cooperatives and collectives. (§ 11362.775.) It is the opinion of this Office that a properly organized and operated collective or cooperative that dispenses medical marijuana through a storefront may be lawful under California law, but that dispensaries that do not substantially comply with the guidelines set forth in sections IV(A) and (B), above, are likely operating outside the protections of Proposition 215 and the MMP, and that the individuals operating such entities may be subject to arrest and criminal prosecution under California law. For example, dispensaries that merely require patients to complete a form summarily designating the business owner as their primary caregiver – and then offering marijuana in exchange for cash "donations" – are likely unlawful. (*Peron*, *supra*, 59 Cal.App.4th at p. 1400 [cannabis club owner was not the primary caregiver to thousands of patients where he did not consistently assume responsibility for their housing, health, or safety].)

2. **Indicia of Unlawful Operation:** When investigating collectives or cooperatives, law enforcement officers should be alert for signs of mass production or illegal sales, including (a) excessive amounts of marijuana, (b) excessive amounts of cash, (c) failure to follow local and state laws applicable to similar businesses, such as maintenance of any required licenses and payment of any required taxes, including sales taxes, (d) weapons, (e) illicit drugs, (f) purchases from, or sales or distribution to, non-members, or (g) distribution outside of California.

EXHIBIT 6

Guidelines for the Security and Non-Diversion of Cannabis Grown for Medical Use

In 1996, California voters approved Proposition 215, the Compassionate Use Act of 1996, which exempted certain patients and their primary caregivers from criminal liability under state law for the possession and cultivation of marijuana for medicinal use. (Health & Saf. Code, § 11362.5.[1]) In 2003, the California Legislature enacted Senate Bill 420, the Medical Marijuana Program Act, which clarified requirements related to medical marijuana. Pursuant to the legislation, the Office of the Attorney General is required to adopt "guidelines to ensure the security and non-diversion of cannabis grown for medical use." (§ 11362.81, subd. (d).) To fulfill this mandate, the Office of the Attorney General is re-issuing and updating these guidelines to (1) ensure that cannabis grown for medicinal purposes remains secure and does not find its way to non-patients or illicit markets; (2) help law enforcement agencies perform their duties effectively and in accordance with California law; and, (3) help patients and primary caregivers understand how they may cultivate, transport, deliver, possess, and use medicinal cannabis under California law.[2]

I. SUMMARY OF APPLICABLE LAW

A. Proposition 215 - The Compassionate Use Act of 1996

On November 5, 1996, California voters passed Proposition 215, the Compassionate Use Act (CUA), which decriminalized the cultivation, possession, and use of marijuana by seriously ill individuals upon a physician's recommendation. (§ 11362.5.) The CUA was enacted to "ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana," "ensure that patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction," and "encourage federal and state governments to implement a plan for the safe and affordable distribution of marijuana to all patients in medical need of marijuana." (§ 11362.5, subds. (b)(1)(A), (B) & (C).) The CUA is a narrowly drafted statute designed to allow a qualified medical patient and his or her primary caregiver to possess and cultivate marijuana for the patient's personal use. (*People v. London* (2014) 228 Cal.App.4th 544, 551-553.)

[1] Unless otherwise noted, all statutory references are to the Health and Safety Code.

[2] Effective January 1, 2018, pursuant to Proposition 64, the nonmedicinal adult-use of cannabis became legal in California for adults 21 years of age and older. (See § 11362.1 and Bus. & Prof. Code, § 26000 et al.) These guidelines are not intended to provide guidance on the nonmedicinal adult-use of cannabis.

The CUA states that "Section 11357, relating to the possession of marijuana, and Section 11358, relating to the cultivation of marijuana, shall not apply to a patient, or to a patient's primary caregiver, who possesses or cultivates marijuana for the personal medical purposes of the patient upon the written or oral recommendation or approval of a physician." (§ 11362.5, subd. (d).) Accordingly, the CUA is designed to ensure that Californians who comply with the CUA are not subject to criminal sanctions. (*People ex rel. Feuer v. Progressive Horizon, Inc.* (2016) 248 Cal.App.4th 533.)

B. Senate Bill 420 - The Medical Marijuana Program Act

On January 1, 2004, Senate Bill 420, the Medical Marijuana Program Act (MMPA), became law. (§§ 11362.7-11362.85.) The MMPA does not amend the CUA, but is a separate legislative scheme that implements the CUA. (*People v. London, supra*, 228 Cal.App.4th 544.) The MMPA, among other things, requires the California Department of Public Health to establish and maintain a program for the voluntary registration of qualified medicinal cannabis patients and their primary caregivers through a statewide identification card system. (§§ 11362.71, subd. (e), 11362.78.) Medical cannabis identification cards are intended to help law enforcement officers identify and verify that cardholders are able to cultivate, deliver, transport, and possess certain amounts of medicinal cannabis (based on a physician's recommendation) without being subject to fines or arrest under specific conditions. (*Ibid*.)

Under the CUA, all county health departments shall participate in the identification card program by: (1) providing applications upon request to individuals seeking to join the identification card program; (2) processing completed applications; (3) maintaining certain records; (4) following state implementation protocols; and (5) issuing medical cannabis identification cards to approved applicants and designated primary caregivers. (§ 11362.71, subd. (b).)

Participation by patients and primary caregivers in the identification card program is voluntary. County health departments are required to verify the applicant's status as a qualified patient before the issuance of the identification card. (§ 11362.71.) State and local law enforcement shall have immediate access to information to verify the validity of the card. (§ 11362.735.)

In addition to establishing the identification card program, the MMPA also defines certain terms, and sets possession guidelines for cardholders. (§§ 11362.7, 11362.77.) In *People v. Mower*, the California Supreme Court held "section 11362.5(d) [of the CUA] does not grant any immunity from arrest." (*People v. Mower* (2002) 28 Cal. 4th 57, 468–69.) Thus, the California Legislature enacted the MMPA to clarify the scope of the CUA. (*People v. Kelly* (2010) 47 Cal. 4th 1008.) "At the heart of the MMP[A] is a voluntary 'identification card' scheme that, unlike the CUA—which ... provides only an affirmative defense to a charge of possession or cultivation—provides protection against arrest for those and related crimes." (*People v. Kelly*, *supra*, 47 Cal. 4th 1014.) A person who

suffers from a serious medical condition or a primary caregiver may receive an identification card that "can be shown to a law enforcement officer who otherwise might arrest the program participant or his or her primary caregiver." (*Id.*)

C. Medical Marijuana Regulation and Safety Act of 2016[3]

On October 11, 2015, Senate Bill 643, Assembly Bill 266, and Assembly Bill 243, collectively known as the Medical Marijuana Regulation and Safety Act (MMRSA), were signed into law. (Bus. & Prof. Code, §§ 19300-19360.) The MMRSA established a state regulatory and licensing system for the cultivation, manufacturing, delivery, and sale of medicinal cannabis as of January 1, 2016. In 2017, the MMRSA was repealed by Senate Bill 94, the Medicinal and Adult-Use Cannabis Regulation and Safety Act, which is discussed below.

D. Proposition 64 – The Control, Regulate and Tax Adult Use of Marijuana Act of 2016

On November 8, 2016, the voters of California passed Proposition 64, the Control, Regulate and Tax Adult Use of Marijuana Act (AUMA), which established 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." (Ballot Pamp., Gen. Elec. (Nov. 8, 2016) text of Prop. 64, pp. 178-210.) The AUMA also provided for the taxation of the commercial growth and retail sale of marijuana. (*Ibid.*) The AUMA did not alter the CUA or MCRSA, but rather the AUMA added and amended sections to numerous California statutes, including, but not limited to, the Penal Code, Business and Professions Code, Health and Safety Code, the Food and Agricultural Code, and the Revenue and Taxation Code. (*Ibid.*) The intent behind the AUMA, in part, was to combat the illegal market by creating a regulatory structure to govern California's commercial cannabis activity, prevent access by minors, and protect public safety, public health, and the environment. (*Ibid.*)

E. Senate Bill 94 – Medicinal and Adult-Use Cannabis Regulation and Safety Act

On June 27, 2017, Senate Bill 94, the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA)[4], was signed into law. (Bus. & Prof. Code, § 26000 et seq.) The MAUCRSA repealed the MCRSA and consolidated the state's medicinal and adult-

[3] On June 27, 2016, pursuant to Senate Bill 837, the Medical Marijuana Regulation and Safety Act was renamed the Medical Cannabis Regulation and Safety Act (MCRSA).

[4] MAUCRSA replaced all references to "marijuana" with "cannabis" within the Business and Professions Code and Health and Safety Code, division 10, chapter 6, article 2, as well as several other statutes. However, other statutes still use "marijuana" within the language of their texts.

use cannabis regulatory systems. (*Ibid*.) In general, the MAUCRSA imposed similar requirements on both commercial medicinal and adult-use cannabis activity.

1. California Penal Provisions Relating to Cannabis

The MAUCRSA reduced and eliminated certain criminal penalties related to cannabis and continued to exempt qualified patients and their primary caregivers from certain criminal penalties.[5] (See, e.g., § 11357 [unlawful possession of cannabis is an infraction]; § 11358 [unlawful cultivation of cannabis in excess of six plants is a misdemeanor]; Veh. Code, § 23222 [unlawful possession of less than 1 oz. of cannabis while driving is an infraction]; § 11359 [unlawful possession with intent to sell any amount of cannabis without a license is a misdemeanor]; § 11360 [unlawful transporting, selling, or giving away cannabis in California is a misdemeanor; under 28.5 grams is an infraction]; § 11361 [selling or distributing cannabis to minors, or using a minor to transport, sell, or give away cannabis, by a person 18 years of age or older is a felony].) Thus, under MAUCRSA, most criminal offenses related to cannabis for a person 18 years of age or older are punishable as an infraction or misdemeanor, although certain conditions may lead to a felony enhancement. (§§ 11357-11362.5.)

2. Taxability of Medicinal Cannabis

In February 2007, the California State Board of Equalization (Board of Equalization) issued a Special Notice confirming its policy of taxing medical marijuana transactions, as well as its requirement that businesses engaging in such transactions hold a seller's permit. (http://www.boe.ca.gov/news/pdf/medseller2007.pdf) According to the Notice, having a seller's permit does not allow individuals to make unlawful sales, but instead merely provides a way to remit any sales and use taxes due. The Board of Equalization further clarified its policy in a June 2007 Special Notice that addressed several frequently asked questions concerning taxation of medical marijuana transactions. (http://www.boe.ca.gov/news/pdf/173.pdf)

On June 15, 2017, the California Legislature passed the Taxpayer Transparency and Fairness Act (AB 102), which restructured the Board of Equalization into two new tax administrative agencies, one of which became the newly created California Department of Tax and Fee Administration. The California Department of Tax and Fee Administration is the state agency tasked with administering business permits and taxes, including those involving cannabis. Cannabis cultivators, processors, manufacturers, retailers, microbusinesses, and distributors making sales must now obtain a seller's permit from this agency. Similarly, distributors of cannabis and cannabis products must also register to obtain cannabis tax permits and to report and pay state cannabis taxes.

[5] Under the MAUCRSA (consistent with the CUA), pursuant to section 11362.5, subdivision (d), section 11357 related to possession of marijuana, and section 11358 related to cultivation of marijuana, do not apply to, "a patient, or to a patient's primary caregiver, who possesses or cultivates marijuana for the personal medical purposes of the patient upon the written or oral recommendation or approval of a physician."

Additional information regarding cannabis state taxes can be found on the California Department of Tax and Fee Administration website. (http://www.cdtfa.ca.gov/industry/cannabis.htm)

The enactment of MAUCRSA has partially exempted medicinal cannabis patients from certain taxes. Under Revenue and Taxation Code section 34011, subdivision (f), "sales and use taxes…shall not apply to retail sales of medicinal cannabis, medicinal cannabis concentrate, edible medicinal cannabis products, or topical cannabis …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." Medicinal cannabis and cannabis products, which include concentrates, edibles, and topicals, are subject to excise and local taxes, regardless of whether a qualified patient possesses a card issued under section 11362.71.

F. Medical Board of California, Osetoepathic Medical Board and Board of Podiatric Medicine

Medical professionals licensed by the Medical Board of California, the California Board of Podiatric Medicine, or the Osteopathic Medical Board of California cannot recommend medicinal cannabis unless certain conditions are met. In April 2018, the Medical Board issued its "Guidelines for the Recommendation of Cannabis for Medical Purposes."[6] The Medical Board clarified that the accepted standards of medical responsibility are the same ones that a reasonable and prudent physician would follow when recommending or approving any medication.[7] They include the following:

1. **Physician-Patient Relationship:** Documenting that an appropriate physician-patient relationship has been established before recommending cannabis use for medical purposes;

2. **Patient Evaluation:** Conducting and documenting an appropriate prior medical examination and collecting relevant clinical history;

3. **Informed and Shared Decision Making:** Providing informed consent, including discussion of side effects;

4. **Treatment Agreement:** Developing a treatment plan with objectives;

[6] (https://www.mbc.ca.gov/Publications/guidelines_cannabis_recommendation.pdf)

[7] The standards of medical responsibility outlined in the guidelines also apply to licensees of the Osteopathic Medical Board of California and the Board of Podiatric Medicine. (See Bus. & Prof. Code, § 2525.2.)

5. **Qualifying Conditions:** Determining appropriateness and safety of recommendation in accordance with current standards of practice and in compliance with state laws, rules, and regulations which specify qualifying conditions for which a patient may qualify for cannabis for medical purposes;

6. **Ongoing Monitoring and Adapting the Treatment Plan:** Periodically reviewing the treatment's efficacy;

7. **Consultation and Referral:** Consultations and referrals, as necessary;

8. **Medical Records:** Keeping proper records supporting the decision to recommend the use of medicinal cannabis; and

9. **Physician Conflicts of Interest:** Avoiding financial conflicts of interest.

Although state law prohibits punishing a physician simply for recommending cannabis for treatment of a serious medical condition (§ 11362.5, subd. (c)), the Medical Board, the Osteopathic Medical Board, and the Board of Podiatric Medicine can, and do, take disciplinary action against licensees who fail to comply with accepted medical standards when recommending cannabis. Physicians, Osteopaths, and Podiatrists who provide medicinal cannabis recommendations in violation of professional standards and/or legal requirements may be subject to license discipline and/or criminal prosecution. (Bus. & Prof. Code, §§ 2234 and 2525.2.)

Complaints about physicians should be addressed to the Medical Board (1-800-633-2322 or www.mbc.ca.gov), which investigates alleged licensing violations.

Complaints about osteopaths should be addressed to the Ostoepathic Medical Board (916 928-8390 or www.ombc.ca.gov)

Complaints about podiatrists should be addressed to the Board of Podiatric Medicine (916-263-2647 or www.bpm.ca.gov.)

The Federal Controlled Substances Act[8]

Adopted in 1970, the Controlled Substances Act established a federal regulatory system designed to combat drug abuse by regulating the manufacture, importation, distribution, use, or possession of any controlled substance. (21 U.S.C. § 801 et seq.; *Gonzales v. Oregon* (2006) 546 U.S. 243, 271-273.) The Controlled Substances Act reflects the federal government's view that marijuana is a drug with "no currently accepted medical use." (21 U.S.C. § 812, subd. (b)(1)(B).) Accordingly, the manufacture, distribution,

[8] Federal laws and regulations use the terms "marijuana" or "marihuana" and not cannabis.

dispensing, possession, or purchasing of marijuana is a federal criminal offense. (*Id.* at §§ 841, subd. (a)(1), 844, subd. (a).)

On August 29, 2013, the United States Department of Justice, under the leadership of United States Deputy Attorney General James Cole, issued a memorandum to all United States Attorneys governing the federal prosecution of marijuana related offenses. The Cole Memorandum (as it is commonly known) stated that the Justice Department would take into consideration regulatory and enforcement systems implemented in states that have legalized marijuana in some form, and that the presence of those systems would make it less likely that a substantial federal interest would be found warranting enforcement action. Former United States Attorney General Jeff Sessions issued a memorandum to all United States Attorneys on January 4, 2018, rescinding the Cole Memorandum. Finally, medicinal marijuana operators acting in compliance with state laws are protected from federal enforcement under the Joyce/Blumenauer Amendment[9] until its expiration on September 30, 2019.

On June 25, 2018, the Food and Drug Administration approved Epidiolex, a cannabidiol oral solution, for the treatment of epileptic seizures associated with Lennox-Gastaut syndrome and Dravet syndrome, in patients two years of age and older. On September 28, 2018, the Drug Enforcement Administration created a new classification in Schedule V of the Controlled Substances Act schedules for "*Approved cannabidiol drugs*," – "A drug product in finished dosage formulation that has been approved by the U.S. Food and Drug Administration that contains cannabidiol (2-[1R-3-methyl-6R-(1-methylethenyl)-2-cyclohexen-1-yl]-5-pentyl-1,3-benzenediol) derived from cannabis and no more than 0.1 percent (w/w) residual tetrahydrocannabinols." (21 C.F.R. § 1308.15, subd. (f).)

The Drug Enforcement Administration indicated in its Final Order:
"By virtue of this order, Epidiolex (and any generic versions of the same formulation that might be approved by the FDA in the future) will be a schedule V controlled substance. Thus, all persons in the distribution chain who handle Epidiolex in the United States (importers, manufacturers, distributors, and practitioners) must comply with the requirements of the CSA and DEA regulations relating to schedule V controlled substances. As further indicated, any material, compound, mixture, or preparation other than Epidiolex that falls within the CSA definition of marijuana set forth in 21 U.S.C. 802(16), including any non-FDA-approved CBD extract that falls within such definition, remains a schedule I controlled substance under the CSA."

[9] Initially adopted in 2014 as the Rohrabacher-Blumenauer Amendment, the Department of Justice is prohibited from allocating federal resources to interfere with the implementation of state medical cannabis laws. Since its enactment, the amendment has been approved or renewed by Congress 11 times. It was initially referred to as the Rohrabacher-Farr amendment as it was named after Reps. Dana Rohrabacher and Sam Farr, who co-sponsored the amendment. After Rep. Farr retired from Congress in 2017, Rep. Blumenauer replaced him as co-sponsor. This amendment was renamed again in 2018 to replace Rep. Rohrabacher as co-sponsor and is now referred to as the "Joyce/Blumenauer Amendment."

Food and Drug Administration-approved drugs with cannabidiol derived from cannabis and containing no more than 0.1 percent residual tetrahydrocannabinols have been moved to Schedule V.

Further, California's medicinal cannabis laws have not been successfully challenged in court on the ground that they are pre-empted by the Controlled Substances Act. (*County of San Diego v. San Diego NORML* (2008) 165 Cal.App.4th 798.) In fact, Congress has provided that states are free to regulate in the area of controlled substances, including cannabis, provided that state law does not positively conflict with the Controlled Substances Act. (21 U.S.C. § 903.) Indeed, neither the MAUCRSA, the CUA, nor the MMPA, conflict with the Controlled Substances Act because, in adopting these laws, California exercised the state's reserved powers to not punish certain cannabis-related offenses under state law when a physician has recommended its use to treat a serious medical condition. (See *City of Garden Grove v. Superior Court (Kha)* (2007) 157 Cal.App.4th 355, 371-373, 381-382.)

II. DEFINITIONS

A. Physician's Recommendation: Physicians may not prescribe cannabis because the federal Food and Drug Administration regulates prescription drugs and, under the Controlled Substances Act, marijuana is a Schedule I drug, meaning that it has no recognized medical use, with the exception noted above. Physicians may, however, lawfully issue a written or oral recommendation under California law indicating that cannabis would be a beneficial treatment for a serious medical condition. (§ 11362.5, subd. (d); *Conant v. Walters* (9th Cir. 2002) 309 F.3d 629, 632.)

B. Primary Caregiver: A primary caregiver is a person who is designated by a qualified patient and "has consistently assumed responsibility for the housing, health, or safety" of the patient. (§ 11362.5, subd. (e).) California courts have emphasized the "consistency" requirement of the patient-caregiver relationship. Although a "primary caregiver who consistently grows and supplies . . . medicinal marijuana for a section 11362.5 patient is serving a health need of the patient," someone who merely maintains a source of cannabis does not automatically become the party "who has consistently assumed responsibility for the housing, health, or safety" of that patient. (*People ex rel. Lungren v. Peron* (1997) 59 Cal.App.4th 1383, 1390, 1400.) A person may serve as a primary caregiver to "more than one" patient, provided that the patients and caregiver all reside in the same city or county. (§ 11362.7, subd. (d)(2).) Primary caregivers may also receive certain compensation (actual and/or out-of-pocket expenses) for their services without being subject to prosecution for possessing or transporting cannabis. (§ 11362.765, subd. (c).)

C. Qualified Patient: A qualified patient is a person whose physician has recommended the use of cannabis to treat a serious illness, which includes AIDS, anorexia, arthritis, cachexia, cancer, chronic pain, glaucoma, migraine, persistent muscle spasms, seizures, severe nausea, or any other chronic or persistent medical condition for which marijuana provides relief. (§§ 11362.5, subd. (b)(1)(A) and 11362.7, subd. (h).)

D. Attending Physician: An attending physician is a person who (1) possesses a license in good standing to practice medicine in California; (2) has taken responsibility for some aspect of the medical care, treatment, diagnosis, counseling, or referral of a patient; and (3) has complied with accepted medical standards (as described by the Medical Board of California in its April 2018 guidelines) that a reasonable and prudent physician would follow when recommending or approving medicinal cannabis for the treatment of a patient. (Bus. & Prof. Code, § 2525.2, citing §11362.7, subd. (a).)

III. GUIDELINES REGARDING INDIVIDUAL QUALIFIED PATIENTS AND PRIMARY CAREGIVERS

A. State Law Compliance Guidelines

1. Physician Recommendation: Patients must have a written or oral recommendation for cannabis from a licensed physician. (§ 11362.5, subd. (d).)

2. State of California Medical Marijuana Identification Card: Under the Medical Marijuana Program, qualified patients may voluntarily apply for a card issued by the county in which they reside, identifying them as a person who is authorized to use cannabis. The primary caregiver may obtain a card identifying them as a person authorized to cultivate, possess, transport, and/or deliver cannabis for medical purposes. To help law enforcement officers verify the cardholder's identity, each card bears a unique identification number, and a verification database is available online (www.calmmp.ca.gov). In addition, the cards contain the name of the county health department that approved the application, a 24-hour verification telephone number, and an expiration date. (§§ 11362.71, subd. (a), 11362.735, subd. (a)(3)-(4), 11362.745.)

3. Proof of Qualified Patient Status: Although oral recommendations are technically permitted under the CUA, patients should obtain and carry written proof of their physician recommendations to help them avoid fines or seizures of medicinal cannabis. A state identification card is the best form of proof, because it is easily verifiable and provides immunity from fine assessments if certain conditions are met (see section III.B.4, below). The next best forms of proof are a city- or county-issued patient identification card, or a written recommendation from a physician.

4. Possession Guidelines

a) Medical Marijuana Program (MMP): Qualified patients or primary caregivers who possess a state-issued identification card may possess no more than 8 ounces of dried cannabis per qualified patient, and may maintain no more than 6 mature or 12 immature plants per qualified patient. (§ 11362.77, subd. (a).) However, a qualified patient or primary caregiver with a doctor's recommendation may possess an amount of cannabis consistent with the patient's needs. (§ 11362.77, subd. (b).) Only the dried mature processed flowers or buds of the female cannabis plant should be considered when determining allowable quantities of medicinal cannabis. (§ 11362.77, subd. (d).) The MAUCRSA enabling regulations adopt these possession limits as daily limits for what a licensed retailer may sell to a medicinal cannabis patient or a primary caregiver. (See Cal. Code Regs., tit. 16, § 5409.)

b) Local Possession Guidelines: Counties and cities may adopt regulations that allow qualified patients or primary caregivers to possess medicinal cannabis in amounts that exceed the MMP's possession guidelines. (§ 11362.77, subd. (c).)

c) Compassionate Use: Qualified patients claiming protection under the CUA may possess an amount of cannabis that is "reasonably related to [their] current medical needs." (*People v. Trippet* (1997) 56 Cal.App.4th 1532, 1549.)

B. Enforcement Guidelines: In light of California's legalization of recreational adult-use cannabis, as well as its decision to remove the use and cultivation of physician-recommended medicinal cannabis from the scope of the state's drug laws, it is recommended that state and local law enforcement officers not arrest individuals or seize cannabis under federal law when the officer determines, from the facts available, that the cultivation, transportation, delivery, and/or possession, is permitted under California's medicinal or adult use cannabis laws.

1. Location of Use: Cannabis may not be smoked (a) where smoking is prohibited by law, (b) at or within 1,000 feet of a school, recreation center, or youth center (unless the medicinal use occurs within a residence), (c) on a school bus, or (d) in a moving motor vehicle or boat. (§ 11362.79 and § 11362.3) In addition, state and local agencies may prohibit or restrict consumption of cannabis or cannabis products on state owned or leased property. (§ 11362.45, subd. (g).) Private property owners may also prohibit or restrict consumption of cannabis or cannabis products on their property. (§ 11362.45, subd. (h).) Finally, since cannabis and cannabis products are illegal under federal law, consumption of

cannabis or cannabis products on federal land, even if it is located in California, is not a protected activity.

2. Use of Medicinal Cannabis in the Workplace or at Correctional Facilities: The medicinal use of cannabis need not be accommodated in the workplace, during work hours, or at any jail, correctional facility, or other penal institution. (§ 11362.785, subd. (a); *Ross v. RagingWire Telecomms., Inc.* (2008) 42 Cal.4th 920, 933 [under the Fair Employment and Housing Act, an employer may terminate an employee who tests positive for cannabis use].)

3. Criminal Defendants, Probationers, and Parolees: Criminal defendants and probationers may request court approval to use medicinal cannabis while they are released on bail or probation. The court's decision and reasoning must be stated on the record and in the minutes of the court. Likewise, parolees who are eligible to use medicinal cannabis may request that they be allowed to continue such use during the period of parole. The written conditions of parole must reflect whether the request was granted or denied. (§ 11362.795.)

4. State of California Medical Marijuana Identification Cardholders: When a person invokes the protections of the CUA or the MMP and he or she possesses an identification card, officers should:

a) Review the identification card and verify its validity either by calling the telephone number printed on the card, or by accessing the Department of Public Health's card verification website (http://www.calmmp.ca.gov); and

b) If the card is valid and not being used fraudulently, there are no other indicia of illegal activity (weapons, illicit drugs, or excessive amounts of cash), and the person is within the state or local possession guidelines, the individual should be released and the cannabis should not be seized. Under the MMP, "no person or designated primary caregiver in possession of a valid identification card shall be subject to arrest for possession, transportation, delivery, or cultivation of medicinal cannabis . . ." (§ 11362.71, subd. (e).) Further, a "state or local law enforcement agency or officer shall not refuse to accept an identification card issued by the department unless the state or local law enforcement agency or officer has reasonable cause to believe that the information contained in the card is false or fraudulent, or the card is being used fraudulently." (§ 11362.78.)

5. Non-Cardholders: When a person in possession of medicinal cannabis, including medicinal cannabis products, or an excessive amount of cannabis plants claims protection under the CUA or the MMP and only has a locally-issued (i.e.,

non-state) patient identification card, or a written or oral recommendation from a licensed physician, officers should use their sound professional judgment to assess the validity of the person's medicinal claim:

a) Officers need not abandon their search or investigation to determine if the amount of cannabis being possessed or transported is within legal constraints and consistent with the qualified patient's physician's recommendation. (*People v. Wayman* (2010) 189 Cal.App.4th 215.) The enactment of the MAUCRSA has decriminalized the possession and transportation of limited amounts of cannabis, therefore the presence of a small quantity of cannabis is not considered contraband when possessed in compliance with state laws. Cannabis and cannabis products lawfully possessed are no longer subject to seizure. (§ 11362.1, subd. (c).) Reasonable suspicion is required for detention, while probable cause is required for search, seizure, and arrest; and the motor vehicle exception to a probable cause search still applies. (*People v. Waxler* (2014) 224 Cal.App.4th 712.)

b) Officers should review any written documentation for validity. It may contain the physician's name, telephone number, address, and license number.

c) If the officer reasonably believes that the medicinal claim is valid based upon the totality of the circumstances (including the quantity of cannabis, packaging for sale, the presence of weapons, illicit drugs, or large amounts of cash), and the person is within the state or local possession guidelines or has an amount consistent with their current medical needs, the person should be released and the cannabis should not be seized.

d) Alternatively, if the officer has probable cause to doubt the validity of a person's medicinal cannabis claim based upon the facts and circumstances, the person may be arrested and the cannabis may be seized. It will then be up to the person to establish his or her medicinal cannabis defense in court.

e) Officers are not obligated to accept a person's claim of having a physician's oral recommendation that cannot be readily verified with the physician at the time of detention.

6. Exceeding Possession Guidelines: If a person has what appears to be valid medicinal cannabis documentation, but exceeds the applicable possession

guidelines identified in section 5(a), above, all cannabis may be seized. (§§ 11362.1, subd. (c), 11471, subds. (c) and (d), § 11475.)

7. Return of Seized Medicinal Cannabis: If a person whose cannabis is seized by law enforcement successfully establishes a medicinal cannabis defense in court, or the case is not prosecuted, he or she may file a motion for return of the cannabis. If a court grants the motion and orders the return of cannabis seized incident to an arrest, the individual or entity subject to the order must return the property. (*City of Garden Grove v. Superior Court* (*Kha*) (2007) 157 Cal.App.4th 355, 369, 386, 391.) State law enforcement officers who handle controlled substances in the course of their official duties are immune from liability under the Controlled Substances Act. (21 U.S.C.§ 885, subd. (d).)

IV. GUIDELINES REGARDING COLLECTIVES AND COOPERATIVES

Under the MAUCRSA, medicinal cannabis cooperatives and collectives are required to obtain state licenses to operate as of January 10, 2019.[10] The exceptions to this requirement are: (a) individual patients; and (b) caregiver gardens serving no more than five patients. (Bus. & Prof. Code, § 26033, subd. (b).) Unlicensed cannabis cooperatives and collectives are subject to enforcement action, in addition to criminal sanctions for failure to comply with legal requirements. The following guidelines apply to qualified patients and primary caregivers who come together to collectively or cooperatively cultivate physician-recommended cannabis.

A. Business Forms: Any group that is collectively or cooperatively cultivating and distributing cannabis for medical purposes should be organized and operated in a manner that ensures the security of the crop and safeguards against diversion for non-medical purposes. The following are guidelines to help cooperatives and collectives operate within the law, and to help law enforcement determine whether they are doing so.

1. Statutory Cooperatives: Cannabis cooperatives are subject to the General Corporation Law. (Bus. & Prof. Code, § 26222.5.) A cooperative must file articles of incorporation with the state and conduct its business for the mutual benefit of its members. (Corp. Code, §§ 12201, 12300.) No business may call itself a "cooperative" (or "co- op") unless it is properly organized and registered as such a corporation under the Corporations or Food and Agricultural Code. (Corp. Code, § 12311, subd. (b); Food & Agr. Code, § 54036.) No business may call itself a "cannabis cooperative" unless it is in compliance with the MAUCRSA. (Bus. & Prof. Code, § 26222.2.) Cooperative corporations are "democratically controlled and are not organized to make a profit for themselves,

[10] Pursuant to the MAUCRSA, section 11362.775, which afforded protection to qualified patients and primary caregivers from criminal sanctions for associating with the collective or cooperative, was repealed effective January 9, 2019.

as such, or for their members, as such, but primarily for their members as patrons." (Corp. Code, § 12201.) The earnings and savings of the business must be used for the general welfare of its members or equitably distributed to members in the form of cash, property, credits, or services. (*Ibid.*) Cooperatives must follow strict rules on organization, articles, elections, and distribution of earnings, and must report individual transactions from individual members each year. (See *id.* at § 12200 et seq.) Agricultural cooperatives are likewise nonprofit corporate entities "since they are not organized to make profit for themselves, as such, or for their members, as such, but only for their members as producers." (Food & Agr. Code, § 54033.) Agricultural cooperatives share many characteristics with consumer cooperatives. (See, e.g., *id.* at § 54002 et seq.) Licensed cannabis cooperatives should not purchase cannabis from, or sell to, non-members; instead, they should only provide a means for facilitating or coordinating transactions between members.

2. **Collectives:** California law does not define collectives, but the dictionary defines them as "a business, farm, etc., jointly owned and operated by the members of a group." (*Random House Unabridged Dictionary*; Random House, Inc. © 2019.) Applying this definition, a collective is an organization that facilitates the collaborative efforts of patient and caregiver members– including the allocation of costs and revenues. As such, a collective is not a statutory entity, but as a practical matter it might have to organize as some form of business to carry out its activities. The licensed cannabis collective should not purchase cannabis from, or sell to, non-members; instead, it should only provide a means for facilitating or coordinating transactions between members.

B. Guidelines for the Lawful Operation of a Cooperative or Collective:

As noted above, the protection against criminal sanctions for cannabis collectives and cooperatives ended on January 9, 2019. After that date, any cannabis collectives and cooperatives that continue their operations must have state licenses and comply with any local requirements. (Bus. & Prof. Code, § 26223.) The Bureau of Cannabis Control has published a "Collectives and Cooperatives Fact Sheet" which outlines the legal requirements that must be met for existing collectives and cooperatives to continue to operate. (https://www.bcc.ca.gov/about_us/documents/18-006_collective_faq.pdf). Cannabis collectives or cooperatives must[11]:

1. Only acquire and provide cannabis to members and assure that no cannabis transactions occur with non-members (Bus. & Prof. Code, § 26053);

[11] See generally, Bus. & Prof. Code, §§ 26220-26231.2.

2. Only receive monetary reimbursement from members in an amount necessary to cover overhead costs and operating expenses (e.g., not operate on a for-profit basis) (Bus. & Prof. Code, § 26033, subd. (b));

3. Possess, cultivate, and transport amounts of cannabis that are consistent with the aggregate limits provided for member patients and may be required to produce documentation to support the amounts of cannabis possessed, cultivated, or transported. Specifically, consistent with section 11362.77, they may possess:

a) 8 ounces of dried cannabis per patient;

b) 6 mature plants per patient;

c) 12 immature plants per patient; or

d) An amount of cannabis consistent with the patient's needs as recommended by a physician;

4. Satisfy fire, safety, and building code requirements (Bus. & Prof. Code, §26055);

5. Obtain a seller's permit from the California Department of Tax and Fee Administration[12] (Bus. & Prof. Code, §26051.5, subd. (6); see, Rev. & Tax. Code §§ 6011.1 and 6012.1); and

6. Comply with all applicable local rules and ordinances for operating a cannabis collective or cooperative in that local jurisdiction (Bus. & Prof. Code, §§ 26051.5, 26054, and 26055).

C. Enforcement Guidelines: Depending upon the facts and circumstances, deviations from the guidelines outlined above may give rise to probable cause for arrest and seizure. The following are additional guidelines to help identify cannabis collectives and cooperatives that are operating outside of state law.

1. Storefront Dispensaries: Although medicinal cannabis "dispensaries" have been operating in California for years, dispensaries, as such, are not recognized as cannabis cooperatives or collectives under the law. As noted above, effective January 10, 2019, cannabis collectives and cooperatives engaged in commercial cannabis activity must have either a Type 1 or Type 2 cultivation license issued by the California Department of Food and

[12] Since collectives and cooperatives generally sell cannabis and cannabis products, they engage in retail cannabis sales, must be licensed as such and must collect and pay sales tax. The Cannabis Tax Law provides that any person required to be licensed as a cannabis retailer, cultivator, distributor, and/or manufacturer collect the excise or cultivation tax, and for a person required to be licensed as a distributor, to obtain a permit and pay the taxes to the California Department of Tax and Fee Administration.

Agriculture – CalCannabis Cultivation Licensing to operate in the State. (Bus. & Prof. Code § 26223, subd. (c).) Any unlicensed collective or cooperative engaging in commercial medicinal cannabis storefront activity is operating outside the protections of the MAUCRSA, the CUA, and the MMPA. Since the legalization of recreational adult-use cannabis in January 2018, licensed retail storefronts are permissible, so long as they are in compliance with applicable state and local laws.

2. Indicia of Unlawful Operation: When investigating collectives or cooperatives, law enforcement officers should be alert for signs of mass production or illegal sales, including (a) excessive amounts of cannabis, (b) excessive amounts of cash, (c) failure to follow local and state laws applicable to similar businesses, such as maintenance of any required licenses and payment of any required taxes, including sales taxes, (d) weapons, (e) illicit drugs, (f) purchases from, or sales or distribution to, non-members, or (g) distribution outside of California.

EXHIBIT 7

U.S. Department of Justice

Office of the Deputy Attorney General

The Deputy Attorney General

Washington, D.C. 20530

October 19, 2009

MEMORANDUM FOR SELECTED UNITED STATES ATTORNEYS

FROM: David W. Ogden
Deputy Attorney General

SUBJECT: Investigations and Prosecutions in States
Authorizing the Medical Use of Marijuana

This memorandum provides clarification and guidance to federal prosecutors in States that have enacted laws authorizing the medical use of marijuana. These laws vary in their substantive provisions and in the extent of state regulatory oversight, both among the enacting States and among local jurisdictions within those States. Rather than developing different guidelines for every possible variant of state and local law, this memorandum provides uniform guidance to focus federal investigations and prosecutions in these States on core federal enforcement priorities.

The Department of Justice is committed to the enforcement of the Controlled Substances Act in all States. Congress has determined that marijuana is a dangerous drug, and the illegal distribution and sale of marijuana is a serious crime and provides a significant source of revenue to large-scale criminal enterprises, gangs, and cartels. One timely example underscores the importance of our efforts to prosecute significant marijuana traffickers: marijuana distribution in the United States remains the single largest source of revenue for the Mexican cartels.

The Department is also committed to making efficient and rational use of its limited investigative and prosecutorial resources. In general, United States Attorneys are vested with "plenary authority with regard to federal criminal matters" within their districts. USAM 9-2.001. In exercising this authority, United States Attorneys are "invested by statute and delegation from the Attorney General with the broadest discretion in the exercise of such authority." *Id.* This authority should, of course, be exercised consistent with Department priorities and guidance.

The prosecution of significant traffickers of illegal drugs, including marijuana, and the disruption of illegal drug manufacturing and trafficking networks continues to be a core priority in the Department's efforts against narcotics and dangerous drugs, and the Department's investigative and prosecutorial resources should be directed towards these objectives. As a general matter, pursuit of these priorities should not focus federal resources in your States on

individuals whose actions are in clear and unambiguous compliance with existing state laws providing for the medical use of marijuana. For example, prosecution of individuals with cancer or other serious illnesses who use marijuana as part of a recommended treatment regimen consistent with applicable state law, or those caregivers in clear and unambiguous compliance with existing state law who provide such individuals with marijuana, is unlikely to be an efficient use of limited federal resources. On the other hand, prosecution of commercial enterprises that unlawfully market and sell marijuana for profit continues to be an enforcement priority of the Department. To be sure, claims of compliance with state or local law may mask operations inconsistent with the terms, conditions, or purposes of those laws, and federal law enforcement should not be deterred by such assertions when otherwise pursuing the Department's core enforcement priorities.

Typically, when any of the following characteristics is present, the conduct will not be in clear and unambiguous compliance with applicable state law and may indicate illegal drug trafficking activity of potential federal interest:

- unlawful possession or unlawful use of firearms;
- violence;
- sales to minors;
- financial and marketing activities inconsistent with the terms, conditions, or purposes of state law, including evidence of money laundering activity and/or financial gains or excessive amounts of cash inconsistent with purported compliance with state or local law;
- amounts of marijuana inconsistent with purported compliance with state or local law;
- illegal possession or sale of other controlled substances; or
- ties to other criminal enterprises.

Of course, no State can authorize violations of federal law, and the list of factors above is not intended to describe exhaustively when a federal prosecution may be warranted. Accordingly, in prosecutions under the Controlled Substances Act, federal prosecutors are not expected to charge, prove, or otherwise establish any state law violations. Indeed, this memorandum does not alter in any way the Department's authority to enforce federal law, including laws prohibiting the manufacture, production, distribution, possession, or use of marijuana on federal property. This guidance regarding resource allocation does not "legalize" marijuana or provide a legal defense to a violation of federal law, nor is it intended to create any privileges, benefits, or rights, substantive or procedural, enforceable by any individual, party or witness in any administrative, civil, or criminal matter. Nor does clear and unambiguous compliance with state law or the absence of one or all of the above factors create a legal defense to a violation of the Controlled Substances Act. Rather, this memorandum is intended solely as a guide to the exercise of investigative and prosecutorial discretion.

Finally, nothing herein precludes investigation or prosecution where there is a reasonable basis to believe that compliance with state law is being invoked as a pretext for the production or distribution of marijuana for purposes not authorized by state law. Nor does this guidance preclude investigation or prosecution, even when there is clear and unambiguous compliance with existing state law, in particular circumstances where investigation or prosecution otherwise serves important federal interests.

Your offices should continue to review marijuana cases for prosecution on a case-by-case basis, consistent with the guidance on resource allocation and federal priorities set forth herein, the consideration of requests for federal assistance from state and local law enforcement authorities, and the Principles of Federal Prosecution.

cc: All United States Attorneys

Lanny A. Breuer
Assistant Attorney General
Criminal Division

B. Todd Jones
United States Attorney
District of Minnesota
Chair, Attorney General's Advisory Committee

Michele M. Leonhart
Acting Administrator
Drug Enforcement Administration

H. Marshall Jarrett
Director
Executive Office for United States Attorneys

Kevin L. Perkins
Assistant Director
Criminal Investigative Division
Federal Bureau of Investigation

EXHIBIT 8

U.S. Department of Justice

Office of the Deputy Attorney General

Washington, D.C. 20530

June 29, 2011

MEMORANDUM FOR UNITED STATES ATTORNEYS

FROM: James M. Cole
Deputy Attorney General

SUBJECT: Guidance Regarding the Ogden Memo in Jurisdictions Seeking to Authorize Marijuana for Medical Use

Over the last several months some of you have requested the Department's assistance in responding to inquiries from State and local governments seeking guidance about the Department's position on enforcement of the Controlled Substances Act (CSA) in jurisdictions that have under consideration, or have implemented, legislation that would sanction and regulate the commercial cultivation and distribution of marijuana purportedly for medical use. Some of these jurisdictions have considered approving the cultivation of large quantities of marijuana, or broadening the regulation and taxation of the substance. You may have seen letters responding to these inquiries by several United States Attorneys. Those letters are entirely consistent with the October 2009 memorandum issued by Deputy Attorney General David Ogden to federal prosecutors in States that have enacted laws authorizing the medical use of marijuana (the "Ogden Memo").

The Department of Justice is committed to the enforcement of the Controlled Substances Act in all States. Congress has determined that marijuana is a dangerous drug and that the illegal distribution and sale of marijuana is a serious crime that provides a significant source of revenue to large scale criminal enterprises, gangs, and cartels. The Ogden Memorandum provides guidance to you in deploying your resources to enforce the CSA as part of the exercise of the broad discretion you are given to address federal criminal matters within your districts.

A number of states have enacted some form of legislation relating to the medical use of marijuana. Accordingly, the Ogden Memo reiterated to you that prosecution of significant traffickers of illegal drugs, including marijuana, remains a core priority, but advised that it is likely not an efficient use of federal resources to focus enforcement efforts on individuals with cancer or other serious illnesses who use marijuana as part of a recommended treatment regimen consistent with applicable state law, or their caregivers. The term "caregiver" as used in the memorandum meant just that: individuals providing care to individuals with cancer or other serious illnesses, not commercial operations cultivating, selling or distributing marijuana.

The Department's view of the efficient use of limited federal resources as articulated in the Ogden Memorandum has not changed. There has, however, been an increase in the scope of

commercial cultivation, sale, distribution and use of marijuana for purported medical purposes. For example, within the past 12 months, several jurisdictions have considered or enacted legislation to authorize multiple large-scale, privately-operated industrial marijuana cultivation centers. Some of these planned facilities have revenue projections of millions of dollars based on the planned cultivation of tens of thousands of cannabis plants.

The Ogden Memorandum was never intended to shield such activities from federal enforcement action and prosecution, even where those activities purport to comply with state law. Persons who are in the business of cultivating, selling or distributing marijuana, and those who knowingly facilitate such activities, are in violation of the Controlled Substances Act, regardless of state law. Consistent with resource constraints and the discretion you may exercise in your district, such persons are subject to federal enforcement action, including potential prosecution. State laws or local ordinances are not a defense to civil or criminal enforcement of federal law with respect to such conduct, including enforcement of the CSA. Those who engage in transactions involving the proceeds of such activity may also be in violation of federal money laundering statutes and other federal financial laws.

The Department of Justice is tasked with enforcing existing federal criminal laws in all states, and enforcement of the CSA has long been and remains a core priority.

cc: Lanny A. Breuer
Assistant Attorney General, Criminal Division

B. Todd Jones
United States Attorney
District of Minnesota
Chair, AGAC

Michele M. Leonhart
Administrator
Drug Enforcement Administration

H. Marshall Jarrett
Director
Executive Office for United States Attorneys

Kevin L. Perkins
Assistant Director
Criminal Investigative Division
Federal Bureau of Investigations

EXHIBIT 9

U.S. Department of Justice

Office of the Deputy Attorney General

The Deputy Attorney General

Washington, D.C. 20530

August 29, 2013

MEMORANDUM FOR ALL UNITED STATES ATTORNEYS

FROM: James M. Cole
Deputy Attorney General

SUBJECT: Guidance Regarding Marijuana Enforcement

In October 2009 and June 2011, the Department issued guidance to federal prosecutors concerning marijuana enforcement under the Controlled Substances Act (CSA). This memorandum updates that guidance in light of state ballot initiatives that legalize under state law the possession of small amounts of marijuana and provide for the regulation of marijuana production, processing, and sale. The guidance set forth herein applies to all federal enforcement activity, including civil enforcement and criminal investigations and prosecutions, concerning marijuana in all states.

As the Department noted in its previous guidance, Congress has determined that marijuana is a dangerous drug and that the illegal distribution and sale of marijuana is a serious crime that provides a significant source of revenue to large-scale criminal enterprises, gangs, and cartels. The Department of Justice is committed to enforcement of the CSA consistent with those determinations. The Department is also committed to using its limited investigative and prosecutorial resources to address the most significant threats in the most effective, consistent, and rational way. In furtherance of those objectives, as several states enacted laws relating to the use of marijuana for medical purposes, the Department in recent years has focused its efforts on certain enforcement priorities that are particularly important to the federal government:

- Preventing the distribution of marijuana to minors;
- Preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels;
- Preventing the diversion of marijuana from states where it is legal under state law in some form to other states;
- Preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity;

- Preventing violence and the use of firearms in the cultivation and distribution of marijuana;
- Preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use;
- Preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and
- Preventing marijuana possession or use on federal property.

These priorities will continue to guide the Department's enforcement of the CSA against marijuana-related conduct. Thus, this memorandum serves as guidance to Department attorneys and law enforcement to focus their enforcement resources and efforts, including prosecution, on persons or organizations whose conduct interferes with any one or more of these priorities, regardless of state law.[1]

Outside of these enforcement priorities, the federal government has traditionally relied on states and local law enforcement agencies to address marijuana activity through enforcement of their own narcotics laws. For example, the Department of Justice has not historically devoted resources to prosecuting individuals whose conduct is limited to possession of small amounts of marijuana for personal use on private property. Instead, the Department has left such lower-level or localized activity to state and local authorities and has stepped in to enforce the CSA only when the use, possession, cultivation, or distribution of marijuana has threatened to cause one of the harms identified above.

The enactment of state laws that endeavor to authorize marijuana production, distribution, and possession by establishing a regulatory scheme for these purposes affects this traditional joint federal-state approach to narcotics enforcement. The Department's guidance in this memorandum rests on its expectation that states and local governments that have enacted laws authorizing marijuana-related conduct will implement strong and effective regulatory and enforcement systems that will address the threat those state laws could pose to public safety, public health, and other law enforcement interests. A system adequate to that task must not only contain robust controls and procedures on paper; it must also be effective in practice. Jurisdictions that have implemented systems that provide for regulation of marijuana activity

[1] These enforcement priorities are listed in general terms; each encompasses a variety of conduct that may merit civil or criminal enforcement of the CSA. By way of example only, the Department's interest in preventing the distribution of marijuana to minors would call for enforcement not just when an individual or entity sells or transfers marijuana to a minor, but also when marijuana trafficking takes place near an area associated with minors; when marijuana or marijuana-infused products are marketed in a manner to appeal to minors; or when marijuana is being diverted, directly or indirectly, and purposefully or otherwise, to minors.

must provide the necessary resources and demonstrate the willingness to enforce their laws and regulations in a manner that ensures they do not undermine federal enforcement priorities.

In jurisdictions that have enacted laws legalizing marijuana in some form and that have also implemented strong and effective regulatory and enforcement systems to control the cultivation, distribution, sale, and possession of marijuana, conduct in compliance with those laws and regulations is less likely to threaten the federal priorities set forth above. Indeed, a robust system may affirmatively address those priorities by, for example, implementing effective measures to prevent diversion of marijuana outside of the regulated system and to other states, prohibiting access to marijuana by minors, and replacing an illicit marijuana trade that funds criminal enterprises with a tightly regulated market in which revenues are tracked and accounted for. In those circumstances, consistent with the traditional allocation of federal-state efforts in this area, enforcement of state law by state and local law enforcement and regulatory bodies should remain the primary means of addressing marijuana-related activity. If state enforcement efforts are not sufficiently robust to protect against the harms set forth above, the federal government may seek to challenge the regulatory structure itself in addition to continuing to bring individual enforcement actions, including criminal prosecutions, focused on those harms.

The Department's previous memoranda specifically addressed the exercise of prosecutorial discretion in states with laws authorizing marijuana cultivation and distribution for medical use. In those contexts, the Department advised that it likely was not an efficient use of federal resources to focus enforcement efforts on seriously ill individuals, or on their individual caregivers. In doing so, the previous guidance drew a distinction between the seriously ill and their caregivers, on the one hand, and large-scale, for-profit commercial enterprises, on the other, and advised that the latter continued to be appropriate targets for federal enforcement and prosecution. In drawing this distinction, the Department relied on the common-sense judgment that the size of a marijuana operation was a reasonable proxy for assessing whether marijuana trafficking implicates the federal enforcement priorities set forth above.

As explained above, however, both the existence of a strong and effective state regulatory system, and an operation's compliance with such a system, may allay the threat that an operation's size poses to federal enforcement interests. Accordingly, in exercising prosecutorial discretion, prosecutors should not consider the size or commercial nature of a marijuana operation alone as a proxy for assessing whether marijuana trafficking implicates the Department's enforcement priorities listed above. Rather, prosecutors should continue to review marijuana cases on a case-by-case basis and weigh all available information and evidence, including, but not limited to, whether the operation is demonstrably in compliance with a strong and effective state regulatory system. A marijuana operation's large scale or for-profit nature may be a relevant consideration for assessing the extent to which it undermines a particular federal enforcement priority. The primary question in all cases – and in all jurisdictions – should be whether the conduct at issue implicates one or more of the enforcement priorities listed above.

As with the Department's previous statements on this subject, this memorandum is intended solely as a guide to the exercise of investigative and prosecutorial discretion. This memorandum does not alter in any way the Department's authority to enforce federal law, including federal laws relating to marijuana, regardless of state law. Neither the guidance herein nor any state or local law provides a legal defense to a violation of federal law, including any civil or criminal violation of the CSA. Even in jurisdictions with strong and effective regulatory systems, evidence that particular conduct threatens federal priorities will subject that person or entity to federal enforcement action, based on the circumstances. This memorandum is not intended to, does not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter civil or criminal. It applies prospectively to the exercise of prosecutorial discretion in future cases and does not provide defendants or subjects of enforcement action with a basis for reconsideration of any pending civil action or criminal prosecution. Finally, nothing herein precludes investigation or prosecution, even in the absence of any one of the factors listed above, in particular circumstances where investigation and prosecution otherwise serves an important federal interest.

cc: Mythili Raman
Acting Assistant Attorney General, Criminal Division

Loretta E. Lynch
United States Attorney
Eastern District of New York
Chair, Attorney General's Advisory Committee

Michele M. Leonhart
Administrator
Drug Enforcement Administration

H. Marshall Jarrett
Director
Executive Office for United States Attorneys

Ronald T. Hosko
Assistant Director
Criminal Investigative Division
Federal Bureau of Investigation

EXHIBIT 10

Office of the Attorney General
Washington, D. C. 20530

January 4, 2018

MEMORANDUM FOR ALL UNITED STATES ATTORNEYS

FROM: Jefferson B. Sessions, III
Attorney General

SUBJECT: Marijuana Enforcement

In the Controlled Substances Act, Congress has generally prohibited the cultivation, distribution, and possession of marijuana. 21 U.S.C. § 801 *et seq*. It has established significant penalties for these crimes. 21 U.S.C. § 841 *et seq*. These activities also may serve as the basis for the prosecution of other crimes, such as those prohibited by the money laundering statutes, the unlicensed money transmitter statute, and the Bank Secrecy Act. 18 U.S.C. §§ 1956-57, 1960; 31 U.S.C. § 5318. These statutes reflect Congress's determination that marijuana is a dangerous drug and that marijuana activity is a serious crime.

In deciding which marijuana activities to prosecute under these laws with the Department's finite resources, prosecutors should follow the well-established principles that govern all federal prosecutions. Attorney General Benjamin Civiletti originally set forth these principles in 1980, and they have been refined over time, as reflected in chapter 9-27.000 of the U.S. Attorneys' Manual. These principles require federal prosecutors deciding which cases to prosecute to weigh all relevant considerations, including federal law enforcement priorities set by the Attorney General, the seriousness of the crime, the deterrent effect of criminal prosecution, and the cumulative impact of particular crimes on the community.

Given the Department's well-established general principles, previous nationwide guidance specific to marijuana enforcement is unnecessary and is rescinded, effective immediately.[1] This memorandum is intended solely as a guide to the exercise of investigative and prosecutorial discretion in accordance with all applicable laws, regulations, and appropriations. It is not intended to, does not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter civil or criminal.

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[1] Previous guidance includes: David W. Ogden, Deputy Att'y Gen., Memorandum for Selected United States Attorneys: Investigations and Prosecutions in States Authorizing the Medical Use of Marijuana (Oct. 19, 2009); James M. Cole, Deputy Att'y Gen., Memorandum for United States Attorneys: Guidance Regarding the Ogden Memo in Jurisdictions Seeking to Authorize Marijuana for Medical Use (June 29, 2011); James M. Cole, Deputy Att'y Gen., Memorandum for All United States Attorneys: Guidance Regarding Marijuana Enforcement (Aug. 29, 2013); James M. Cole, Deputy Att'y Gen., Memorandum for All United States Attorneys: Guidance Regarding Marijuana Related Financial Crimes (Feb. 14, 2014); and Monty Wilkinson, Director of the Executive Office for U.S. Att'ys, Policy Statement Regarding Marijuana Issues in Indian Country (Oct. 28, 2014).

EXHIBIT 11

Single Convention

on

Narcotic Drugs, 1961

As amended by the 1972 Protocol amending the Single Convention on Narcotic Drugs, 1961,

United Nations

b) That the Parties shall be asked whether they accept the proposed amendment and also asked to submit to the Council any comments on the proposal.

2. If a proposed amendment circulated under paragraph 1 *b)* of this article has not been rejected by any Party within eighteen months after it has been circulated, it shall thereupon enter into force. If, however, a proposed amendment is rejected by any Party, the Council may decide, in the light of comments received from Parties, whether a conference shall be called to consider such amendment.

Article 48

DISPUTES

1. If there should arise between two or more Parties a dispute relating to the interpretation or application of this Convention, the said Parties shall consult together with a view to the settlement of the dispute by negotiation, investigation, mediation, conciliation, arbitration, recourse to regional bodies, judicial process or other peaceful means of their own choice.

2. Any such dispute which cannot be settled in the manner prescribed shall be referred to the International Court of Justice for decision.

Article 49

TRANSITIONAL RESERVATIONS

1. A Party may at the time of signature, ratification or accession reserve the right to permit temporarily in any one of its territories:

a) The quasi-medical use of opium;
b) Opium smoking;
c) Coca leaf chewing;
d) The use of cannabis, cannabis resin, extracts and tinctures of cannabis for non-medical purposes; and
e) The production and manufacture of and trade in the drugs referred to under a) to d) for the purposes mentioned therein.

2. The reservations under paragraph 1 shall be subject to the following restrictions:

a) The activities mentioned in paragraph 1 may be authorized only to the extent that they were traditional in the territories in respect of which the reservation is made, and were there permitted on 1 January 1961.
b) No export of the drugs referred to in paragraph 1 for the purposes mentioned therein may be permitted to a non-party or to a territory to which this Convention does not apply under article 42.
c) Only such persons may be permitted to smoke opium as were registered by the competent authorities to this effect on 1 January 1964.
d) The quasi-medical use of opium must be abolished within 15 years from the coming into force of this Convention as provided in paragraph 1 of article 41.
e) Coca leaf chewing must be abolished within twenty-five years from the coming into force of this Convention as provided in paragraph 1 of article 41.
f) The use of cannabis for other than medical and scientific purposes must be discontinued as soon as possible but in any case within twenty-five years from the coming into force of this Convention as provided in paragraph 1 of article 41.
g) The production and manufacture of and trade in the drugs referred to in paragraph 1 for any of the uses mentioned therein must be reduced and finally abolished simultaneously with the reduction and abolition of such uses.

3. A Party making a reservation under paragraph 1 shall:

a) Include in the annual report to be furnished to the Secretary-General, in accordance with article 18, paragraph 1 a), an account of the progress made in the preceding year towards the abolition of the use, production, manufacture or trade referred to under paragraph l; and
b) Furnish to the Board separate estimates (article 19) and statistical returns (article 20) in respect of the reserved activities in the manner and form prescribed by the Board.

EXHIBIT 12

Reconvened 63rd Session of the
UN Commission on Narcotic Drugs (CND)
December 2-4, 2020
Vienna, Austria

EXPLANATION OF VOTE ON CHANGES IN THE SCOPE OF CONTROL OF CANNABIS AND CANNABIS-RELATED SUBSTANCES

Explanation of Vote for Recommendation 5.1

- Thank you chair, for your skilled leadership over the past year that has brought us to the conclusion of this important process.

- Today's votes were not taken lightly. They followed a lengthy, two-year-long process in which the Commission carefully considered each of the recommendations, their effects and impacts, and the rationale behind them. The participation of a wide array of stakeholders in these consultations was helpful for informing the Commission's deliberations, and we would like to thank them for their assistance.

- The CND is charged by the three international drug control treaties to make scheduling decisions that appropriately balance the public health risks of drugs with access to those drugs for medical and scientific purposes. The placement of cannabis in Schedules I and IV when the Single Convention was drafted reflected the high degree of negative public health effects and lack of accepted medical use of cannabis preparations, as well as an understanding that if future well-controlled clinical trials identified a legitimate medical use of those preparations, cannabis could be removed from Schedule IV.

- In recent years, well-controlled clinical trials have identified therapeutic uses for certain isolated cannabinoids, most notably the product Epidiolex, which contains highly purified cannabidiol extracted from the cannabis plant and which was approved by the U.S. Food and Drug Administration in 2018 for the treatment of two rare seizure disorders in children. As a result, the legitimate medical use of a cannabis preparation has been established through scientific research, and cannabis no longer meets the criterion for placement in Schedule IV of the Single Convention.

- Nevertheless, it is clear that cannabis and cannabinoids are not benign substances. There is robust scientific evidence of negative and lasting health effects, especially to pregnant women and adolescents. Cannabis use can result in addiction, and its use appears to also increase the subsequent risk of addiction to other drugs. The cannabis plant has not been approved as a safe and effective therapeutic for any indication.

- The scientific assessment of cannabis and cannabis resin by the World Health Organization's Expert Committee on Drug Dependence highlighted these public health risks, reaffirming the decision at the time the Single Convention was adopted to subject cannabis to the strictest set of international controls under that convention.

- The vote of the United States to remove cannabis and cannabis resin from Schedule IV of the Single Convention while retaining them in Schedule I is consistent with the science demonstrating that while a safe and effective cannabis-derived therapeutic has been developed, cannabis itself continues to pose significant risks to public health and should continue to be controlled under the international drug control conventions.

- Further, this action has the potential to stimulate global research into the therapeutic potential and public health effects of cannabis, and to attract additional investigators to the field, including those who may have been deterred by the Schedule IV status of cannabis.

Explanation of Vote for Recommendation 5.5

- Thank you chair, for your leadership as the CND has worked diligently over the past two years to consider social, economic, administrative, and legal factors relevant to the WHO's cannabis-related recommendations.

- The United States was unable to vote in support of recommendation 5.5 on legal and procedural grounds. We do not dispute the scientific basis for the recommendation. Cannabidiol has not demonstrated abuse potential, and it is not our position that cannabidiol should be or is under the control of the international drug conventions.

- Notably, the recommendation before the Commission for a vote today was in fact the second recommendation from the Expert Committee relating to cannabidiol preparations, and was explicitly designed - quote: "to give effect to the recommendation of the fortieth ECDD that preparations considered to be pure cannabidiol should not be scheduled within the international drug control conventions" end quote.

- As a matter of past practice, when the ECDD recommends that a substance should not be subject to international control, no CND action is required to give effect to that recommendation; substances are presumed to be outside the scope of the conventions unless explicitly included in a Schedule. This recommendation to give effect to a state of affairs which already exists therefore breaks from past procedure and intrudes on the treaty-based mandate of the CND to make recommendations for the implementation of the aims and provisions of the drug control conventions.

- Additionally, adoption of the proposed footnote would have in effect amended the Single Convention by creating a new category of preparations wholly excluded from control. This recommendation would have contravened the Single Convention by amending the treaty while sidestepping the amendment process outlined in the treaty itself. Proposals to amend the treaty are reserved exclusively to Member States, and are wholly outside the scope of the scheduling process.

- The treaties give significant flexibility to allow Member States to design drug control polices that reflect their national realities. We believe the Member States are capable of determining for themselves what should be considered a "pure" cannabidiol preparation

for domestic enforcement purposes, based on analytical capacity, abuse liability, and prioritization of prosecutorial resources. Indeed, many countries, including the United States, have already instituted legal measures to adopt thresholds for purity and residual delta-9-THC impurities in cannabidiol preparations.

- If the Commission determines that standardization of these thresholds would improve the application of international drug control requirements, it is empowered by Article 8 of the Single Convention and Article 17 of the Convention on Psychotropic Substances to issue recommendations for that purpose, without amending the conventions or misusing the scheduling system. We look forward to continuing the conversation around this important issue within the CND.

EXHIBIT 13

PATHWAYS REPORT

POLICY OPTIONS FOR REGULATING MARIJUANA IN CALIFORNIA

STEERING COMMITTEE:

Lt. Governor
Gavin Newsom,
Chair

Prof. Keith Humphreys,
Stanford University

Abdi Soltani,
ACLU of California

Blue Ribbon Commission on MARIJUANA POLICY

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Published July 22, 2015

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July 22, 2015

As the Steering Committee of the Blue Ribbon Commission on Marijuana Policy (BRC), we are pleased to share the *Pathways Report: Policy Options for Regulating Marijuana in California.*

The goal of the BRC is to provide expert research and analysis to help the public and policymakers understand the range of policy issues and options to consider when drafting proposals to legalize, tax, and regulate marijuana.

This report builds on the Progress Report the Commission released in March, which launched the public phase of the BRC. From April through June, we held public forums in Los Angeles, Oakland, Fresno and Humboldt. We are grateful to all the researchers, experts and members of the public who provided valuable testimony and feedback at these events and in other ways.

This report marks the close of this phase of the Blue Ribbon Commission. We will however continue to monitor and analyze marijuana policy issues as legalization initiatives are developed and put before the voters.

We are grateful to all the members of the Blue Ribbon Commission and all the stakeholders who participated in this process. We look forward to the thoughtful and vigorous dialogue that lies ahead.

Gavin Newsom
Lt. Governor
State of California

Abdi Soltani
Executive Director
ACLU of Northern California

Keith Humphreys
Professor of Psychiatry and Behavioral Sciences & Director of Mental Health Policy
Stanford University

EXECUTIVE SUMMARY

The question of whether or not California should legalize adult use of marijuana[1] beyond medical purposes is gaining increased attention by voters and policymakers in California. Four states and the District of Columbia have voted to legalize recreational marijuana use, and each offers important lessons for California. But there are circumstances that are unique to our state that must be thoughtfully analyzed before we move forward with any legalization effort.

The question may well appear on the 2016 statewide ballot. With public opinion polls showing that a narrow majority of likely voters are supportive of the concept of legalization (Public Policy Institute of California, March, 2015), now is the time to think through how such a system could be designed and implemented.

The Blue Ribbon Commission on Marijuana Policy (BRC) was created for this purpose. This Commission report provides guidelines and offers analysis of key issues to be considered by policymakers and voters as they contemplate the legalization and regulation of cannabis in California.

Neither the Commission nor this report is intended to make the case for or against legalization. Rather, this report serves as a resource to help the public and policymakers understand the range of policy issues and options to consider in advance of such a decision.

The *Process* of Legalization: Core Strategies

One of the major findings of the Blue Ribbon Commission's work is that the legalization of marijuana would not be an event that happens in one election. Rather, it would be a *process* that unfolds over many years requiring *sustained attention to implementation.*

That process of legalization and regulation will be *dynamic*. It will require the continued engagement of a range of stakeholders in local communities and at the state level. This report is based on a recommendation that the process the state would embark upon must be based on four macro-level strategies operating concurrently:

1 In this report, the reader will see both the term marijuana and cannabis. Many strongly prefer the term cannabis, which is the scientific term for the plant and does not have some of the negative associations of the word marijuana. The public, however, is more familiar with the term marijuana, and existing state and federal laws, including our state medical marijuana law, use the term marijuana. Some refer to the word cannabis for the plant, and marijuana for the laws and industry. In this report, we use the term cannabis and marijuana interchangeably. The report also uses the terms "recreational" and "adult use" interchangeably, to indicate marijuana that is not used for a medical reason.

1) **Promote the public interest** by ensuring that all legal and regulatory decisions around legalization are made with a focus on protecting California's youth and promoting public health and safety.

2) **Reduce the size of the illicit market** to the greatest extent possible. While it is not possible to eliminate the illicit market entirely, limiting its size will reduce some of the harms associated with the current illegal cultivation and sale of cannabis and is essential to creating a well-functioning regulated market that also generates tax revenue.

3) **Offer legal protection to responsible actors** in the marijuana industry who strive to work within the law. The new system must reward cooperation and compliance by responsible actors in the industry as an incentive toward responsible behavior. It must move current actors, current supply and current demand from the unregulated to the regulated market. And the new market will need to out-compete the illicit market over time.

4) **Capture and invest tax revenue** through a fair system of taxation and regulation, and direct that revenue to programs aligned with the goals and needed policy strategies for safe legalization.

Goals of Legalization and Regulation

The Commission believes any legalization effort should be clear on the goals it is setting out to achieve for the people of California. Other stakeholders may propose different or additional goals. The Commission recommends the following nine goals:

1) Promote the health, safety and wellbeing of California's youth, by providing better prevention, education and treatment in school and community settings and keeping youth out of the criminal justice system. Limit youth access to marijuana, including its concurrent use with alcohol and tobacco, and regulate edible products that may appeal to children.

2) Public Safety: Ensure that our streets, schools and communities remain safe, while adopting measures to improve public safety.

3) Equity: Meet the needs of California's diverse populations and address racial and economic disparities, replacing criminalization with public health and economic development.

4) Public Health: Protect public health, strengthen treatment programs for those who need help and educate the public about health issues associated with marijuana use.[2]

5) Environment: Protect public lands, reduce the environmental harms of illegal marijuana production and restore habitat and watersheds impacted by such cultivation.

2 For an annotated bibliography of research on marijuana and health, please consult this resource from the Colorado School of Public Health: http://csph.ucdenver.edu/cphp/mj_bib.pdf

6) Medicine: Ensure continued access to marijuana for medical and therapeutic purposes for patients.

7) Consumer Protection: Provide protections for California consumers, including testing and labeling of cannabis products and offer information that helps consumers make informed decisions.

8) Workforce: Extend the same health, safety and labor protections to cannabis workers as other workers and provide for legal employment and economic opportunity for California's diverse workforce.[3]

9) Market Access: Ensure that small and mid-size entities, especially responsible actors in the current market, have access to the new licensed market, and that the industry and regulatory system are not dominated by large, corporate interests.

Evaluating Various Policy Options

The Commission studied policy options in seven major areas related to regulation of the industry, which is the primary focus of this report. The goals of protecting youth and public safety are embedded in this report, but additional information on those specific topics is also available on the Blue Ribbon Commission website.

Although these major policy areas overlap to some extent, we discuss them separately in this report for ease of presentation. Beyond the above 13 recommended strategies and goals, the Commission offers 45 additional and related recommendations within the following policy areas for the public, policymakers, and lawmakers to consider:

A. Defining the Marijuana Industry Structure
B. Regulating Marijuana Cultivation and Processing
C. Regulating Marijuana Marketing, Sales and Consumption
D. Taxing Marijuana
E. Enforcing the New Rules
F. Data Collection and Monitoring
G. Using The New Revenue from Marijuana

3 For a discussion of labor law as it relates to legalized marijuana, please see a new report written by Stanford Law School students in a class led by Professor Robert MacCoun, starting on page 77: https://www.law.stanford.edu/sites/default/files/publication/988796/doc/slspublic/SLS Marijuana Policy Practicum Report.pdf

Considering California's Unique Characteristics

California policymakers and regulators must craft California-centric solutions to the complex problems that surround cannabis legalization. Policymakers should also take regional variations into account, and realize that challenges that face the northern part of the state, for example, may be fundamentally different than those in the south. These factors include people and demographics, land and environmental protection, industry and commerce, and government at all levels.

Applying Lessons from Other States and Other Industries

While considering our state's unique characteristics, policymakers can learn lessons from different approaches taken by other states and study what has worked and what has not.

The Blue Ribbon Commission on Marijuana Policy has monitored the implementation of marijuana legalization in Washington and Colorado, and has reviewed the early policies and practices of Oregon, Alaska and Washington D.C. Throughout the body of this report, we reference lessons from Washington and Colorado, and to a lesser extent our neighbor to the north, Oregon. In addition, California can apply lessons from its own 20-year history of medical marijuana, including the lack of statewide regulation, the lessons learned from divergent approaches to local regulation and the best practices developed by responsible actors in the industry.

Policymakers can also draw from the lessons of the regulation of other industries in California over many decades, notably tobacco and alcohol,[4] even though cannabis is different than both tobacco and alcohol in its production, processing and physiological effects.

By virtue of references to those substances, the Commission is not making a statement about relative risks or harms of these substances, but we can draw lessons from the various approaches to regulating those substances and apply these lessons to any new legal marijuana industry *from the outset*:[5]

- Public health and regulatory tools can be adopted to discourage problematic or unhealthy use and educate consumers about health risks associated with such use. In the case of tobacco these tools have helped reduce consumption and associated health risks substantially in California.[6]

4 For an analysis of lessons that can be applied from alcohol and tobacco regulation, please see "Developing Public Health Regulations for Marijuana: Lessons From Alcohol and Tobacco" published in the *American Journal of Public Health*: June 2014, Vol. 104, No. 6, pp. 1021-1028. By Rosalie Liccardo Pacula, Beau Kilmer, Alexander C. Wagenaar, Frank J. Chaloupka and Jonathan P. Caulkins:
http://ajph.aphapublications.org/doi/abs/10.2105/AJPH.2013.301766

5 For an analysis of the lessons from the tobacco industry and how they apply to marijuana regulation, please see this report "Waiting for the Opportune Moment" by Rachel Barry, Heikki Hiilamo and Stanton Glantz:
http://www.milbank.org/uploads/documents/featured-articles/pdf/Milbank_Quarterly_Vol-92_No-2_2014_The_Tobacco_Industry_and_Marijuana_Legalization.pdf

6 For further information on the impact of California's tobacco control program in reducing harms associated with cigarette smoking, please see this study by John Pierce of UCSD: http://health.ucsd.edu/NEWS/2010/Pages/9-28-tobacoo-control-results.aspx

- A broad array of civil enforcement tools are available to address alcohol and tobacco sales that are out of compliance with the regulatory system, without first resorting to criminal enforcement.

- Tax policy and its impact on price can be a tool to address problematic use, but only one tool. Cigarette taxes have had a positive effect in reducing use.

- Alcohol taxes, set differently according to beer, wine and spirits (though not necessarily based on alcohol content) provide a model of differential taxing.

- Regulation for beer provides a licensing model that recognizes both function and size, with production caps for smaller entities, strict rules for retail sales, and a separate and distinct function for distributors.

- Large corporations tend to gain influence and exercise greater commercial power in the market, generating greater revenue from regular rather than occasional users.

- Industries can exert influence over political and regulatory decisions; adequate capacity is needed in regulatory agencies to actively monitor those industries given the large number of licensees, and safeguards need to be put into place to ensure against improper industry control of the regulatory process.

Commission Recommendations

While the Blue Ribbon Commission is not making overly specific or prescriptive recommendations, the Commission does offer over 50 recommendations by identifying core strategies, goals, and policy options.

They can serve as guidelines for consideration by the public and policymakers. Some of these recommendations may be appropriate to include in a ballot measure, others in subsequent implementing legislation or regulation. In order to be effective, many of these recommendations would need to be put into place at the outset, whereas others could be sequenced during implementation as greater regulatory and industry capacity evolve.

While the Blue Ribbon Commission is not making overly specific or prescriptive recommendations, the Commission does offer over 50 recommendations by identifying core strategies, goals, and policy options.

There are tradeoffs inherent to the transition from an illegal to a legal market. In the transition to a legal market, the purpose of public policy would be to reduce the harms associated with the prohibition of marijuana, including the criminalization of people, while minimizing the harms and capturing the benefits of a legalized system.

Voters and policymakers will need to balance competing priorities. To be clear, some advocates have set out potential goals that the Blue Ribbon Commission believes should not be priorities. Among them: lowering the price of marijuana for recreational users, creating and promoting the largest industry possible or raising the maximum amount of tax revenue. If these were goals, they would encourage or depend upon the heavy use of cannabis.

If and when California begins the *process* of legalization, these *policy options* can be evaluated in relation to achieving the desired *policy goals*. This framework is illustrated in the Logic Model, see ***Figure 1***.

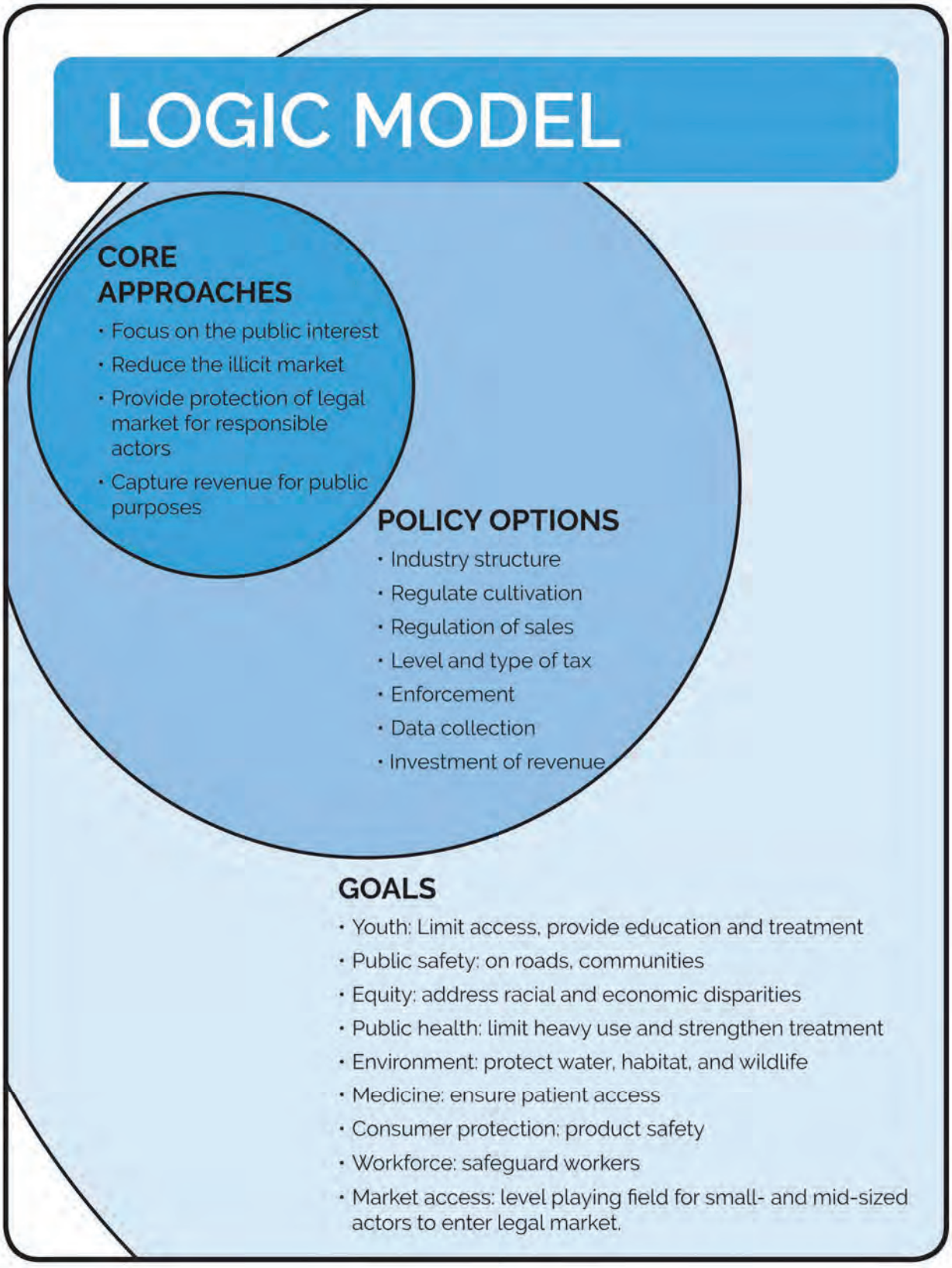
LOGIC MODEL
CORE APPROACHES
• Focus on the public interest
• Reduce the illicit market
• Provide protection of legal market for responsible actors
• Capture revenue for public purposes
POLICY OPTIONS
• Industry structure
• Regulate cultivation
• Regulation of sales
• Level and type of tax
• Enforcement
• Data collection
• Investment of revenue
GOALS
• Youth: Limit access, provide education and treatment
• Public safety: on roads, communities
• Equity: address racial and economic disparities
• Public health: limit heavy use and strengthen treatment
• Environment: protect water, habitat, and wildlife
• Medicine: ensure patient access
• Consumer protection: product safety
• Workforce: safeguard workers
• Market access: level playing field for small- and mid-sized actors to enter legal market.

Figure 1

ACKNOWLEDGEMENTS

This report is the work product of the Steering Committee of the BRC, in an attempt to present a comprehensive view of the deliberations and recommendations of this process. Each individual member of the Steering Committee and each member of the Blue Ribbon Commission as a whole does not necessarily agree with every point raised in the report.

It should also be stated clearly that some members of the BRC and many panelists who spoke at the public forums oppose the legalization of marijuana for recreational use. In no case did participation in the BRC as a member or presenter mean the individual supports legalization of marijuana or that the individual has approved every recommendation in this report.

The Steering Committee members of the Blue Ribbon Commission (Lt. Governor Gavin Newsom, Professor Keith Humphreys, and ACLU of Northern California Executive Director Abdi Soltani) would like to thank all the people who have participated in the proceedings of the Blue Ribbon Commission.

Blue Ribbon Commission Members

Youth Education & Prevention Working Group: Timmen Cermak (co-chair), Marsha Rosenbaum (co-chair), Seth Ammerman, Peter Banys, Carl Hart, Steve Heilig.

Public Safety Working Group: W. David Ball (chair), Neill Franklin, Paul Gallegos, Harlan G. Grossman, Chris Magnus, Craig Reinarman, Avelardo Valdez.

Regulatory & Tax Structure Working Group: Sam Kamin (co-chair) Patrick Oglesby (co-chair) James Araby, Rachel Barry, Erwin Chemerinsky, Igor Grant, Alison Holcomb, Ben Rice.

Panelists at Public Forums and Meetings

Los Angeles: W. David Ball, Ventura Police Chief Ken Corney, Paul Gallegos, Harlan Grossman, Chris Murphy, Kristin Nevedal.

Oakland Forum: Peter Banys, Timmen Cermak, Sikander Iqbal, Marsha Rosenbaum, Deborah Small, Bryan Zaragoza.

Fresno Forum: Elizabeth Cox, Rick Crane, Reedley Police Chief Joe Garza, Mihae Jung, David Lampach, Rob MacCoun, Pat Oglesby, Ben Rice, Tulare County Supervisor Steve Worthley.

Humboldt County Forum: Assemblymember Jim Wood, Humboldt County Sheriff Mike Downey, Keith Humphreys, Paul Gallegos, Mourad Gabriel, Luke Bruner, John Corbett.

Shasta County Community Meeting: Jamie Kerr, Betty Cunningham, Cathy Grindstaff.

Hosts of Public Forums and Meetings: University of California Los Angeles, Fresno State University, Youth UpRising of Oakland, Redwood Playhouse of Garberville, ACLU Chapter of Shasta-Tehama-Trinity County.

Humboldt County Visit Partner: Office of Congressman Jared Huffman.

Individuals and Organizations who 1) submitted testimony, 2) attended public forums, 3) spoke at public forums, and 4) provided additional comment.

Observers of the Blue Ribbon Commission, many of whom also provided testimony:
Sarah Armstrong, Graham Boyd, Ellen Komp, Richard Lee, John Lee, Dale Gieringer, Diane Goldstein, Kristin Nevedal, Amanda Reiman, Dan Rush, Steph Sherer, Dale Sky Jones, Lanny Swerdlow.

Santa Clara University School of Law Students who conducted research on marijuana policy with support of BRC member and working group co-chair Professor David Ball: including Reed Wagner, Claire McKendry, Lawrence Weiss, Forest Miles, Erin Callahan, Ruby Renteria, Jeff Madrak, Phil Brody, and in particular:

- Bethany Brass, for research and writing of "California Recreational Cannabis Tax: Model Options and Other Considerations."
- Keri Gross, for assistance on the public forum in Los Angeles, as well as research and writing of "California Recreational Cannabis Tax: Model Options and Other Considerations."
- Kendra Livingston, for assistance on the public forum in Los Angeles and research on Native American tribal sovereignty.
- Eugene Yoo, for assistance on the public forum in Los Angeles and research on private right of action and DUID.

State Board of Equalization for their early efforts to study marijuana tax policy and organizing a tour of Northern California in which some BRC members and partners were able to participate.

ACLU of California Staff and Consultants: Daniela Bernstein, Margaret Dooley-Sammuli, Wendy Edelstein, Jolene Forman, Clarissa Woo Hermosillo, Allen Hopper, Daniel Galindo, Will Matthews, Courtney Minick, Gigi Pandian, Catrina Roallos, Bill Zimmerman, RootId, Design Action Collective and Grizzly Bear Media.

Lieutenant Governor Newsom Staff: Conrad Gregory and Rhys Williams.

INTRODUCTION

In October 2013, Lieutenant Governor Gavin Newsom announced the formation of the Blue Ribbon Commission (BRC) on Marijuana Policy. Over the last two years, the Blue Ribbon Commission has worked to provide expert research and analysis to help the public and policymakers understand the range of policy issues and options to consider when drafting proposals to legalize, tax, and regulate marijuana.

This spring, the Commission held public forums in Los Angeles, Oakland, Humboldt and Fresno to hear from experts and the public. The Commission also solicited and received written input from the public. Those public comments helped shape the Commission's research and policy recommendations, and are reflected throughout the body of this report.

If Californians opt to move forward with legalizing recreational cannabis production, sale and use, lawmakers and regulators will have many choices to make about who will supply it, who can buy it, how it will be taxed and how it will be regulated.

This report offers analysis of some of the major issues the BRC has been discussing and studying over the past two years and makes a series of recommendations about best practices going forward as the state prepares to vote on legalization of recreational cannabis use.

The BRC is not a policy-setting or advocacy body. From the current period through to the regulatory period after the voters have passed a possible ballot measure, the BRC serves as a resource to interested parties seeking thoughtful analysis about a complicated set of public health, safety, environmental and economic issues.

Current Policy Environment

Any move toward legalization is complicated by the fact that the federal government still lists marijuana as a Schedule 1 drug, creating a series of legal issues for policymakers, the industry and consumers to navigate.

Amid this federal prohibition, California has two current prongs of a marijuana industry: a) a large illicit market of cultivation and retail sale, and b) a quasi-legal medical cannabis system that is largely unregulated, untaxed and untenable. Our loose regulations regarding medical cannabis serve as an invitation to recreational users to use the medical marijuana system, but they are also an invitation for federal intervention because these regulations do not establish clearly what is and is not legal and do not adhere to enforcement guidelines set forth by the U.S. Department of Justice.

Meanwhile, over the past few decades, there is no indication that youth access to marijuana has decreased, and the state government is not receiving substantial tax revenue to help offset the burdens caused by an unregulated industry.

This nebulous system has led to spotty enforcement of federal marijuana laws, and, in some cases, to unfair criminalization of individuals who were trying to play by the rules. Racial disparities persist in the way our criminal justice system continues to deal with marijuana-related offenses.

Unfortunately, the murky legal terrain surrounding cannabis will continue to be an issue for local governments, cultivators, retailers and consumers as long as marijuana remains federally classified as a Schedule 1 drug. While the current federal administration has elected not to crack down on state legalization experiments, this could change at any time. Strong and clear state regulations that deal with medical and adult use of marijuana could immunize the state and its residents, or at least reduce the risk of federal prosecution.

The Commission's work builds upon a growing body of scientific study on the issue of marijuana policy. In its 2015 report "Considering Marijuana Legalization," the RAND Drug Policy Research Center writes that policymakers should consider "broad goals" when contemplating legalization.[7]

This report by the BRC is an effort to articulate the broad goals that should be considered for California based upon the expert analysis of the members of the Commission and input from outside experts and the general public over the course of nearly two years since the Commission's inception in October 2013.

Our goal is to offer analysis to help guide the policy-making process, should California voters opt to go down the path of legalization. It is equally important to realize that any ballot initiative is just another step in that process, not the end. If a ballot measure is going to lead to good, thoughtful public policy, it is imperative that the language of that initiative not hamper needed adjustments in the future. Any ballot measure should allow enough flexibility over time for the creation of effective regulation that is clear, reasonable and responsive, achieves stated goals and is not unduly burdensome.

Our goal is to offer analysis to help guide the policy-making process, should California voters opt to go down the path of legalization.

7 This comprehensive research report by the Rand Drug Policy Center in 2015, while developed for the state of Vermont, provides a comprehensive analysis of the effects of different policy options on marijuana use, supply architecture, taxation and regulation that could be used by other jurisdictions: http://www.rand.org/content/dam/rand/pubs/research_reports/RR800/RR864/RAND_RR864.pdf

BLUE RIBBON COMMISSION WORKING GROUPS

The Commission's work was organized into three working groups, focused on: 1) Youth, 2) Public Safety and 3) Tax and Regulatory Structure. For each topic, the working group convened to identify and discuss issues, reviewed existing research, solicited public and expert input and organized a public forum, which included testimony from expert panelists as well as open public comment. A number of the studies the Blue Ribbon Commission consulted are available on its website.

The Commission held four public forums, each focused on inter-related topics of the BRC: youth, public safety, and taxation and regulation.

Youth: The Youth Education and Prevention Working Group of the Commission reviewed a considerable amount of research on the prevalence and associated risks of marijuana use by youth. At the Oakland forum of the BRC, the Working Group released a Policy Brief, which is included as an Appendix to this report, with an extensive discussion of the issues involving youth and marijuana use.[8] Additional resources on this topic are available on the BRC website.[9]

Panelists and members of the public at the forum on youth held in Oakland raised the valid concern about the risks of early and heavy use of marijuana by youth and the concurrent use of marijuana with tobacco, alcohol or other drugs. They also noted the importance of reducing youth access both in the current illicit and medical market, as well as diversion from any future legal market.[10]

Some members of the public expressed a concern about the message that legalizing marijuana for adult use would send to youth. Others spoke in favor of equipping adolescents with accurate information and real-life skills to make safe and responsible decisions.[11] Advisors from the tobacco control movement have also emphasized that public education strategies aimed at the whole population can be effective in changing youth behavior, rather than solely relying on public education campaigns aimed at youth.

8 To download the BRC Youth Education and Prevention Working Group Policy Brief as a free-standing document, rather than read it as an Appendix in this report, please visit: https://www.safeandsmartpolicy.org/wp-content/uploads/2015/05/Youth-Education-and-Prevention-Policy-Brief.pdf

9 For additional reference materials prepared by members of the BRC Youth Education and Prevention Working Group, please visit: https://www.safeandsmartpolicy.org/reports/youth-education-and-prevention-working-group-reference-materials/

10 For a further analysis of youth and marijuana policy, please see the report "Youth First" by Drs. Tim Cermak and Peter Banys, who also serve on the BRC, published by the California Society of Addiction Medicine: http://www.csam-asam.org/sites/default/files/csam_youth_first_final_14.pdf

11 For further resources on providing accurate information to teens about marijuana and drug use, please consult "Safety First" written by BRC member Marsha Rosenbaum, and published by the Drug Policy Alliance: http://www.drugpolicy.org/sites/default/files/DPA_SafetyFirst_2014_0.pdf

Spotlight on Youth

The BRC focused on youth education, prevention and treatment from the outset. Discussion and analysis of policy solutions aimed at youth can be found throughout this report, including:

- Regulation of marketing, sales and consumption (page 42) Policy solutions on retail sales environment and diversion to youth
- Taxation (page 48) Relationship of taxes to illicit market, price and youth access
- Enforcement (page 57) Enforcing the laws to limit youth access
- Data Collection and Monitoring (page 64) Research to monitor prevalence of marijuana use and impacts on youth
- Use of Revenue (page 65) Investments from marijuana tax revenue for youth programs
- Appendix A (page 72) the full Policy Brief of the Youth Education and Prevention Working Group of the BRC

The working group issued these findings and recommendations:

- Regular or heavy marijuana use at an early age can be associated with reduced educational attainment and educational development.

- Criminal sanctions for marijuana use and possession have multiple negative impacts on youth, especially for youth of color, with regard to educational attainment and employment opportunities, while also reducing law enforcement resources for addressing more serious crime.

- Significant improvements are needed to make drug-safety education more scientifically accurate, realistic and effective at protecting youth.

- Sufficient funding available from marijuana tax revenue, if effectively reserved for and spent on services for youth, could close many gaps in current community-based support for at-risk youth.

- School-based approaches such as Student Assistance Programs (SAPs) are effective in improving school retention, academic achievement and reduction of drug use.

- Universal availability of school-based services throughout California, combined with an evidence-based approach to drug education, could become a reality under a Tax and Regulate public health approach to marijuana policy.

- Well-designed and implemented regulations have the potential to better protect youth.

A few dimensions of these recommendations and those from the Policy Brief of the Youth Education and Prevention Working Group are important to underscore. The recommendations do not focus on marijuana alone but look at marijuana alongside other forms of substance abuse, including alcohol, tobacco and other illegal drugs. They do not isolate substance abuse from other social, emotional and mental health issues facing youth, and the root causes that may drive young people toward substance abuse. They shift the responsibility for addressing youth marijuana use from the primary emphasis on the juvenile justice system to a primary emphasis on public health responses and educational attainment. And they focus on the particular nexus of regular and heavy marijuana use with diminished educational attainment—in both directions—as a point of action. Experts in tobacco control also emphasize the importance of broad-based education campaigns of the public as a whole as an important way to influence youth knowledge and behavior. Concerns about edibles and other products that are particularly appealing to youth were raised. That and other issues affecting regulation that relate to youth are discussed in the Policy Options section.

Public Safety: The Public Safety Working Group of the Commission studied a range of issues related to maintaining safe roads and communities. The forum on public safety, held in Los Angeles, addressed a range of topics, many of which related to enforcement strategies, maintaining separation between the illicit and legal market, and the issues of consumer, workforce and environmental safety, which are discussed throughout this report.

One notable topic was the issue of Driving Under the Influence of Drugs (DUID) on roads and highways, for which the BRC has additional resources on its website. The link between alcohol consumption, alcohol presence in the breath or blood, impairment and crash risk has been well documented, leading to a *per se* standard equating a certain blood alcohol content with a criminal violation of the law, whereas such a scientific link for marijuana has not been established.[12] Similar research on marijuana and other drugs, including prescription drugs, is fairly limited, but important new studies in this area are now being conducted.[13] The combined efforts of federal and local governments to combat drunk driving due to alcohol are paying off, but the prevalence of other drugs is increasing in drivers without the corresponding research or public education campaigns.

12 For a full analysis of the history of drunk driving laws, and the comparison of marijuana and alcohol in relation to the law, please consult this report by UC Berkeley Professor Andrea Roth: https://www.safeandsmartpolicy.org/wp-content/uploads/2015/02/2.5.15-version-DUI-marijuana.pdf

13 The National Highway Traffic Safety Agency released two studies in February 2014 on Driving Under the Influence which address alcohol, marijuana and other drug use and highway safety: http://www.nhtsa.gov/About+NHTSA/Press+Releases/2015/nhtsa-releases-2-impaired-driving-studies-02-2015

Law enforcement has existing tools related to impairment which can be used including for alcohol, marijuana and any number of prescription and illegal drugs: *using probable cause* to make traffic stops and *using roadside impairment tests* to establish impairment. These strategies could be enhanced by 1) additional scientifically valid research on marijuana and crash risk to determine if a valid standard could be adopted linking tetrahydrocannabinol (THC)[14] presence with impairment, 2) development of additional tests of intoxication specific to marijuana,[15] 3) training of officers as drug recognition experts, 4) use of video footage of roadside impairment tests for evidence and 5) consumer education about marijuana consumption and driving safety, including combining use with alcohol.

Spotlight on DUID

An important public safety focus of the BRC was on DUID. Further information can be found throughout this report:

- Introduction (page 3) overview and research related to DUID and highway safety
- Enforcement (page 57) enforcement strategies for road safety
- Data (page 64) data collection and research on marijuana impairment and crash risk
- Use of Funds (page 65) investments and public education for road safety

The deliberations of the working group as well as the public forum hosted on this topic in Los Angeles led to several important findings and recommendations:

- DUID, Road and Highway Safety: A number of steps can be taken to improve road and highway safety as it relates to Driving Under the Influence of Drugs and marijuana impairment specifically. These include support for currently available tools (such as roadside impairment tests available for all drugs) as well as research to develop new scientifically valid tools specific to marijuana.

- Banking: Current federal policy means limited access to banking for marijuana businesses, causing many cultivators and dispensaries to operate on a cash basis. This makes businesses the target of crime, and reduces transparency of financial information. The state should engage the federal government to provide some safe harbor for licensed businesses to access the banking system.

14 Tetrahydrocannabinol (THC) is one of many cannabinoid compounds found in the plant *cannabis sativa L.* and is considered the primary psychoactive ingredient causing intoxication. Other prominent cannabinoids such as cannabidiol (CBD) are not considered psychoactive, although their precise effect is unknown. In contrast, ethyl alcohol is just one compound, dissolved in water, and easily measured. For further discussion on THC and impairment, see these articles by Santa Clara Law student Eugene Yoo: https://druglawandpolicy.wordpress.com/2015/04/04/thc-driving-limits-a-shot-in-the-dark/
https://druglawandpolicy.wordpress.com/2015/03/07/are-high-drivers-high-risk/

15 For a further discussion of attempts to develop a valid way to detect THC and measure impairment, see this article by also by Santa Clara Law student Eugene Yoo: https://druglawandpolicy.wordpress.com/2015/05/05/what-to-expect-and-not-expect-from-the-thc-breathalyzer/

- Masking the Illicit Market: A third major concern is the ways in which a legal market can be a cover for illegal activity, whether small-scale illegal sales to youth or large-scale cultivation and distribution for sales inside or outside California. Many of the recommendations in the Policy Options section of this report focus on available tools to separate the legal and illicit market and to prevent diversion to and from the illegal market, which can be associated with other violent and serious crime.

- Other Dimensions of Safety: Environment, Consumer and Worker. The BRC process addressed other concerns related to public safety that are not currently prominent elements of enforcement, given that law enforcement resources are limited and must be prioritized in other areas. Protection of the environment, consumers and workers can be addressed through civil enforcement and, where appropriate, through criminal enforcement.

Taxation and Regulation: The Tax and Regulatory Working Group studied a range of issues related to policy options in this area, many of which were raised at the public forums held in Fresno and Humboldt. The goals of protecting youth and public safety formed a guiding framework for deliberation regarding taxation and regulation. The extensive findings and recommendations of this working group are discussed in detail later in this report in the chapter titled "Policy Options."

This commission feels strongly that maximizing tax revenue should not be the focus of cannabis policy even though a successful tax system will need to raise money to pay for increased education, public health and enforcement costs associated with marijuana use and any new regulations.

Protecting youth and ensuring safe, healthy communities must be the guiding principles of any cannabis regulation.

Cannabis taxes can have unintended consequences for youth access and general public safety and public health. Protecting youth and ensuring safe, healthy communities must be the guiding principles of any cannabis regulation, even if that means failing to maximize the potential for cannabis as a source of tax revenue.[16]

While promising to fund other government programs through cannabis tax revenue may be a popular selling point for legalization proponents, we do not believe that making government dependent on cannabis taxes makes for sound public policy, nor do we believe cannabis tax revenue will be very large in relation to the total budgets of state and local government.[17] For these reasons, we believe these revenues should be used on a targeted basis to help achieve specific public policy goals related to legalization.

16 For a discussion on the relationship between legalization, price, tax revenue and related issues, please consult "Altered State? Assessing How Marijuana Legalization in California Could Influence Marijuana Consumption and Public Budgets" by the Rand Corporation: http://www.rand.org/pubs/occasional_papers/OP315.html

17 For further discussion on factors that are likely to limit the amount of tax revenue even after legalization, please consult this study by Robert Mikos of Vanderbilt University: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1549828

CALIFORNIA'S UNIQUE CHARACTERISTICS

California policymakers and regulators need to craft a California-centric solution to the complex problems that surround cannabis legalization. Policymakers should also take regional variations into account, and realize that challenges that face the northern part of the state, for example, may be fundamentally different than those in the Southern half.

While there are many lessons to be learned from policy tools developed by national research organizations or from legalization efforts that are further along in Colorado, Washington and other states, California has a unique set of circumstances that will require cannabis laws and regulations that are specifically tailored to California.

We are the most populous state in the nation, with some of the nation's largest urban areas. But we also have millions of acres of rural land, many of which are part of our national or state parks systems.

The magnitude and complexity of legalization in California are influenced by a handful of unique characteristics that deserve specific attention as initiative drafters and lawmakers consider future cannabis policy. These factors, which are illustrated in ***Figure 2***, include:

People

California is a **large state**—home to 38 million people. Implementing a legalization policy in a state of this size has a greater magnitude for that exact reason—the state is just bigger. It will require careful planning and monitoring to ensure safe and effective implementation.

California is a **racially and ethnically diverse** state, with a plurality of the population made up of people of color, a majority of its youth population are people of color, many foreign-born residents, and many languages spoken. Issues related to racial and ethnic disparity—from who has access to the legal market to how to communicate public health messages—must be considered.

California is home to more **people living in poverty** than any other state, in both rural and urban communities. Poverty affects the other social conditions residents face and the resources available to them to address those conditions, posing unique challenges for how to set cannabis policy that protects and promotes the health and safety of communities.

California has a **large youth population**. This youth population is a driving factor in the state's growing racial diversity. Over half the children and youth in California are Latino.[18] California has a high child poverty rate, and youth face a number of other social conditions.[19]

Land

Environmental protection is a priority for Californians, and should be for those making decisions about cannabis policy. This is of particular concern given the size and scope of the current cannabis industry in California.

Environmental protection is a priority for Californians, and should be for those making decisions about cannabis policy.

California is home to **rural producing regions,** which are the center of marijuana cultivation. These include the so-called "Emerald Triangle" counties of Humboldt, Mendocino and Trinity, and other rural counties, as well as rural areas of urban counties.

California is home to **public lands**, where considerable marijuana cultivation takes place. Some of these lands are owned by the state, others by the federal government. California has more than 1.3 million acres of state park land and more than 8 million acres of national forest and wilderness land. This is a challenge for enforcement agents and regulators. It also means cracking down on these illegal grows will take a funded and coordinated effort from federal, state and local officials to ensure our public lands are being protected.

California is home to **watersheds and habitats** that are essential for wildlife and for human health and wellbeing. These regions face serious issues as illegal cultivators clear-cut large areas of forest and apply large amounts of fertilizer and pesticides. Rivers, streams and forests pay the price, as do rare and endangered species and the people who depend on a healthy environment.

California is a state in **severe drought**, where water is a precious resource even in wet years. Cultivation of cannabis requires water, whether indoors or outdoors. While responsible cultivators adopt good practices for responsible water use, illicit cultivation efforts have led to illegal and often wasteful use of water without permits. Currently, illegal grows siphon off millions of gallons of water each year.

18 One measure of youth diversity is based on publc school enrollment, as published by the California Department of Education http://www.cde.ca.gov/ds/sd/cb/ceffingertipfacts.asp. Other sources about the youth population as a whole include U.S. Census data.

19 Many research centers document the social factors shaping the lives of young people in California. KidsData.org is one such useful resource: http://www.kidsdata.org/export/pdf?dem=1

Industry

California is home to the nation's oldest **medical marijuana industry**. Voters passed Proposition 215 in 1996, making it the first state to legalize cannabis use for medicinal purposes. This industry includes entities involved in cultivation, retail sales, testing and many other functions. While the industry is 20 years old, it is largely unregulated at the state level. Policymakers must consider the role of existing players in this industry, many of whom are dedicated to responsible cultivation and use, and yet may also have past criminal records associated with their participation in the medical marijuana industry.

This industry serves a large number of patients who legitimately need and benefit from medical marijuana. It also includes individuals with medical cards who may really be using marijuana primarily for recreational reasons. Trying to navigate a mature medical cannabis market poses unique challenges in crafting tax policy and other regulations associated with legalization of recreational use.

California is also home to a substantial amount of **cannabis cultivation**. There are no reliable statistics on how much cannabis is produced in California, but there is wide agreement that California produces more cannabis than it consumes. California is thought to supply a substantial portion of the illegal cannabis market in the United States. Local officials in Northern California have estimated there are more than 30,000 cannabis gardens in the Emerald Triangle region of the state alone. That means that whatever steps are taken to provide a legal market of cultivation and sales in California, a remaining portion of the state's existing cultivation will not have a legal destination in California.

Besides cannabis, California grows a considerable amount of other crops through a robust industry of **agriculture**. While a substantial focus on cannabis cultivation is on the northern part of the state, every region of California is involved in the cultivation of other agricultural crops. Legalization could lead to farmers in other regions to want to cultivate marijuana, since they would operate under state law and likely without federal prosecution. More cultivation could lead to an oversupply in the market.

California is a **tourism** destination for visitors across the United States and from all over the world. Whether they are coming to see the Golden Gate, Half Dome or Hollywood, tourists enjoy the wonders of this state. Consideration should be given to the fact that some tourists will choose to consume cannabis. Proper guidance for tourists can help ensure safe and responsible consumption, prevent use on federal lands, and also prevent taking home a souvenir in violation of federal law.

Californians have **innovation** in their DNA. A legal, adult-use marijuana market will be the focus of venture capital, entrepreneurs and innovators. Harnessing this talent may create innovations favorable to public health and industry oversight—such as improved testing technology—but could also lead to new products and marketing strategies to attract more heavy users.

Government

California has a complex **state constitution** and extensive state laws, which can affect marijuana policy and regulation in unexpected ways. Our initiative system is part of our political fabric, enshrining changes in our state laws and constitution, including changes to state finance and tax policy. It is important that any tax and fee systems that are established for cannabis abide by those structures, or tailor them specifically for the needs of marijuana regulation.

Laws passed by **citizen initiative** are often more difficult to change or amend than legislative measures or regulatory decisions. There are numerous examples of unintended consequences growing out of ballot measures that have proven challenging for state and local policymakers to navigate. That is why it is imperative that any cannabis legalization initiative be crafted in such a way to allow flexibility for policymakers and regulators.

California has a complex and interconnected system of **local governance** with more than 482 cities and 58 counties, as well as 1,000 school districts. Our state laws and constitution provide local government the unique responsibilities and authority to enact legislation related to land use, taxation and other policies, and other significant responsibilities in the areas of public health, safety and education.

California is home to more than 100 federally recognized Native American tribes, with another 78 entities petitioning for recognition. Tribes in California currently have nearly 100 separate reservations or Rancherias. There are also a number of individual Indian trust allotments.

These lands are run by sovereign **tribal governments**, and are not subject to all of the same rules and regulations of non-tribal lands. Casinos, for example, are allowed on California tribal lands, but nowhere else in the state. Recent policy statements by the U.S. Department of Justice have opened the door for Tribal participation in the cannabis industry. Other states that have tried to regulate cannabis sale, production and cultivation have also wrestled with what laws can and should be extended to tribal lands. With or without state legalization, it is entirely possible that some tribal governments will take steps to participate in the medical and/or adult use market as long as they comply with the same DOJ guidelines as states.

California is a state with significant **federal influence**—and this influence runs both ways. The federal government has a large presence in California, including public lands, national parks and military installations, as well as federal law-enforcement agencies, which the state must consider and respect in its legalization efforts. In turn, the state of California, with its large electorate, congressional delegation and influence with federal executive agencies, can also have a voice in federal policy as it affects our state.

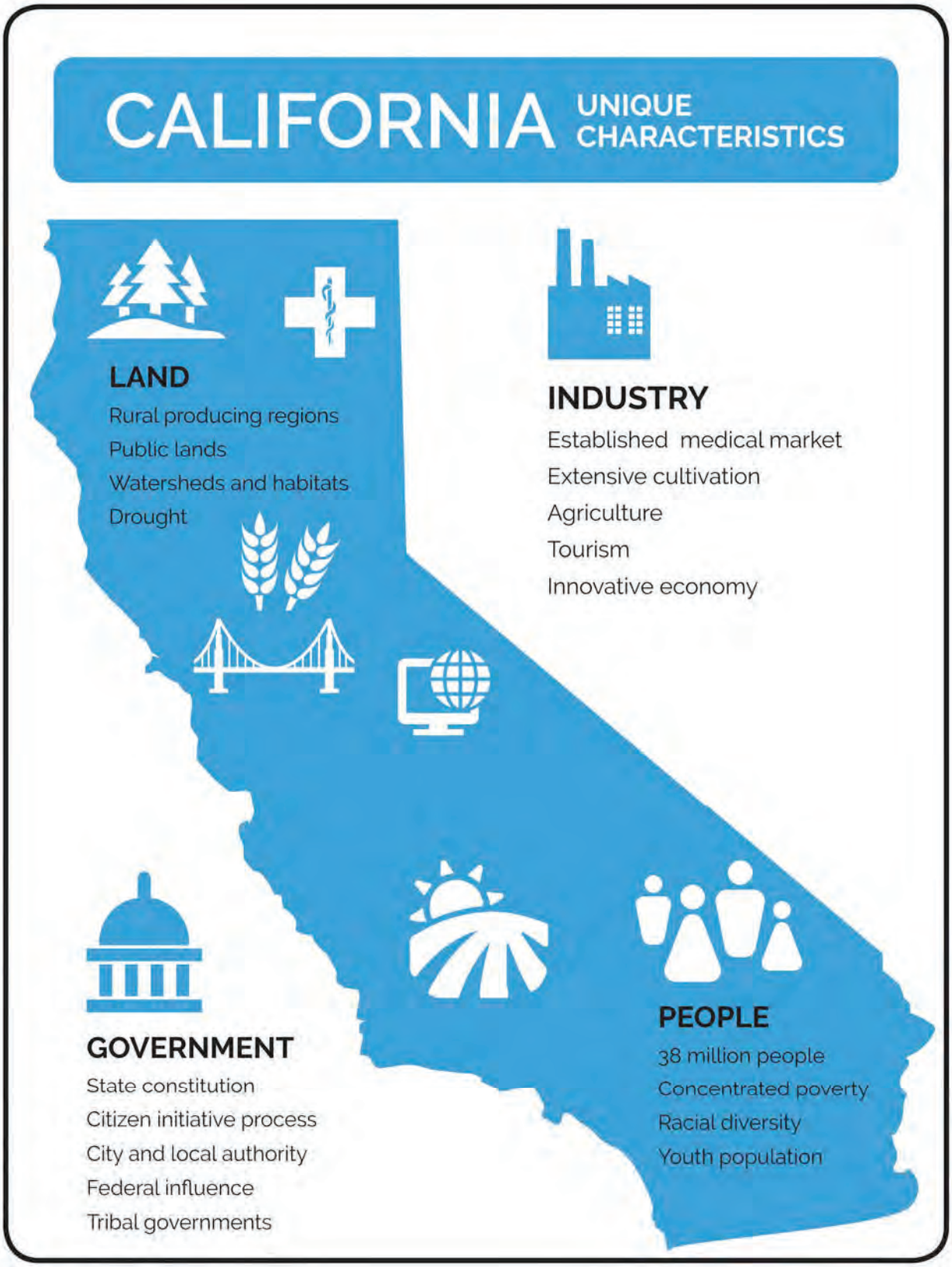
CALIFORNIA
UNIQUE CHARACTERISTICS
LAND
Rural producing regions
Public lands
Watersheds and habitats
Drought
INDUSTRY
Established medical market
Extensive cultivation
Agriculture
Tourism
Innovative economy
GOVERNMENT
State constitution
Citizen initiative process
City and local authority
Federal influence
Tribal governments
PEOPLE
38 million people
Concentrated poverty
Racial diversity
Youth population

Figure 2

FEDERAL COMPLIANCE AND FEDERAL CHANGES

Over the last two decades, 35 states have enacted laws allowing some extent of medical marijuana use. More recently, several states and Washington D.C. have gone further, legalizing and regulating marijuana for adult use beyond medicine. However, virtually all marijuana use outside of federally sanctioned research trials remains illegal under federal law. This has created an interesting set of challenges both for the federal government and for the states that have taken steps to legalize marijuana.

Over the last two decades, 35 states have enacted laws allowing some extent of medical marijuana use.

While the Supremacy Clause of the U.S. Constitution provides that federal law trumps most contradictory state laws, fundamental tenets of our federalist system of government and specific provisions of the federal Controlled Substances Act (CSA) grant the states considerable autonomy to create their own drug laws even if those state laws allow activities prohibited by federal law. The result is that state laws legalizing marijuana are valid, yet at the same time the federal government can enforce its own laws prohibiting marijuana use even within the states that have legalized it under their own law.[20]

While the Supremacy Clause of the U.S. Constitution provides that federal law trumps most contradictory state laws, fundamental tenets of our federalist system of government and specific provisions of the federal Controlled Substances Act grant the states considerable autonomy to create their own drug laws even if those state laws allow activities prohibited by federal law.

Marijuana is still banned under federal law and is listed as a Schedule 1 drug by the Drug Enforcement Agency. The Department of Justice has a marijuana enforcement policy that defines its own priorities at the federal level, but has relied on state and local authorities to enforce their own state marijuana and narcotics laws. The Obama administration has implemented an enforcement compromise between competing federal and state laws. In August of 2013, the Department of Justice released new guidelines in a memo by Deputy Attorney General James Cole to all U.S. Attorneys, which outlined eight enforcement priorities for the federal government in relation to marijuana.[21]

20 For additional analysis on the legal issues of federalism and preemption raised by state and federal marijuana regulation, please consult this *UCLA Law Review* article by Erwin Chemerinksy, Jolene Forman, Allen Hopper and Sam Kamin:
http://www.uclalawreview.org/cooperative-federalism-and-marijuana-regulation-2/

21 The full DOJ memorandum is available at this link: http://www.justice.gov/iso/opa/resources/305201382913275685746 7.pdf

Department of Justice Guidelines

The Department of Justice policy statements are widely understood as allowing states to enact and enforce legalization systems so long as the state laws adequately address these guidelines with the goal of preventing:

1) Distribution of marijuana to minors;
2) Revenue from the sale of marijuana going to criminal enterprises;
3) Diversion of marijuana from states where it is legal under state law to other states;
4) State-authorized marijuana activity from being used as a cover for the trafficking of other illegal drugs or other illegal activity;
5) Violence and the use of firearms in the cultivation and distribution of marijuana;
6) Drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use;
7) Growing of marijuana on public lands and the attendant public safety and environmental dangers; and
8) Possession or use of marijuana on federal property.

The clear message from the current administration is that states will not be sanctioned for legalizing recreational or medical cannabis use if they work within these guidelines. Clarity and focus from state and local officials in ensuring that California remains within these guidelines can help resolve some of the tensions and issues that can arise in this legal environment.

If voters approve a legalization initiative in 2016, state officials should engage the federal government, both to ensure compliance with these federal enforcement priorities and to help change other federal rules that may be obstacles to safe legalization at the state level. By making clear they want to be part of the solution, state officials can play an important role in providing legal and financial clarity for its citizens. There are certain key issues where policy changes are needed at the federal level to allow for clarity and stability in the cannabis industry. Here we discuss two of these issues.

First among these is banking. Because of the federal prohibition on marijuana, people in the marijuana industry who want to be good actors and play by the rules often have limited access to the banking system. Banks are regulated federally and are prohibited from engaging in money laundering for illegal enterprises. While marijuana businesses operating under state regulation may be willing to accept the risks associated with operating under the current federal enforcement guidelines, most banks are averse to do so. That has led to, among other things, dispensaries that operate as cash businesses that are the targets of robbery and violent crime. It also leads to massive cash payments being delivered to tax-collecting agencies for operators who want to abide by state tax laws. Better access to banking can help the state meet its goals, but also allows California to meet the federal guidelines.

A second area is IRS tax rules. The state should engage the federal government on changing current IRS rules that prohibit marijuana-related businesses from deducting normal business expenses from their federal taxes. Licensed retailers, trying to compete with the illicit market, cannot deduct the taxes they pay to wholesalers or cultivators, as can retailers in other industries. This prohibition encourages policies that assess taxes only on retail sales. However, this tax structure may not be the best path forward for California. Securing changes in these IRS rules will increase state flexibility in creating a tax system that is guided primarily by protecting youth, public health and public safety.

LESSONS FROM OTHER STATES

While considering our state's unique features, policymakers can learn lessons from the different approaches taken by other states, and study what has worked and what has not. It is important to understand that effective implementation and regulation will be an ongoing process that will take continued work from state and local officials.

While considering our state's unique features, policymakers can learn lessons from the different approaches taken by other states, and study what has worked and what has not.

In Washington, state lawmakers recently concluded a special legislative session to address issues that have arisen in that state's experimentation with legalized recreational cannabis. Among the changes made during that session were changes to tax policy.

Washington originally levied taxes at every stage of cannabis production, distribution and sale. The state collected a 25% excise tax at three transfer points: when producers sell to processors, when processors sell to retailers and when retailers sell to end consumers—though producers who merged with or became processors could avoid one level of tax, so most did.

The state is moving away from that model to one that simply taxes cannabis at the retail point of sale. Business owners in the industry say the old tax structure inhibited their ability to do business and drove up prices. Part of this has to do with federal rules. As long as cannabis is illegal at the federal level, anyone involved in cultivation would be unable to deduct normal business expenses on federal tax returns (Internal Revenue Code section 280E). Washington's repealed tax on producers was arguably not imposed on production, but rather on a producer's act of selling. So a producer could not deduct it. The state is moving to a system that would charge a one-time tax of 37% on retail sales of both medical and non-medical cannabis (though medical cannabis is exempt from Washington's standard 6.5% retail sales tax). By shifting to a tax at the retail level that the consumer pays, Washington clearly avoids this federal tax problem.

Washington lawmakers also voted to effectively end the side-by-side existence of separate recreational and medical marijuana systems. Medical marijuana dispensaries as they exist now will either close or seek licenses in the regulated adult-use industry. In the future, medical customers will have to look for "medically endorsed" recreational marijuana stores for their supply.

In Colorado, Gov. John Hickenlooper recently signed a measure that will lower that state's retail marijuana tax, with the cut delayed until 2017 to avoid short-term budget problems. The tax rate will go from 10% to 8%. Proponents of the move believe it will lower the price of cannabis, which will help the legal cannabis market compete with the illicit market.

Colorado, which had a more closely regulated medical cannabis system before legalizing recreational use, is trying to move forward with a two-tiered approach that would allow recreational and medical markets to exist side-by-side under slightly different rules and regulations. Colorado originally enacted a 15-percent tax on production, but converted that percentage to a weight-based tax, and collects different per-pound production taxes for the more valuable cannabis flowers (generally used for smoking) and less valuable cannabis trim (leaves and other trimmings that are processed into other products.)

Oregon is currently debating a tax rate and structure for its marijuana market. The Oregon Legislature is considering imposing a 17 percent state tax on retail sales. Cities and counties would be able to levy an additional 3 percent tax if local voters approve.

The table following illustrates some different approaches to tax, regulatory and enforcement policies in Washington, Colorado and Oregon—all states where voters have approved recreational cannabis.[22]

Washington lawmakers also voted to effectively end the side-by-side existence of separate recreational and medical marijuana systems. Medical marijuana dispensaries as they exist now will either close or seek licenses in the regulated adult-use industry. In the future, medical customers will have to look for "medically endorsed" recreational marijuana stores for their supply.

22 Adapted from Oregon Liquor Control Commission. Retrieved from http://www.oregon.gov/olcc/marijuana/Documents/Measure91_sidebysidecomparison.pdf

OREGON/WASHINGTON/COLORADO COMPARISON

	OREGON	WASHINGTON	COLORADO
Tax Rate	$35 per ounce of marijuana flower, $10 per ounce for leaves, $5 per immature plant, paid by the producer. State has exclusive right to tax.	37% marijuana excise tax collected exclusively at retail level—charged to customer.	10% special sales tax paid by consumer on retail marijuana/products. 15% wholesale excise tax for marijuana based on average market price of product.
Retail and Wholesale	Licensed entities may sell at both wholesale and retail levels.	"Tiered structure" prohibits licensed entities from selling at both wholesale and retail levels.	For initial rollout, retailers were required to produce 70% of their own product. (Provision expired 10/1/14.)
Home Cultivation	4 plants.	Prohibited.	6 plants per person, with 3 being mature plants. 12 plants maximum per residence.
Drugged Driving	Oregon Liquor Control Commission is required to report to Legislature about driving under influence of marijuana. Current law prohibits driving under influence of any controlled substance, including marijuana.	Per se drugged driving limit: drivers with THC levels greater than 5ng/mL of blood are guilty of marijuana DUI.	Marijuana impairment can be legally inferred at THC levels greater than 5ng/mL of blood, but defendant can rebut presumption of impairment.
Local Control	The measure preempts any local ordinances. Local governments may adopt time, place and manner regulations, but may prohibit recreational marijuana businesses only via general election.	Washington AG has declared that local governments are not pre-empted from adopting ordinances that prohibit recreational marijuana businesses	Local governments may prohibit marijuana businesses.
Number of Licenses	Measure 91 does not limit the number of licenses that may be issued.	Retail licenses capped at 334 for the state.	No limit on total number of licenses.
Medical Marijuana	Measure 91 does not impact the Oregon Medical Marijuana Act but does distinguish medical marijuana as applying to patients with qualifying medical conditions.	State recently combined medical and recreational into one recreational system. Patients will now use "medically endorsed" recreational cannabis stores under new system.	For initial rollout, only licensed medical dispensaries were allowed to apply for retail licenses. (Provision expired 10/1/14.)

Figure 3

POLICY OPTIONS

The Blue Ribbon Commission divided its work into three broad topic areas to match three significant public concerns about legalized recreational cannabis use in California. The Commission held a public hearing on each of these topics and solicited expert and public testimony in each area. Those three topic areas were:

1) Public Safety
2) Youth Education and Prevention
3) Tax and Regulatory Structure

While this structure gave us access to a broad spectrum of expert opinion and sensitized us to a myriad of critical and important problems, solutions to those problems necessarily overlap across the three issues. It also sensitized us to the reality that a policy that works well in one area can complicate matters in another. For example, a tax that is too high may maintain or boost the illicit market, posing a danger to public safety and increasing illegal grows that have a negative environmental impact. A tax that is too low could contribute to a low price that could lead to increased use.

Given this significant crossover and the likely possibility of unintended consequences, we believe it is imperative that drafters build as much flexibility as possible into a legalization initiative. The process of legalizing recreational cannabis should be viewed as just that—a process. The ballot initiative is the beginning of that process, and should be structured to allow state and local lawmakers and regulators flexibility to improve and adapt enabling legislation and policy. Details specified in ballot initiatives can be changed only by other ballot initiatives unless specifically stated in the initiative itself. Requiring additional voter approval is too cumbersome and difficult for necessary adjustments and accommodations likely to be needed as experience reveals unanticipated problems.

Agencies Responsible for Implementation and Stakeholder Engagement

The Blue Ribbon Commission did not focus on which state agency or state agencies should be responsible for regulation. However, given what we have learned through the scope of our work, a few themes are emerging. First, a designated individual or entity should be charged with the authority and responsibility to provide oversight of implementation. This entity would be required to coordinate a number of state agencies that would have a significant role in the regulation of the industry and implementation of the policy—from the Board of Equalization to the Department of Public Health to many others.

Given the wide scope of areas that are involved in marijuana regulation, it is necessary to engage the many state agencies focused on those specific functions, rather than try to recreate expertise in literally dozens of areas all in one new entity. At the same time, distributing authority without any central

A range of stakeholders—including law enforcement, treatment providers, patient advocates, public health, civil rights, youth, parents, researchers and the public—should be engaged in the process.

coordination and accountability would create problems as well. This also is a topic where California can learn from other states that have legalized marijuana, as well as from the regulation and control of alcohol, tobacco and other products subject to state or federal regulation.[23]

A range of stakeholders—including law enforcement, treatment providers, patient advocates, public health, civil rights, youth, parents, researchers and the public—should be engaged in the process. The level of thoughtful, constructive and insightful public comment from many sectors through the proceedings of the Blue Ribbon Commission is a positive indicator of the contribution that Californians can make to a future implementation process. Such public engagement is built into California's regulatory process, with periods of notice and public comment before regulations are finalized. The state should periodically publish reports of the progress, successes and challenges of implementation and provide for public and stakeholder feedback for course corrections.

Additional structures for more formal stakeholder engagement should also be considered. It is critical that any boards, commissions or agencies that oversee the legal marijuana industry represent all the public interests of the people of California rather than being dominated by individuals with an economic stake in the industry itself.

Summary of Policy Option Recommendations

Earlier, in the Introduction to this report, we discussed specific recommendations related to Youth and Public Safety, two of the working groups of the BRC. In this section, we summarize the recommendations of the BRC as they relate to tax and regulatory decisions, the third working group. It is important to note that many of the tax and regulatory recommendations are informed by the goals related to youth and public safety. They are organized first as a group of general recommendations and then by seven specific areas of policy discussed in more detail in the subsequent sections of this chapter.

23 A new report written by students in a class led by Professor Robert MacCoun of Stanford Law School provides an extensive discussion of the advantages and disadvantages of different agency choices and structures for marijuana regulation, starting on Page 16: https://www.law.stanford.edu/sites/default/files/publication/988796/doc/slspublic/SLS Marijuana Policy Practicum Report.pdf

General Recommendations

1. Develop a highly regulated market with enforcement and oversight capacity from the beginning, not an unregulated free market; this industry should not be California's next Gold Rush.

2. Build ongoing regulatory flexibility and responsiveness into the process, while ensuring regulatory agencies are engaged constructively to ensure successful and faithful implementation.

3. Establish a coordinated regulatory scheme that is clearly defined with a unified state system of licensing and oversight, as well as local regulation.

4. Designate a central person, agency or entity with the authority and responsibility to coordinate the implementation process and to engage all relevant state agencies and local governments in their respective roles in the process.

5. Any boards, commissions or agencies that oversee the legal marijuana industry should represent all the public interests of the people of California rather than being dominated by individuals with an economic stake in the industry itself.

Build ongoing regulatory flexibility and responsiveness into the process, while ensuring regulatory agencies are engaged constructively to ensure successful and faithful implementation.

6. State officials should engage the federal government, both to ensure industry compliance with current federal enforcement priorities and to help change other federal rules that may be obstacles to safe legalization at the state level.

Marijuana industry structure

7. Consider options that limit the size and power—both economic and political—of entities in the marijuana industry, through limits on the number and types of licenses that are issued to the same entity or owners, limits on the size of any one license, encouragement of non-commercial options and incentives for smaller players. The goal should be to prevent the growth of a large, corporate marijuana industry dominated by a small number of players, as we see with Big Tobacco or the alcohol industry.

8. Require participants in the cannabis industry to meet high standards of licensing and training, and provide paths of entry to the industry for California's diverse population.

9. Licensing fees should be set at reasonable levels to cover the cost of regulation, certification and oversight by state and local government. They should not be so onerous as to limit smaller actors from participating in the industry.

10. Business entities involved in the marijuana industry should be required to hold both state licenses and local permits.

11. Provide flexibility and authority for local government to adopt additional measures responsive to public health, safety and economic development, as well as to regulate business practices of licensees in their jurisdiction. Apart from this local authority to regulate commerce, the state should set uniform minimum guidelines related to personal cultivation, possession and consumption.

12. Urge the federal government to provide better access to banking in order to help the state meet its goals, and also help California comply with federal guidelines.

13. Accommodate the medical and recreational uses of marijuana based on conscious policy decisions as to which functions of the two systems will be merged and which will remain separate. To the extent any functions are merged, ensure certain key guidelines are met to ensure medical access. To the extent any functions are separate or provide a benefit to patients, establish clearer guidelines for who can qualify as a patient.

Regulating marijuana cultivation and processing

14. Protect the ability of individuals to consume, possess or cultivate marijuana within certain uniform statewide guidelines, apart from the additional authority granted to local government.

15. Provide for a designated level of legal licensed cultivation at the state level, and in coordination with local government, to supply the demand in California, without diversion to other states.

16. Establish a statewide seed-to-sale tracking system ensuring that marijuana is cultivated, distributed and sold through the licensed, regulated system, with the minimum amount of diversion out to—or in from—the illicit market.

17. Current participants in the market who have been responsible actors, and are willing to be licensed and abide by regulations should be given consideration for the new recreational licenses.

18. Existing environmental laws must be enforced. State and local agencies responsible for this enforcement should have the authority and resources to ensure marijuana cultivation meets environmental standards.

19. Afford the same protections and rights to cannabis workers as other workers in the similar industries.

20. Testing of cannabis—for potency as well as for pesticides, molds and other contaminants—should occur near the points of harvesting and/or processing.

Regulating marijuana marketing, sales and consumption

21. Testing and oversight of the supply chain (through a seed to sale tracking system) should be in place throughout the process—including at the stage of retail sales to ensure consumer safety and to limit diversion to and from the illicit market.

22. The state should regulate the retail sales environment (ID and age requirement of 21 years old and over to enter stores, public health information, child-proof packaging) and what marijuana products can legally be brought to market (including limits on THC content, products such as concentrates and different forms of edibles).

23. All products should have consistent labeling, especially as to dosage and concentration of key cannabinoids.

24. Through their permitting, land use, and regulatory authority, local governments can limit the number of marijuana retailers, limit retailer density and maintain cannabis-free zones near places like schools and parks.

25. Place limits on advertising and marketing of marijuana, in accordance with constitutional standards, with the particular aim of limiting or prohibiting tactics aimed at youth or that encourage heavy and problematic use.

26. Comply with public smoking, smoke-free, and public consumption laws.

Taxing marijuana

27. Adjust the taxation of the industry periodically throughout implementation, including the base, type, timing and level of tax.

28. When determining changes to the level and type of tax, consider the four core strategies (public interest, legal actors, illicit market, and capture revenue) and specific policy goals (youth, public health, medical access) as the basis for those changes.

29. The state should engage the federal government on changing IRS rules that prohibit marijuana-related businesses from deducting normal business expenses from their federal taxes; this change will help responsible actors pay tax at whatever stage of production the state determines is best for public policy.

30. A successful tax system will raise the money needed to pay for the increased education, public health and enforcement costs associated with marijuana use and new regulations. However, this commission feels strongly that maximizing revenue—which would depend on higher levels of consumption - should not be the focus of cannabis tax policy.

Enforcing the new rules

31. Deploy a spectrum of enforcement tools appropriate to the offense, with clarity regarding state and local responsibilities using a) inspections and demands for correction for licensed entities that regularly comply with the law, recognizing the higher cost of compliance they have relative to the illicit market, b) civil enforcement tools of fines, suspensions and license revocations for entities that regularly fail to meet standards, c) alternatives to incarceration for low-level offenses in the illicit market, and d) the most serious criminal justice penalties for individuals who cultivate on public land, engage in large-scale trafficking, operate enterprises to sell to youth or engage in other violent or serious crime.

32. State law needs to clarify how enforcement responsibilities will be divided between state and local agencies.

33. Illegal sales by adults to minors, as well as illegal cultivation on public and private lands, must remain enforcement priorities.

34. Policymakers should consider alternatives to arrest and jail wherever possible for youth involved in marijuana sales.

Collecting Data

35. Conduct research and collect and analyze data on key indicators to make further, evidence-based decisions through the course of implementation.

36. Data collection should include demographic factors, such as race, age, income bracket, etc.

37. Data collection and research should cover a range of topics, with metrics and indicators aligned to the core strategies (for example, the size of the illicit market) and policy goals the state adopts (for example, youth, public health, etc.)

38. Research and data collection related to youth, public health and public safety should include marijuana as well as tobacco, alcohol, illegal drugs, abuse of prescription drugs, etc.

39. This research and monitoring function should be paid for from marijuana tax revenue.

40. The state should periodically publish reports of comprehensive data, with information about progress, successes and challenges of implementation and provide for public and stakeholder feedback for course corrections.

Using the new revenue

41. Revenue raised from marijuana taxes should be used to help further the public interest in achieving the policy goals directly associated with legalization. Governments should not view marijuana taxes as a potential source of general fund revenue. All investments should be evaluated for their impact on the desired goals.

42. The state must fund necessary programs to protect youth, including evidence-based education, prevention and treatment; and also universally available assistance to students in schools and community-based settings, for example Student Assistance Program.

43. Funding should be available from the outset for a vigorous public health effort to educate the public and provide health-based solutions and responses to problem use.

44. Funding should be provided for public safety, such as better research on impaired driving, and enforcement priorities, such as sales to minors and grows on public lands.

45. Funding should be provided to invest in communities with high levels of unemployment, high levels of crime, and large numbers of drug arrests to provide general job training and employment opportunities.

The rest of this chapter is devoted to exploring the tax and regulatory policy discussions of the Commission, which contributed to many of the above recommendations. They are grouped into the following seven categories:

A. Defining the Marijuana Industry Structure
B. Regulating Marijuana Cultivation and Processing
C. Regulating Marijuana Marketing, Sales and Consumption
D. Taxing Marijuana
E. Enforcing the New Rules
F. Data Collection and Monitoring
G. Using The New Revenue from Marijuana

A. Defining the Marijuana Industry Structure

Scale and Integration

The comprehensive study by the RAND Corporation provides an explanation of the variety of choices relating to the basic structure of the industry. Indeed, the choice is not a binary choice between prohibition and unregulated legalization. There are many intermediary points in the spectrum even among legalization options. These range from state monopoly to public benefit or not-for-profit corporations, to small for-profit entities, to a for-profit industry with no limits to scale.

In evaluating these options relative to the specific conditions in California, a prudent approach is to take a middle course. Given the federal prohibition against marijuana, a state monopoly, whatever its virtues and drawbacks, would require many of its employees to systematically commit—and document that they had committed—federal felonies. Another public model allows local public authorities to participate in the market, similar to the quasi-municipal store that sells recreational cannabis in North Bonneville, Washington.

The Commission and many of the individuals it consulted had significant reservations about the other end of the continuum, namely a market dominated by large corporations that could exert increasing influence on the commercial and political process.

It is appropriate and probably wise for the state of California to adopt a path that limits the size and power—both economic and political—of any one entity in the marijuana industry. The experience of tobacco and alcohol control shows that large corporations with resources for political influence (legislative lobbying, campaign contributions, regulatory interference) and marketing muscle will promote widespread and heavy use to increase sales and profits. Legislative behavior in this context is often incongruent with public health goals.

In addition to limiting the scale of operations, it may be appropriate for the state to set limits on vertical integration, namely what different licenses the same entity can have in the supply chain; or horizontal integration, namely what other non-cannabis businesses in which a cannabis business can also participate.

There are many small players already in the marijuana market in California, and bringing these players into the fold of a legalization system is a valid goal, as is the goal of spreading the economic opportunities and benefits of a legal market. If that is the goal, it would be appropriate for the state to adopt laws or regulations that either encourage more small entities, or even go further, and limit the size of any individual actor involved in cultivation or sales in this market. This may have the effect of increasing the relative costs to produce and sell marijuana. It will also increase the costs of regulating and inspecting a system with many actors. This kind of industry structure would have some similarities to the so-called "craft beer" market where many small players (local microbreweries) exist at one end of the scale, and larger players (regional craft breweries) exist at the other end of the scale, with plenty of room in the market for a large spectrum of entities.

In evaluating these (industry structure) options relative to the specific conditions in California, a prudent approach is to take a middle course.

In addition to size, the state can consider whether to encourage or provide incentives in regulations for participants in this market to be nonprofit or public benefit corporations, but with these entities still taxed on their cultivation or sales. Such a model would be more akin to local credit unions than large statewide banks. Many medical marijuana dispensaries are currently established as nonprofit or public benefit corporations.

Regardless of what dominant form the industry takes, allowing individuals the right to grow their own cannabis and share it without financial profit would provide consumers another option and put some constraints on the power of corporate actors. Balanced against these benefits is the danger that some growers will also sell to the illicit market. Limits on the number of plants would reduce the risk of diversion to the illicit market, while larger grows can be addressed through other means.

In terms of vertical integration, some states are experimenting with a closed, vertically integrated system, such that a dispensary will have a set amount of area under cultivation, matching the amount of area to the amount of potential sales and tax paid. For instance, Colorado has adopted a "70/30 rule" that is still required in the medical marijuana system but was only temporarily required for the recreational system, which forces retailers to grow 70% of the marijuana they sell. This model treats each system of cultivator-retailer as a relatively closed system that has its production, sales and taxes measured. Many of the current collectives and cooperatives in the medical marijuana market operate in this manner.

Criticism of such a system includes a concern that these entities are poorly run without accountability or that in the long term it may give too much power to single entities. For example, alcohol regulation clearly separates manufacturer, distributor and retailer, with few exceptions. Prohibiting all vertical integration would have the effect of breaking up some current responsible players in the medical marijuana industry who engage in cultivation and sales, while requiring vertical integration of cultivation and sales could force large numbers of small incumbent growers into rushed and perhaps unwanted "shotgun marriages" with retailers.

In the area of horizontal integration, the question arises of what other products cultivators can grow or wholesalers and retailers can sell beyond cannabis. Some argue that at a retail level, on-site consumption of marijuana should be permitted in adult-only facilities that also sell food. Others are concerned about the simultaneous consumption specifically of alcohol and marijuana. These issues will be discussed later in the discussion of licensing and later in retail sales.

In evaluating these options, policymakers and voters must consider the tradeoffs inherent in these options. If the policy goal is to promote market access, so as to spread the economic opportunities in this market to a larger number of actors and to reduce the concentration of power, then an industry structure that encourages more small players will be beneficial. Such a system will probably have higher prices, greater costs of regulation and more potential locations for diversion along the supply chain.

Licensing and Training

Participants in this industry should meet high standards of licensing and training.

Licensing should apply to any entity that seeks to participate in the marijuana industry, which can include the following:

- cultivators who grow cannabis, harvest it and process it
- distributors and wholesalers, who may also be involved in processing, packaging, labeling in bulk or for individual sale
- manufacturers who make specific products for retail sale
- retailers who sell to individuals
- transporters who are responsible for delivery between any two points in the system, including to individuals through delivery services, if applicable
- suppliers of seeds, cannabis agricultural products or products and supplies
- product testing, cannabis technology vendors, third-party certifiers, training providers and any other entities involved in supply chain monitoring, product safety testing or employee training

The section on testing and supply chain management, which relates to regulation of cultivation and retail sales, addresses the possibility of using technology to monitor the flow of supply through each stage of legal licensing, providing real-time statewide information to regulators.

Decisions need to be made as to 1) how many licenses an individual or entity can hold in any one stage or across multiple stages of the supply chain, 2) how many licenses will be given at any stage, and whether the industry will have a "choke point" or "hour glass" structure through which most of the supply must flow, 3) how much commerce can be conducted on each license, 4) the extent to which a licensee in that stage can be involved in both medical and adult use of marijuana to the extent a distinction remains, 5) whether licensees in any one stage can be involved in another industry or product.

Licensing fees should be reasonable to provide for the cost of certification and oversight, and not be so onerous as to limit participation in the industry to only those with large amounts of capital. Further, if license fees are too high, it will be a further reason for current players who wish to comply with regulations to remain in the illicit market. The temporary or permanent loss of such a license would be

among the available enforcement sanctions available to policymakers and government. It would be appropriate for state or local government to evaluate potential licensees based on their qualifications to participate and their commitment to comply with the law.

Beyond licensing the entities and organizations in the industry, policymakers should consider licensing and workforce training requirements for the individuals involved in the industry as workers. This agricultural industry will not be like others. It must establish public trust in its operation, handle a high-value crop, and ensure that its harvest is not diverted to the illicit market. For these reasons, consideration of employee licensing and workforce training in cultivation is appropriate. Likewise, this retail industry will not be like others. The employees in retail establishments could be licensed and trained in the health impacts of cannabis, the risk factors of heavy use, the critical priority of limiting youth access, and the consequences of breaking these rules. These measures would be intended to regulate cannabis, in a sense, better than alcohol or tobacco, which do not face similar requirements.

To ensure access, any individual requirement could be provided through apprenticeships concurrent to paid employment, rather than just as an educational requirement before employment. Any such requirements may also need to be phased in over time, rather than required at the outset.

The requirement of business and individual licensing also provides an additional tool for civil enforcement: the potential to levy fees and fines, pursue unfair business or competition laws, collect taxes and the potential to revoke licenses for entities and individuals who do not play by the rules. It provides a tool beyond criminal sanctions, which should be reserved to the extent possible for serious, repeated or large-scale offenses in this new industry.

Beyond licensing the entities and organizations in the industry, policymakers should consider licensing and workforce training requirements for the individuals involved in the industry as workers.

Medical Marijuana

The Blue Ribbon Commission was not established to evaluate the benefits or limits of marijuana as medicine generally or for specific conditions. California voters made the decision to legalize medical marijuana 20 years ago and scientists continue to research these medical benefits and limits with many doctors giving recommendations to patients for its use. Many other states have followed California in legalizing medical marijuana, but the federal government does not recognize marijuana as medicine. Even then, marijuana is very different from the traditional drugs the FDA regulates, which are made up of just one or a few compounds.

In this context, a major public policy question is how the legal recreational marijuana market would work alongside the medical marijuana market. And to the extent that any distinction is maintained that provides a benefit for medical marijuana compared to other adult uses of marijuana, attention needs to be paid to the criteria based on which marijuana can be used for medicine, which in turn requires evidence and

research to guide doctors, patients and policymakers. In California's current medical marijuana system, patients with serious and legitimate medical needs coexist with adult users with medical cards whose main use of marijuana is recreational.

The experience of the State of Washington, which had a very loosely regulated medical cannabis system prior to the legalization of recreational use, is important for California to consider. The newly legal recreational system competes for customers with the medical system, where those users may pay no excise tax and thus are unlikely to move over to the recreational system.

Ultimately, California will have to consider whether to treat recreational and medical marijuana the same or differently.

In an attempt to reconcile the two systems, earlier this year, state lawmakers in Washington effectively consolidated the medical and recreational systems, after concerns that a regulated and taxed recreational market could not effectively function alongside the existing medical market Washington had created.

California's medical system is also unregulated at the state level, with a patchwork of differing local regulations from county to county and from city to city. The success of a legal recreational approach in California is necessarily intertwined with the nature of its existing medical marijuana system. As of this writing, bills proposed in the California legislature seek to establish a statewide regulatory framework for medical cannabis.

Ultimately, California will have to consider whether to treat recreational and medical marijuana the same or differently. Some issues are likely to be the same – for example, no driver should get behind the wheel of a car while impaired, regardless of the reason for consuming marijuana. Other policy issues will require specific attention, as illustrated in ***Table 1.***

Table 1: Regulatory Decisions of Medical and Recreational Marijuana

Function	Medical-Recreational Same for that Function	Medical-Recreational Separate for that Function
Regulatory Oversight	Same regulatory entities develop and oversee rules for all uses, including for medical and recreational uses.	Different regulatory entities develop and maintain rules for unique systems.
Cultivation, Manufacturing, Distribution, etc.	Same entities can cultivate, process, manufacture, distribute, test, or otherwise supply products for both the medical and adult-use market.	Different entities would need to be licensed to specifically provide that specific stage for medical and adult- use markets.
Retail Stores	Same retailer can sell a variety of products to both medical and adult- use customer.	Totally separate retailers, some for medical only, and some for recreational only, with no overlap.
Customer	Customers for medical and recreational treated the same, requirement to show ID to establish 21 years of age, no medical card required. Patients aged 18-21 would require a medical card for specific medical conditions.	Medical patients continue with valid medical cards. May need to tighten standards to obtain the medical card. Recreational users show ID only to establish 21 years or older.
Plants and Products	Same range of products available for medical or recreational use. Same high level of quality testing and labeling for product safety and content.	Encourage plant biodiversity and require products that have stronger therapeutic or medical benefits to the extent possible; stricter testing, quality control and labeling for medical products.
Tax Rate	Same taxes, both excise and sales, charged for marijuana regardless of whether consumer is medical or recreational.	Higher taxes charged either for recreational customers, recreational retail stores, or, if possible, for products intended for recreational use. Or a discount on taxes could be available for qualified medical patients with serious medical need, could means test based on Medi-Cal.
Who is Allowed to Discuss Possible Health Benefits	All retail workers trained and licensed for both medical and recreational sales and are allowed to discuss possible health benefits with customers/patients up to the same limit, recognizing these employees are not doctors or pharmacists.	Only specially trained and licensed professionals allowed to discuss possible medical or health benefits in the retail sales facility up to the limit allowable for employees who are not doctors or pharmacists; all other retail sales staff prohibited from doing so.

Policymakers can pick:

1) Unitary System: All policy choices completely merge the two markets into one and treat them the same.

This has the advantage that state and local governments have to establish only one—rather than two—legal systems, while they also work to limit the illicit market. Legal actors in the market can reach the entire market of both recreational and medical users, which would help them offset the costs of compliance with regulations and better compete against the illicit market. A possible drawback is the potential for medical patients to now pay additional excise taxes, although this could be offset if there is a comparable drop in prices, such that the after-tax price before and after is similar to what it is now without an excise tax.

Another drawback to a unitary system is the potential for the larger recreational market to drown out the development and marketing of products with medical and therapeutic benefits. That could be offset with strategies outside the marijuana marketplace: 1) investments in scientific research into the medical benefits and limits of marijuana for a variety of medical conditions, age groups, etc. and 2) education and dissemination of information to doctors about those medical benefits and limits so they can make better informed recommendations to patients that match the labeling requirements for all cannabis products (product type, chemical content, dosage, etc.) leaving the customer to only need assistance in the retail store to find that type of product, without further medical advice needed in the retail store.

2) Completely Separate Systems: All policy choices to maintain complete separation of medical and adult use from seed to sale.

This model ensures that those patients with valid medical needs receive different, specialized products and services. The issue of 18-21 year olds with valid medical need would be addressed; they would pick up their medicine at the same retailers with adults 21 and over that also have medical need. This model does risk increasing the costs both for regulators and for cultivators and retailers because they could only work on one side of the industry or the other. If the medical products are subject to stronger testing requirements, and have a more limited market size and customer base to spread their fixed costs, those products may well become more expensive—potentially much more expensive—because of the underlying business costs, even if the tax rate is lower than recreational. In this case, some medical users would likely turn to the adult use retailers anyway, which will still have tested and labeled products for basic consumer safety needs, potentially leaving the medical retailers with even fewer customers.

3) Hybrid System(s): Some policy choices merged and some separated.

Starting with a unitary system where all functions are merged, perhaps the first accommodation of a separate function would be how to provide medical marijuana to patients with valid medical needs between the ages of 18-21. Consideration should be given as to whether stricter controls for access to

medical cards would be needed for 18-21 year olds than current policy. The reality is that these young adults, who are not minors, can currently access marijuana through either the medical or illicit market.

Policymakers could also mix and match additional functions, with a dizzying number of combinations. For example, the same regulatory agency could oversee both systems (the FDA regulates certain aspects of both food and drug regulation), and cultivators could grow cannabis for either market. Retailers could be the same, but the employees who sell could be differently trained and licensed within the same retail facility.

The reality is that young adults, who are not minors, currently access marijuana through either the medical or illicit market.

Policymakers could merge almost all the functions to achieve the greatest efficiency but tax patients with serious medical needs at a lower rate than recreational users or offer them subsidized or reduced prices at the point of retail sale. This avoids the risk of a small separate medical system with higher operating costs passed on as higher prices to patients, despite a lower tax for patients. But it creates a new problem— incentivizing adults to still get medical marijuana cards. To combat the problem of adults abusing the medical system, the state could establish stronger requirements to obtain a medical card, which would impose a burden on doctors and legitimate patients. Yet another option is to waive taxes or offer subsidized prices to patients with both a valid medical marijuana card and on Medi-Cal, ensuring that subsidies are going only to those with financial need.

These questions have to be asked: Does the benefit of a lower tax for patients justify the burden to patients and doctors posed by stricter requirements for medical cards in order to keep recreational users out of the less taxed medical marijuana system? Or, in an effort to avoid that burden on patients and doctors, is the benefit of a lower tax for everyone applied equally worth the reduction in tax revenue? Could a smaller medical industry provide competitive prices for unique products and services relative to the legal adult-use market, regardless of tax? What other unique issues face patients who need medicine, as compared to other adult users who choose marijuana for recreational purposes?

These policy decisions need to be made and their impacts monitored, with flexibility built in to the new rules so that they can be adjusted in response to lessons learned. California can also learn from lessons in Washington and Colorado, with the former integrating medical and adult use, and the latter maintaining separate systems.

Regardless of how the two systems are structured, these five guidelines should be considered:

1) **Research** into medical marijuana benefits and its limits in treating various medical conditions

2) **Information** provided to doctors and patients from reliable sources about those medical benefits and limits

3) **Products** with medical and therapeutic value, as well as plants bred for those purposes

4) **Affordability** for patients with true medical needs relative to current costs, taking into consideration both the underlying product cost and the excise taxes that are imposed

5) **Access** for patients, including the seriously ill, with relative convenience and in establishments respectful of their needs.[24]

The first of these points—research—deserves more discussion.[25] Given its number of universities and medical centers, California itself can support further research into the medical benefits and limits of marijuana for a range of medical conditions. Ultimately, the federal government may consider the medical benefits and limits of marijuana as well. One challenge in the long term is that cannabis is a plant, made up of many chemical compounds beyond just THC or CBD, whereas the FDA traditionally approves prescription drugs that are made up of only one or just a handful of compounds.

Given the number of universities and medical centers, California itself can support further research into the medical benefits and limits of marijuana for a range of medical conditions.

It should be noted that in every gym, there are people who exercise for medical reasons (e.g., rehabilitating after an injury) and people who exercise because they enjoy it or want to improve their appearance. In every grocery store there are people buying the same products because they like the taste, and because they expect a health benefit. It is not therefore clear that there needs to be an entirely distinct medical and recreational sales system for cannabis; the costs of an entirely separate system do not seem to be justified relative to the benefits. However, a completely unitary system for adults aged 21 and over, ignores 18-to-21-year-old medical patients with legitimate need. It also leaves the seriously ill to fend for themselves in a market that will likely tilt toward a larger customer base of recreational users seeking intoxication. Invariably, even a system merged in some functions will need to maintain unique elements to meet the needs of patients.

24 For additional information from a patient advocate perspective on the regulation of medical marijuana alongside adult use, consult this policy brief from Americans for Safe Access: https://american-safe-access.s3.amazonaws.com/Hunter/Med_v_Rec_rev1.pdf

25 For additional information on the perspective of doctors related to marijuana regulation, please see this 2011 policy brief "Cannabis and the Regulatory Void" from the California Medical Association: https://www.safeandsmartpolicy.org/wp-content/uploads/2015/04/CMA_Cannabis_TAC_White_Paper.pdf

Local and State Regulation

Throughout this discussion of policy options, consideration needs to be given to the extent to which state law drives the process, and the extent to which local regulation is permitted. Business entities involved in the marijuana industry should probably be required to hold both state licenses and local permits in the jurisdiction in which the business operates, similar to many other industries. In this instance, in order to comply with Department of Justice requirements, state oversight and licensing is a necessary component. This interplay between state and local regulation can exist across a spectrum:

- State rules *preempting* any further local rules
- State rules *permitting* further local rules (whether those rules are more permissive or restrictive)
- State rules permitting *local opt out* (banning a certain stage of the marijuana industry altogether such as cultivation, retail sale, whether by a vote of a legislative body or the requirement of a vote by local citizens)
- State rules providing *parameters* within which local government can act

Through the course of the public phase of the Blue Ribbon Commission, it has been made clear that some degree of flexibility for local government in marijuana policy and enforcement is necessary. The experience of tobacco and alcohol regulation points to the need to authorize local government to enact measures responsive to community public health, safety and economic development concerns. In these industries, state preemption of local laws was often used to maintain low levels of regulation and enforcement, by preventing local government from enacting stronger regulations. The ability of local government to adopt innovative policies to control over-consumption through retail licensing laws is important in any marijuana regulatory regime. Many industries exercise more power at the state legislative and regulatory level than they can in local government.

At the same time, many residents who participated in the Blue Ribbon Commission spoke with great frustration about their local government's adoption of de facto bans on medical marijuana cultivation or sales. They look to uniform statewide rules that are consistent and reliable throughout the state.

Native American Tribes

California is a state with a large number of Native American tribes, each of which has sovereignty in many aspects of its operations, with some areas subject to federal law and in some cases subject also to state law. The role of tribal lands comes into play in 1) cultivation, 2) on-site consumption at the point of retail sale, 3) purchase for transport to homes outside tribal lands, 4) tax collection and more. Some tribes operate facilities such as casinos, including in urban areas, so this is an urban and rural issue.

Late in 2014, the federal government announced that the same Department of Justice guidelines applicable to states with regard to marijuana regulation and enforcement are applicable to Native American tribes. Because of the complex nature of both federal-state preemption, and federal-state-tribal relationships, it may be that Native American tribes in California can proceed even now with medical and/or adult recreational marijuana cultivation or sale, even without any state approval or further state legalization. If California takes the step of legalizing marijuana for adult use, it certainly affects the chances that Native American tribes would do so as well, and it would not be clear if the tribes would be subject to local and state regulation. Legislators and/or those crafting a ballot initiative should consider explicitly addressing the unique needs and legal status of the state's many tribes when drafting these new laws and regulations. A further question is whether each tribe would be subject to the federal guidelines individually, while being denied the ability to participate in the rest of the state market. The Blue Ribbon Commission is not offering a legal opinion on these questions, but identifying them as issues for consideration.

Path to Entry

One of the core issues that needs to be addressed is who can work in or own licenses in this new industry, and whether previous criminal records should be a bar to entry. A variety of the core strategies of legalization and a variety of public policy goals come into play here.

Many current cultivators or sellers of marijuana have prior criminal convictions, while others do not. If a strategy of legalization is to bring current participants in the illicit market who are willing to comply with regulations into the legal market, then categorical exclusions of people who have in the past or are currently in the illicit market would be counterproductive, leaving many to continue working in the illicit market. Such categorical exclusions would also exacerbate racial disparities given past disparities in marijuana enforcement. For these reasons, categorical exclusions that are too broad, and that overly rely on past convictions as predictors of future behavior, should not be considered.

Important goals—such as those related to youth, public safety, consumer safety and many others—require the new industry to be composed of people who will uphold the law and require that there be consequences for those who do not. A core public safety goal is to ensure that the legal market does not act as a cover for illegal activity. Everything from diversion from the legal market, sales to youth, and tax evasion are ways licensees could violate the law.

There are several approaches available to strike the right balance in this area. To the extent that past offenses should be considered, one possible approach is to limit exclusions to serious crimes unrelated to marijuana where a specific, valid risk or concern exists. Within marijuana or drug-related offenses, consideration could be given to the nature of the offense: how serious the offense was, how long ago the person was convicted, etc.

In addition, failure to participate in or complete training and licensing requirements is an obvious reason to exclude an individual from the legal market. And any concern about their potential to divert product

to the illicit market or to sell to youth must be addressed through effective oversight of the supply chain and effective enforcement of preventing sales to minors. The threat of and actual loss of a license in the marijuana industry based on failure to follow the law and regulations is yet another tool to ensure compliance.

B. Regulating Marijuana Cultivation and Processing

Cultivation for Personal Consumption

Growing cannabis for personal consumption is an important topic, but it is relatively self-contained so we will address it on its own first, before going into the main discussion on cultivation.

After the passage of Proposition 215, Senate Bill 420 established certain rules for the medical marijuana system including a state limit of 6 mature and 12 immature plants, and possession of up to 8 ounces of marijuana, with certain exceptions. A similar model could be established to provide statewide guidelines for cultivation for personal use. Counties could provide additional flexibility or rules, but since cultivation for personal use is not a business or commercial activity, local outright bans of personal cultivation may not be appropriate, especially for medical use. If an individual exceeds these limits, for instance with a large unlicensed grow, law enforcement can use these guidelines to remedy the problem.

Matching Supply and Legal Demand

The major challenge for regulating marijuana cultivation is the sheer size and scope of California's cannabis production. California is the fruit basket of America, a leader in the cultivation and export of dozens of varieties of fruits, vegetables, nuts, wine, dairy and meat products. Marijuana is not an exception. While firm figures are not available, every analyst we consulted believes that a significant portion of the marijuana grown in California is sold out-of-state (and that a meaningful part of the nation's marijuana supply is grown in California). This is a critically important point, because it means that there is currently more supply than there is demand in the legal in-state market.

This is important first and foremost because California likely does not want to invite a new gold rush of people into the state to cultivate marijuana, as happened in counties like Santa Cruz after fairly permissive policies were passed before regulatory capacity was in place. While it is not likely legal to exclude people from other parts of the country *permanently* from the legal market in California, the message must be clear that California does not need to add to the supply of marijuana. Residency requirements in Colorado and Washington have not been challenged and continue to operate unscathed (aggrieved nonresidents would need a court to grant federal constitutional protection for commerce that is deemed federally illegal). While a residency period would likely run afoul of the federal constitution eventually, some consideration should be given to ways to slow down the ability of out-of-state residents to enter the market.

Because of the limited demand in the market for a legal supply, it is important that the amount of cannabis supplied be available to a reasonably large number of smaller producers. Current cannabis cultivators who are willing to be licensed and abide by regulations and who have responsible track records should be given due consideration in a market where legal supply exceeds legal demand. Probably a bigger issue than out-of-state migration into California will be current California farmers who cultivate other crops that may want to become licensed to cultivate marijuana, adding further to a possible oversupply of cannabis in the market.

A valid policy approach is to try to maintain a price for legal, regulated marijuana that can compete with the illegal market but that does not drop dramatically to the point that it helps foster overuse and its associated public health harms. If the state is successful in adopting rules and tax policies that do not result in a collapse in price, even small farmers should be able to operate at a scale and with a profit margin to succeed economically.

One challenge for how to manage supply is the interaction of state and local regulation, and the interaction of state and local tax revenue. If localities benefit from taxes imposed at the point of cultivation, some rural counties may want to encourage a large amount of cultivation, at a level greater than the state market as a whole can bear from that county. On the other hand, if taxes are imposed only at the point of sale, areas where production flourishes may lose out on any significant revenue gains while bearing the burden of production. Consideration must be given as to what a fair division of tax revenue should look like when taking into account the differences of how localities will participate in this industry. Some will mainly cultivate and produce, some will mainly sell at retail, and some will opt out entirely. Any tax scheme among these varying jurisdictions will require deliberation and balance.

One approach is to allow fluctuations in price and healthy business competition to act as drivers in balancing supply and demand in the market. But, this method poses the risk of a sharp price drop, reduction in state revenue (if taxes are tied to retail price), and greater risk of diversion toward out-of-state sales. Another approach is for the state to determine a level of cultivation that would meet the demand in California (by weight of product or square footage of cultivation area), allocate a certain amount to counties that enter the regulated cultivation market and provide licenses to cultivators meeting the total state and county cultivation targets. The level of production can have a flexible cap set by a regulatory agency that adjusts depending on demand in the legal market and efforts to reduce the illicit market. We can look to Colorado as an example of a state that has set and is managing production caps, as well as to other models of agricultural regulation, where the government has a hand in making sure that supply and demand of some commodities remain in relative balance over time in order to avoid rapid price changes.

Land Use, Water and Wildlife

One of the critical challenges facing regions with illicit cultivation is the impact on the environment. Land use issues are an important consideration in marijuana policy, both in cultivation and in sales.[26] There are

26 For more information on land use and marijuana regulation as they pertain to both cultivation and sales, please see these articles by Santa Clara Law student Laurence Weiss: https://druglawandpolicy.wordpress.com/2015/03/04/the-fight-for-the-future-of-commercial-marijuana-land-use/ https://druglawandpolicy.wordpress.com/2015/05/09/cannabis-land-use-regulation-in-the-warm-california-sun-santa-cruz/

laws already in place at the state and local levels against pollution, agricultural runoff, diversion of streams and the like. Whether new laws are needed or not for marijuana cultivation specifically, it is clear that existing environmental laws must be enforced. State and local agencies responsible for this enforcement should have the authority and mandate to do so with marijuana cultivation as well.

Under a legalization and regulation system, licensed cultivators should be able to access various permits to better comply with water, land use, grading, and other environmental considerations, the same as people growing other legal crops. Failure to comply with environmental and water rules could be grounds for loss of such a license. A portion of tax revenue could be designated to environmental restoration of sensitive habitats and watersheds, especially those affected by cannabis cultivation.

One challenge for regulating cultivation to mitigate environmental harm is that a portion of the product will not have a legal destination in California; even if the grower wants to comply with environmental laws and local permits, they may not be able to get a state license. Unlicensed growers who blatantly disregard environmental rules and those growers who continue to operate illegally on public lands or trespass on private lands pose a different challenge. These unscrupulous cultivators should be the priority for law enforcement.

Worker Protection and Safety

The workforce involved in marijuana cultivation and processing should be afforded the same protections and rights as other workers in the agriculture and processing industries. This includes the right to collective bargaining, as well as other worker safety protections. Once again, consideration should be given not only to these issues in the regulated industry, but also to make those involved in the illicit market that abuse workers an enforcement priority.

Licensing requirements are commonplace in many industries, often coupled with a formal requirement of training or a specific college or professional degree. Apprenticeships are a useful model of providing that training while an employee is working and receiving compensation. If the state adopts licensing requirements for individual employees, the requirements should balance the needed training requirements without creating undue barriers that drive large numbers of people to remain working in the illicit market.

Testing and Monitoring the Supply Chain

Cultivation is the first step in supply chain management. After cultivation comes processing, which is an intensive part of the cannabis process. Testing of cannabis—for potency and also to ensure that it is free of contaminants, pesticides and mold—should occur near this point in the supply chain before any products reach the retail level. Cannabis in many forms may be processed for sale at this point and distributed in bulk. Technology can be used to begin the monitoring of all cannabis supplies as they pass through the supply chain, from licensed entity to licensed entity to the point of legal retail sale. Comparable models from other industries include the tracking of produce and meat through the supply

chain to ensure product safety and for the purpose of product recalls. Colorado, Washington and other states are already experimenting with ways to provide testing and technology that enables regulators to monitor the marijuana supply chain. Key goals at this stage are to ensure that 1) illegally cultivated cannabis does not enter the legal supply chain, 2) licensed cannabis cultivation is not diverted to the illegal market, both in state or out-of-state, and 3) only product that is tested for safety and cannabinoid content proceeds to the retail market.[27]

Consideration should be given as to when in the supply chain manufactured, branded or packaged products can be produced; whether on site at the point of cultivation, in distribution centers or at the point of retail sale.

Movement along the supply chain from cannabis cultivation to retail sales may include an intermediary stage with a wholesaler or distributor. For example, in the case of alcohol regulation, a three-tier system of producer, distributor and retailer separates those functions with only a few exceptions allowed. Regardless of industry structure or licensing scheme, testing and oversight of the entire supply chain should exist from the beginning of cultivation through to the final point of sale. The technology monitoring the supply chain should record transfers from cultivators or processors to retailers, and then the further sale to and tax collection from customers. Possible further testing on samples at the retail point of sale can be used to confirm cannabinoid content, accurate labeling, as well as to confirm that the product remains free of contamination or other unwanted adulteration.

C. Regulating Marijuana Marketing, Sales and Consumption

Regulating What Products Can Be Sold: Smokable, Edible and Beyond

Cannabis is an evolving plant, and with it come ever-evolving products. Innovations in breeding are leading to new strains of cannabis. Innovations in processing are yielding new concentrates and forms of marijuana. Innovations in production are yielding greater varieties of products such as new types of edibles. Just as policymakers can regulate the level of alcohol in beer, wine and spirits (which is easier to do because ethyl alcohol is the only active ingredient in alcoholic drinks and it is readily measured), it is appropriate for the state to have some oversight in relation to what products can legally be brought to market, including possible limits on THC content, limits on products such as concentrates, and limits on different forms of edibles.

Regardless, all products should have consistent labeling, especially in regards to dosage and concentrations of key cannabinoids. Experience from tobacco control can be useful in this area, where products carry large warning labels of possible health risks. As was adopted in tobacco restrictions for the cartoon character, Joe Camel, no product should be packaged in a way that would especially appeal to children or be confused by children as a product meant for them. One way to avoid attracting the attention of young people is to sell products in plain packaging in order to reduce their visual appeal.

27 For additional information on testing and analysis of marijuana, please consult resources from the state of Washington: http://liq.wa.gov/marijuana/botec_reports

Policymakers should consider regulations for the different types of marijuana products. The most common product is dried cannabis flower intended for smoking, which comes with the associated health risks of smoking[28] in general. Policymakers should also anticipate "vaping," whereby a concentrated extract of cannabis is vaporized and inhaled. Consumption of cannabis concentrates through various forms of vaporization is gaining favor in some segments of the market. Although current research has not led to a broad consensus, researchers are concerned about the health effects of vaping, whether from tobacco or marijuana, and continue to conduct various studies. Care must be applied to consider policies that regulate the new and innovative ways cannabis is being consumed.

Edible marijuana products (e.g., cannabis-infused baked goods or cannabis-infused drinks) have the advantage of not being inhaled as smoke into the lungs, as well as the related advantage of not causing secondhand smoke. But edibles come with a problem of their own—because metabolism of THC via digestion is slower than direct absorption into the blood via the lungs, it can take longer for the effect to be felt, causing some people to ingest a greater amount of THC than they intended. Edible products also carry the risk of being accidentally consumed by individuals (including children and adults) who did not intend to or should not consume marijuana at all, especially if the product resembles enticing food or candy. Strong guidelines on labeling should require clear information on cannabinoid content, dosage and timing for the onset and duration of effects. Consistent and accurate labeling, when combined with consultation by trained and licensed workers at the retail location, should help prevent over dosage and unintended consumption. Limiting the amount of THC within each separately sealed package is another option, as are other regulations on what products can be sold. Edibles could also be sold in tamper-proof or childproof packaging.

Where Marijuana Can Be Consumed

The following factors must be considered in regard to where marijuana can be consumed, including the product type and the variety of locations:

- Product type—is it smokable, edible, etc.
- Single family residence—issue of secondhand smoke, indoor or outdoor smoking
- Apartment—issue of ventilation systems, air circulation, rules on indoor smoking
- Renters and landlords—issue of lease agreements and general housing laws[29]

28 For more information on the health effects of second hand smoke from tobacco and marijuana, please see this article by Matthew Springer and Stanton Glantz: https://tobacco.ucsf.edu/marijuana-use-and-heart-disease-potential-effects-public-exposure-smoke

29 For discussion of tenant-landlord issues, evictions and other issues related to marijuana consumption by tenants, see this article by Santa Clara Law student Ruby Renteria: https://druglawandpolicy.wordpress.com/2015/05/22/medicated-patients-facing-eviction-because-most-landlords-are-not-pot-friendly/

- Public housing—marijuana possession and consumption remain illegal under federal law, but landlords receiving Section 8 subsidy have discretion[30]

- Vehicle—no consumption in any form by driver or passenger, similar to open-bottle laws

- Parks, open space, public space—subject to local and state rules

- Federal lands—consumption prohibited

- Hotels—California has many tourists who stay in hotels, motels, and alternative lodging like Airbnb

- Presence of children, youth and young adults—schools, colleges, dorms, playgrounds, etc.

There are complex issues related to on-site and off-site consumption of cannabis.[31] This is illustrated by a concern in Colorado that the absence of legal places for novice consumers and tourists to smoke marijuana led many to consume edible marijuana products instead, which had stronger intoxication effects than they anticipated. Because of this unintended consequence, some have argued for on-site consumption as a way to provide more choices for responsible consumption.

But on-site consumption has drawbacks as well. One set of drawbacks relate to the consumer, who would feel the effect of the marijuana outside the safety and comfort of their home, and who may consume too much if the retailer is motivated to sell more product and increase use, as is sometimes the case with the sale of alcohol in bars.

Another issue is compliance with smoke-free laws to protect workers from exposure to smoke from the use of combustible marijuana in indoor spaces, which would be a serious health issue. Colorado law allows for some clubs where members pay dues and can smoke. California's current smoke-free laws also have exceptions where some businesses can allow on-site indoor smoking of tobacco (for example, businesses with fewer than five employees). Any consideration of marijuana smoking within California's smoke-free laws must consider the impact of secondhand smoke on workers.

Exposure to smoke from marijuana is harmful to health just as exposure to tobacco smoke is. If the state of California takes the step of legalizing recreational marijuana, the state's laws related to smoke-free indoor spaces, public smoking, and public consumption and intoxication from alcohol could be reviewed as possible guidelines in relation to public smoking or consumption of marijuana.

30 For an analysis of HUD guidelines on Section 8 housing, please see this article also by Santa Clara Law student Ruby Renteria: https://druglawandpolicy.wordpress.com/2015/03/18/hud-has-cleared-the-smoke-it-is-now-safe-for-landlords-and-public-housing-agencies-to-come-down/

31 For a series of articles on on-site consumption, please consult these posts by Santa Clara Law student Phil Brody: https://druglawandpolicy.wordpress.com/author/pbrody2015/

Workplace Considerations

Employers have the ability to set rules related to a drug-free workplace. Each employer can consider the unique factors facing their workplace, which can include issues like worker safety, hazardous situations, workers operating motor vehicles and equipment, workers in sensitive positions, etc. Many employers also have their own licensing requirements or consideration for compliance with federal rules, for example, the operation of large vehicles with special licensing requirements. Employers already must contend with a range of issues related to workers who come to work under the influence, consume drugs at work, or have substance abuse problems that extend to a number of substances including marijuana, alcohol, other illegal drugs, prescription drugs and more.

Employers should retain the ability to set their drug-free workplace policies and apply them fairly and equally among all their employees.

Employers should retain the ability to set their drug-free workplace policies and apply them fairly and equally among all their employees. Marijuana, however, poses a special challenge. It is a common drug and its use is widespread, similar to alcohol. THC remains in the system long after its effects have worn off. Also, alcohol is socially accepted, and some employers do not prohibit employees from having a beer at lunch, and the employer may even provide alcohol at work functions. In the absence of reliable tests of impairment, employers may want to retain the ability to enforce a drug-free workplace policy against an employee who may not be impaired but has THC present in their system. To medical marijuana users, such a policy is overly strict. Finding the right balance between employer and employee considerations in this area is important. Development of reliable tests of impairment will be important for workplace considerations, as it is for determining DUID.

Retail Licensing Laws

Local governments have considerable authority through zoning and land-use laws to regulate business entities within their jurisdiction. One of the regular concerns raised in the public forums of the Blue Ribbon Commission regarded the location siting and conduct of some current retailers in the medical marijuana industry who do not adhere to state or local laws or industry best practices. Public health and community development advocates who participated in the BRC hearings cited the concern that marijuana dispensaries are often sited/concentrated in poor communities and communities of color. These advocates noted that oftentimes, these same communities may also have a strong presence of other retailers selling tobacco or alcohol, while simultaneously lacking access to fresh food, drug addiction services, or job opportunities. Retailer density in poor communities and communities of color as it relates to tobacco and alcohol can shed light on potential risks for problem marijuana consumption.

Local governments, when issuing licenses to businesses that plan to sell marijuana, should consider these issues of equity in terms of siting cannabis businesses. Through their licensing authority, local

governments can limit the number of marijuana retailers, limit retailer density and require set distances from places like schools and parks.

While concerns were raised about overly permissive zoning, licensing and siting decisions, particularly in poor communities and communities of color, others in the BRC process, particularly from more rural counties, had the opposite concern: entire cities or counties that essentially opted out of any legal medical marijuana market, including personal cultivation. It may be appropriate for the state to set or incentivize some lower and upper limits on the presence and location of marijuana retailers through tax measures, regulations or other inducements. Local restrictions that directly or effectively ban the commercial market should be evaluated in relation to the extent to which they stimulate demand in illicit market.

Limits on Advertising and Marketing

Years of work by the tobacco control community have resulted in stronger limits on advertising for tobacco than for alcohol. Tobacco advertising restrictions began with radio and television in 1970. In 1998, after the settlement of a major lawsuit with tobacco companies, further restrictions were put in place that prohibited billboards, cartoon characters, event sponsorships and any other advertising that was particularly appealing to youth. The legal settlement, however, did not address advertising tobacco products in print, online and in retail stores, areas where tobacco companies increasingly concentrate their marketing expenditures, particularly after 1998. Alcohol has much more permissive rules for advertising, including broadcasting on programs such as sports events with large numbers of people under 21 watching. Pharmaceutical drugs are also widely advertised on television, on the Internet and in print publications.

Years of work by the tobacco control community have resulted in stronger limits on advertising for tobacco than for alcohol.

Because players in the marijuana industry currently operate at relatively small scales, it is unlikely that initial levels of advertising would lead to significant problems. Nevertheless, there are considerable benefits to limiting the advertising and marketing of marijuana, even if it may pose a challenge to marijuana retailers and consumers. Advertising rules could limit exposure to children and youth, and limit tactics that target young people, poor communities, communities of color, women and LGBTQ communities. More limited commercial advertising also allows for public messaging about safe and responsible use and health risks to reach the audience more effectively. Local or state policy could prohibit coupons, promotions, discounts, bulk sales and other enticing offers by retailers.

There are several available policy tools to limit advertising and marketing. The first, and perhaps most effective policy tool is shaping the industry's structure itself, specifically, creating an industry structure that works to limit the size and scale of any one actor. Without very large actors in the industry, few, if any, will have the resources for broadcast media advertising. This type of indirect limit on advertising rests on the government's ability to license and regulate the industry. While a trade association may band

together to advertise, its resources would likely be more limited than what a single large corporation could deploy.

A second approach is to limit in-store sales and marketing to only those retail locations or dispensaries where adults aged 21 and over can enter, and as discussed earlier, to limit what other non-cannabis products can be sold in these establishments so that adults enter with the sole purpose of purchasing cannabis. These choices can have the effect of preventing youth exposure to in-store advertising, and likewise that adults who were not intending to buy marijuana would not initiate a purchase due to point-of-sale marketing tactics.

The third tool is to adopt actual limits to advertising through legislation that meets constitutional standards.[32] Because the federal government regulates broadcast media such as TV and radio, and because the Controlled Substances Act specifically bars advertising of a Schedule I controlled substance, marijuana advertising would not have federal constitutional protection. State constitutional protections might apply to some mediums of advertising (perhaps not those explicitly regulated by the federal government) and some types of restrictions, for example, those aimed at limiting exposure to youth. Whether and how state constitutional protections for this form of advertising would affect the ability of state and local government to regulate it in certain media requires further analysis.

The fourth policy tool is the denial of tax deductions for business advertising. Under section 280E of current income tax law, taxpayers cannot deduct the expenses of cannabis advertising on their federal returns. Similarly, individual taxpayers cannot now deduct those expenses on their California returns. There is no federal or state Constitutional right to deduct advertising or marketing expenses for any business, cannabis related or not. To be sure, denying state tax deductions would not eliminate advertising, but that approach would make it somewhat more costly. However, when legal operators are shouldering the costs of regulation, licensing and compliance, as well as other tax burdens, without the benefit of regular business tax deductions, such an additional burden at the outset may be too onerous.

A different but related approach is to limit the overall extent and types of marketing to adults, and in particular, to regulate sales practices that draw in new users (bundled sales for discount with other products, free offers with purchases of other products, etc.) or that may encourage regular or habitual use of marijuana (bulk discounts, coupons, loyalty points, etc.).

Limiting Sales and Diversion to Youth

California youth already have ready access to marijuana, as described in the Policy Brief of the Youth Education and Prevention Working Group. Likewise, the illicit selling of cannabis will continue at some level, even with enforcement and competition from a legal market. The issue of enforcement will be addressed in a subsequent section, including for the illicit market. A key component of regulating licensed retailers, however, will be to ensure that 1) the product is not diverted generally into illicit sales, and 2)

32 For a further discussion of advertising and state and federal constitutional issues, please see this article by Santa Clara Law student Jeff Madrak: https://druglawandpolicy.wordpress.com/2015/03/30/building-big-marijuana-marketing-and-advertising-for-the-brave/

the product is not sold, or resold, to youth. For this second objective, regulation and licensing of retailers, the threat of the loss of licenses and fines, workforce training requirements and other provisions will be needed to limit youth access. Limits on advertising and marketing, as well as restricting marijuana advertising in businesses youth can enter, must be given consideration. Retailers should be responsible for activity both on-site and in the immediate vicinity of their facilities. Customers can be notified of this important requirement and its consequence at the point of purchase. Illegal resale by adults to youth after the point of sale is more difficult to enforce through the retailer, and is addressed in the enforcement section.

D. Taxing Marijuana

The ability to tax cannabis is one of the main political reasons given to support recreational legalization. A successful tax system will need to raise money to pay for increased education, public health and enforcement costs associated with marijuana cultivation and use. However, this commission feels strongly that maximizing tax revenue should not be the focus of cannabis tax policy.

California will have to wrestle with when and how to tax marijuana. Each decision has trade-offs that must be considered by policymakers. Protecting youth and ensuring safe, healthy communities must be the guiding principles of any cannabis regulation, even if that means failing to maximize the potential for cannabis as a source of tax revenue.

While promising to fund other government programs with cannabis taxes may be a popular selling point for legalization proponents, we do not believe that making government dependent on cannabis taxes makes for sound public policy. Tax dependence can produce an alliance between government and corporations committed to maximizing sales and revenue. Furthermore, while the tax revenue may be noticeable and substantial, we do not expect tax revenue from cannabis to be so large as to make a dramatic impact on the state budget as a whole.

Yet it still remains that a logical and effective taxation system can help establish effective broader public policy. Regulators and decision makers should consider how to set up a tax scheme that will help them achieve the core goals of legalization policy that have been stated earlier in this report.

In drafting any taxation scheme, it is important to devise a plan that can be administered and enforced effectively. Tax policy can be the driving force for public policy only if it is effectively enforced, and effective enforcement will result only from systems that can be properly administered.

Tax and regulatory compliance should be simple to execute and formulated in a way that makes compliance desirable to market participants.[33]

33 For additional information and analysis of taxation, drawing lessons and applications from other California excise taxes on substances such as alcohol and tobacco, and products such as fuel, please see this paper by Santa Clara Law students Bethany Brass and Keri Gross prepared in consultation with members of the BRC and submitted to the Board of Equalization in June of 2015: https://druglawandpolicy.files.wordpress.com/2015/07/ca-cannabis-tax-options_wriiten-by_b-brass-k-gross.pdf

HOW TO TAX: PRICE VS. WEIGHT VS. THC

Discussion of marijuana taxation is mainly about an excise tax, which is a specific tax on a product (as we have for alcohol, cigarettes, gasoline) that is above and beyond the standard sales tax charged on nearly all products. A key question is whether any excise taxes on legal marijuana should impose a constant amount based on weight (e.g., $1/gram) or be a percentage of price, "ad valorem" (e.g., 15% of sale price). Alternatively, taxes could be based on the amount of THC, or perhaps other cannabinoids, sold.

An excise tax can be based on the quantity of cannabis sold. For example, the federal government charges an 18-cents-per-gallon excise tax that doesn't change when the price of gasoline goes up or down. Similarly, California's tire fee is $1.75 per tire, regardless of price. In contrast, an ad valorem tax is charged as a percentage of the price paid. In California, for example, if a consumer buys an item on sale they get not only a lower price, they also pay less tax because the 7.5% state sales-tax rate is based on the lower price charged during the sale.[34]

Price-based Taxes

Taxing by percentage of sale price seems easy and quick. This is the approach that Washington State has taken. Regulators need not worry about measuring the weight or potency of the product, which is important because these variables can change based on various factors during cultivation and processing.

But calculating marijuana taxes as a percentage of price creates the danger that taxes will be, at first, too high, and then later too low. Initial business start-up costs and possible shortages in supply can drive up the retail cannabis cost in the beginning, artificially creating more tax revenue. But then as businesses and the market mature and production costs go down, tax revenue will decrease. Taxes that are too high make prices for the legal market unattractive to consumers relative to the prices for the untaxed illicit market. This results in two negative effects: (1) lower actual tax collections, and (2) a continued illicit market.

In the short run, however, early supply shortages in the taxed legal market, combined with increased demand for taxed legal cannabis, could mean that the legal market will be able to sell all available supply at a price that consumers are willing to pay—a price that leaves cannabis companies with plenty of cash flow to stay comfortably in business. In this constrained-supply scenario, high taxes early on may, for a short time, create no problems.

In time however, businesses in the market will adapt. Efficiency, business experience and eliminating the need to hide from law enforcement will drive the industry's costs down. When those efficiencies are reflected as cost savings in the price of marijuana, the price will fall, perhaps dramatically. The state

34 For further discussion of the advantages and disadvantages of different types of tax and levels of tax, please see the Stanford Law School report, starting on page 44: https://www.law.stanford.edu/sites/default/files/publication/988796/doc/slspublic/SLS Marijuana Policy Practicum Report.pdf

revenue brought in by ad valorem taxes would shrink right along with it. There would also be no meaningful floor for the price of marijuana, and cheap marijuana could both attract more young people and problem users, and could lead to federal government intervention if criminals take advantage by distributing the cheap cannabis around the country. In addition, taxing based on price invites attempts to circumvent the tax, like employee discounts or "free" cannabis with non-cannabis purchase, in order to disguise the true price.

Another issue with price-based taxation is that prices can be hard to find or measure. That's why Colorado's original 15% price-based producer tax was converted to a weight base—so the state has something it can measure. In many cases, there is no actual producer price to tax. Colorado originally required producers to sell directly to consumers (forced vertical integration). When the producer is not a separate entity from the retailer, there is no "arm's-length," or actual, producer price. The absence of an arm's-length market price caused the state to estimate an "average market rate" which it uses to compute a weight-based tax. This average market rate, adjusted every six months, applies even to sales between unrelated parties.

Weight-based taxes

A weight-based excise tax has the advantage of creating a kind of price floor under the market and guaranteeing at least some government revenue even in the event of a marijuana price collapse. Assessing tax on the basis of the weight sold raises potential arguments about when the weight should be assessed (e.g., at the farm gate, at the processor, at the retail outlet) and how to account for the fact that, as a harvested plant, marijuana will change in weight as it loses moisture.

Colorado's de facto weight tax uses scales calibrated at the outset and then periodically adjusted by the Department of Agriculture. All commercial cannabis travels tax-paid, accompanied by shipping manifests, in bags of not more than one pound, with the state notified whenever transportation occurs.

A further challenge of a weight-based tax is that it could incentivize producers to make extremely high-potency products so as to reduce the amount of tax per unit of THC sold. With a single tax rate, an ounce of marijuana that has 15% THC would be taxed at the same level as an ounce of marijuana with only 5% THC. There may be advantages to avoiding a market filled with high THC cannabis products, just as there are advantages to alcoholic beverages being widely available at strengths lower than that of hard liquor: increased consumer choice and greater chance that people will establish non-dependent use patterns that do not harm their health.

A policy could compensate for this problem by setting a different tax rate for high potency products, similar to what is done for alcohol. In the first half of 2012, Colorado taxed trim (the leaves and clippings of cannabis) at 12 cents per gram, while taxing dried flower for smoking at 66 cents per gram. These differential rates distinguish between the potent flowers of the plant that contain higher concentrations of THC from the less potent leaves, which are typically processed into concentrates and extracts used for other products like edibles. Similarly, taxing concentrates differently from the

raw plant material could be used to alter consumer behavior by incentivizing the consumption of one form of marijuana over another.

A key issue for a weight-based tax, or any tax or fee expressed in dollar terms, is indexing for inflation. Federal alcohol taxes have been cut by over 50%, in real terms, since the last rate change, because they are not adjusted for inflation over time. The choice to adjust for inflation any cannabis tax or fee expressed in dollar terms should be made deliberately and not overlooked.

THC-based taxes

Targeting a tax directly at intoxication might seem a theoretical best practice. Some have suggested taxing THC, the primary intoxicant, directly—or adjusting the tax down for the presence of CBD, which may have a mitigating effect on THC. Indeed, measuring THC in homogeneous concentrates, before incorporation into edibles and other products, might yield reliable and replicable results. But measuring THC in raw plant material, like dried flower, is more problematic. These products are not homogeneous. Broad-brush test results, accurate enough to warn or inform consumers, may not be accurate enough for taxation. In that way, unprocessed cannabis may be like cigarette tobacco, another non-homogeneous product, where taxes are not based on tar or nicotine, but more crudely on weight.

There was some skepticism expressed at the public forums about the ability to tie taxes to specific levels of potency, due primarily to the challenges of measuring a variety of cannabinoids in plant material. And no state has so far pursued this route because of these challenges. However, given the other policy goals and options described in this report (consumer safety, proper labeling, supply-chain control), basing some level of taxes on some measure of potency (for example, merely distinguishing high potency from low potency) could be within reach. When further capacity for testing, supply-chain management and labeling are in place, taxes related to potency could become more practical.

Tax Bases Over Time

The Commission emphasizes the view that legalization is a *process* that will take time, not a one-time fix with all rules in place from the beginning and static in perpetuity. The state may benefit from implementing tax rules in phases or steps. Steps in the process may reflect and co-exist with an evolving and maturing marketplace. For instance, a low square footage tax or fee could be imposed at the outset of legal production. Shortly thereafter, the very first commercial sales might well bear a modest ad valorem excise tax. But the state could decide initially to delay imposition of weight-based or potency-based taxes for some period of time. There are two reasons to delay or phase in these taxes: first, to give the legal market time to compete with the illicit market, and second, to give the Board of Equalization time to create the rules and structure to collect the tax.

Other Revenue Sources

While taxation tools based on price, weight, or potency, are likely to contribute most to the goal of adequate revenue generation, other taxation tools may better serve other policy goals. For example, licensing fees are a standard adjunct to any regulatory system.

A cannabis tax or fee based on square footage of plants grown or "canopy" is only moderately difficult to set up, and its administration overlaps with regulatory oversight. Decisions about what square footage to count and whether to collect annually or per harvest cycle would be required. Such a tax would allow state or local agencies to collect the tax up front, thus providing initial funds to support the rollout of the legalized cannabis system. Alternatively, a low-level per plant tax or fee could also be administered with the development of regulatory capacity. For a short time, Mendocino County imposed a per-plant fee, with the Sheriff's office selling zip-ties to be used as tags for legal medical cannabis plants, until the federal government dismantled this system. Yet another alternative is a tax on the electricity used by indoor cultivators, like the one collected by the City of Arcata, which might be adopted by other localities if not the State.

WHEN TO TAX

Cannabis taxes can be assessed during at least two different stages of commerce: cultivation or retail sales. If a separate distribution or processing stage is required, taxes can be assessed there as well. States that have already passed legalization measures have set up different methods of taxing cannabis—each with their own advantages and disadvantages.

Taxes that are easiest to calculate, monitor and collect, for example, may not be the best for public health. Also, because marijuana prices and marijuana consumption will change over time, certain types of taxes may offer more stable tax revenue and consistent after-tax prices than others.

When Washington State originally passed Initiative 502, it taxed marijuana at all three stages of the supply chain, levying a 25% excise tax at three key points: when producers sell to processors, when processors sell to retailers, and when retailers sell to consumers—though processors who merged with producers escaped one of those tax stages. These taxes were arguably included in federal taxable income but not deductible on federal income tax returns under Section 280E of the Internal Revenue Code. Businesses complained the tax structure drove up prices and did not allow retail stores to compete with the illicit market.

In an attempt to remedy this issue, earlier this year Washington opted to replace the three-tiered tax system with a one-time excise tax of 37% on retail sales of both medical and non-medical cannabis. This new tax solves the 280E problem by keeping the state tax separate from federal taxable income for businesses and shifting it to consumers; at the same time, the new tax aims to keep state revenue relatively

steady in the short term. This change in tax policy cut costs for businesses, without deliberately cutting state tax receipts.

As of the writing of this report, Oregon was planning to replace its initiative's weight-based tax on producers with an ad valorem retail tax based on a percentage of the sale price. That change would more readily allow tax exemption for medical cannabis, which could be identified at the point of sale.

Colorado taxes recreational cannabis from the licensed and regulated market at the point of production, with a de facto weight tax. In addition, Colorado adds a 10% tax on recreational cannabis at the retail level as well. (Both medical and non-medical cannabis bear Colorado's standard 2.9% retail sales tax.)

In mature industries, collection of excise taxes typically follows two guidelines. First, taxes are collected as early as possible in the supply chain. Early identification of legal product lets law enforcement identify contraband. Second, excise taxes are typically collected at a choke point, where there is a small number of taxpayers in the supply chain.

States and the federal government follow both guidelines for alcohol and tobacco taxes. They collect as early as they can. Meaning that federal alcohol and tobacco taxes are typically collected at the factory or point of production.

State alcohol and tobacco taxes are collected as soon as finished products, wherever they are produced, are directed to the particular state. None of those excise taxes are collected from farmers: grapes, corn and hops are not intoxicating; there is no retail market for loose, unpackaged tobacco leaves. So the risk of valuable product escaping tax does not appear until processing. Cannabis is different. As flowers or bud mature on the plant and then leave the farm gate, they are extraordinarily valuable.

Taxing at the farm gate would indeed ensure the early collection of taxes, but might involve a large number of taxpayers—the opposite of a choke point.

If we put aside the risks of leakage and tax evasion, late collection has certain apparent advantages—despite the "collect early" guideline. With any chosen ad valorem tax percentage on price, imposing it as late as possible gives the state more revenue, since the price of any product ordinarily rises as it passes through the supply chain. For instance, a 20% retail tax will collect more revenue than a 20% production tax, since the retail price is normally higher than the production price. If, instead of a particular percentage, the state seeks a specific dollar amount of revenue, taxing later in the supply chain usually results in lower consumer prices, since retailers tend to add a percentage of profit margin based on their costs, including the cost of taxes. For example, if the state wants a million dollars of revenue, collecting that amount at the retail level should increase costs to consumers by about a million dollars. Alternatively, collecting the million dollars in tax revenue earlier, for instance at the production level, would increase the price of cannabis along the entire supply chain, with retailers adding their desired percentage of profit margin to this increased price, meaning that the total amount consumers paid would increase by more than a million dollars.

Pushing consumer prices down may appear to be an advantage at first, because lower prices in the legal market would allow it to take customer share from the illicit market. But it may also have the unintended consequence of increasing access for youth and heavy users. Finally, late collection allows tax preferences for products identified for medical use.

But there need not be only one method. Taxing and generating revenue at each stage of the supply chain—cultivation, processing and sales—spreads out the taxing pressure, so that the incentive to circumvent the tax is smaller at any one point. Multiple stages of taxation have the added benefit of acting as checkpoints to prevent illicit cannabis from entering the legal supply chain or to prevent legal cannabis from being diverted to the illicit market.

SETTING A TAX RATE

State and local officials will also have to wrestle with proper tax rates for cannabis. Again, finding the proper balance will be key, and may require some trial and error. A tax rate that is too high runs the risk of pushing customers back into the illicit market, inadvertently resulting in lower tax revenue.

Tax rates that are too high on the production side can also force out small producers, creating a system where only interests with access to large amounts of capital would be able to afford to produce cannabis. This would undermine the ability of the state to ensure Big Tobacco or other large, corporate interests do not dominate the production market**,** something we believe should be a key goal of any legalization policy. High taxes will also have the effect of creating an incentive for illegal sales in California as sellers and buyers try to avoid the tax.

Setting the rate too low, however, can make cannabis products more accessible to youth and fail to cover the costs of public health, safety and education programs that should accompany legalization.

If, as predicted, the legal cannabis market experiences a large drop in pre-tax prices after legalization, a static tax burden will result in drastic reductions in the total price the consumer pays. That is not an outcome we seek. The RAND Report outlines several options for increasing tax rates over time, including delegating authority and scheduling rate increases. Scheduled rate increases, like the gradual increase in the minimum hourly wage in Los Angeles to $15 by 2020, give businesses time to adjust. Delegation of rate-setting authority might seem more tenable if rates were tied to a fixed formula preventing the exercise of discretion.

TAXING CULTIVATION

California may have an additional incentive to try to tax cannabis production before the point of sale. Because the state is a net exporter of cannabis, the state can miss out on tens of millions of dollars in potential revenue if cannabis is not taxed at the producer level.

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In addition, we can imagine a system where areas that grow more than is consumed locally, like the Emerald Triangle region of Mendocino, Humboldt and Trinity Counties, may find themselves unable to recoup local costs associated with monitoring and regulating cannabis cultivation.

Again, we do not believe that maximizing tax revenue should be the state's primary goal. But if state officials opt for only a retail-based taxation system, other steps might be taken to ensure that high-cultivation areas receive their fair share of cannabis tax revenue.

TAXING MEDICAL CANNABIS

Policymakers should acknowledge the important and legitimate use of cannabis for therapeutic and medicinal purposes. One question regulators will need to address is whether to tax medical cannabis at a different rate than recreational cannabis, as discussed earlier in the section on industry structure.

Other states have wrestled with this problem. In Washington, which first legalized medical cannabis in 1998, recreational businesses complained of unfair competition by medical dispensaries that were able to provide cheaper products due to lesser tax rates. Earlier this year, Washington Governor Jay Inslee signed a bill that merged medical and recreational dispensaries, effectively creating one 37% excise tax rate for all legal cannabis products, and exempting medical marijuana from only the general state sales tax.

Taxation, Flexibility and Constitutional Constraints

Having flexibility to adjust the tax—including the base, type, rate and timing—is critically important to effective implementation. Other states have already made adjustments, but it is not possible to predict now with perfect certainty what will be the right tax policy at each stage of implementation to help the state proceed toward its core strategies. We would do well to pick the right starting point, but we cannot foresee how or when a proper balance among the different goals will be struck.

This need for flexibility exists within the constraints of the state constitution and state law in at least three respects:

1) The initiative process: If the initiative locks in the tax and requires a future initiative to change it, then the time it takes to make future adjustments may not be adequate to meet the demands of implementation.

2) The legislative process: It would likely take a ⅔ majority of the legislature to impose a new tax, or even potentially change the tax policy, which may prove too difficult or slow moving to correct implementation deficiencies.

3) The regulatory process: The state constitution may not grant that authority to a regulatory agency. There may also be issues with administrative procedure and the notice and comment periods that should be anticipated.

Federal Restrictions

Cannabis is currently listed as a Schedule 1 drug by the federal government. Even if cannabis is legalized in California, it is still illegal under federal law. The current administration has chosen not to enforce federal marijuana laws against states that have pursued medical or recreational legislation that meet federal guidelines. But the continued gray legal area has created particular challenges in the area of taxation.

Cannabis business operators are not able to deduct business expenses other than "cost of goods sold" (the expense of producing or buying the product) from their federal taxes. (This result is mandated by Federal Tax Code Section 280E, which applies only to businesses selling federally illegal drugs.) This is a particular problem for marijuana retailers, whose expenses for selling costs, like rent and salaries, are not deductible, because they are not product acquisition costs. California may seek to avoid making its state taxes a problem under 280E, perhaps by imposing them on the consumer rather than the retailer of the product (with the retailer serving only as a collection agent, as is the case under Washington's new law), or by explicitly imposing production-level taxes on production, rather than sale.

E. Enforcing the New Rules: Highway safety, underage use, continuing illicit grows and sales, criminal and noncriminal sanctions

The major framework for enforcement of marijuana laws historically has been the criminal justice system: its frontline workers were police and sheriffs, and its institutional workers were the staff at jail and state prison. Shifting to a regulated system introduces other tools and players into the enforcement system. These include the tax collector, the city attorney, county counsel, natural resources professionals, agricultural inspectors, and public health professionals, among many others.

Civil and Criminal Enforcement

The new enforcement system can provide these individuals with a full array of tools:

- Safe harbor and incentives for those who follow the law and do so to the highest standards.
- Third-party certification—a model through which cultivators, processors or retailers pay for a third party to inspect and certify their operations, either only to encourage best practices or as part of an enforcement system that interacts with local or state government.
- Tax collection—ability to collect taxes from those in the legal market and even those who are not.
- Private right of action – policymakers can consider the option of a private right of action, allowing private attorneys to sue and seek compliance and damages from those acting with or without a license who are in violation of the law (this may raise public safety issues in certain instances).[35]
- Civil enforcement—fines and fees, unfair competition laws, code and zoning rules on grower, seller, and property/landowner, including the threat of the loss of license.
- Criminal penalties—misdemeanors for lower level offenses that still require criminal enforcement, and felonies for serious offenses such as large-scale operators working in the illicit market, cultivating on public lands or engaged in other serious or violent crime.

35 For more on the private right of action in the area of environmental protection, see this article by Santa Clara law student Eugene Yoo https://druglawandpolicy.wordpress.com/2015/05/13/greedy-lawyers-are-good-for-the-environment-controlling-the-environmental-effects-of-marijuana-cultivation-through-private-enforcement/

Policymakers can use a framework to recognize the spectrum between licensed entities playing by the rules to large-scale illegal grows on public land, systematic sales to youth, etc. Some of these state enforcement priorities would match the federal enforcement priorities, such as diversion to minors.

State law also needs to clarify which areas, if any, are the domain of enforcement for state government, which are the domain of local government, and which are domains where both state and local law enforcement are engaged in marijuana enforcement. Criminal enforcement has an existing framework of responsibility, whereas the new civil enforcement tools will require more attention to clarify roles and build capacity.

Policymakers can use a framework to recognize the spectrum between licensed entities playing by the rules to large-scale illegal grows on public land, systematic sales to youth, etc.

Eliminating Racial Disparities in Enforcement

An element of data collection is to measure the types of sanctions used, and the racial disparity in those sanctions. Colorado has seen a drop in the number of criminal justice sanctions, but the racial disparity has persisted. Oregon has just reduced penalties for certain marijuana-related felonies to misdemeanors. Considerations include the racial makeup of different individuals who are likely to be engaged in different practices, the geographic location of those individuals (producing counties vs. urban counties) and the type of conduct. Individuals charged with illicit sale in urban areas will be far more likely to be black or Latino.

Table 2: Enforcement Spectrum

	Licensed, responsible entities	**Licensed but frequent problems**	**Licensed but engaged in illegal activity**	**Unlicensed cultivators and retailers**	**Unlicensed individuals engaged in additional serious crimes**
Types of conduct	Regularly follow rules, good faith effort at compliance, occasionally makes mistakes given complexity of compliance	Poor management and poor oversight of facility means frequent rule-breaking	Using licensed business as a cover for large-scale criminal activity	Cultivators who do not have a license or cannot supply the legal market in California. Small-scale illegal retail sale within California	Illegal sales by adults to minors. Illegal grows on public land. Large-scale export out of California. Frequent abuse of workforce, environmental laws
Civil enforcement, incentives and penalties: need to specify state and local roles	Provide opportunities for errors to be corrected and improved, recognize the extra costs these responsible actors bear, before imposing heavy fines or sanctions	Use increasing levels of fines, require further compliance and monitoring, revoke license if behavior persists. Apply models from alcohol and tobacco regulation	Use all the tools of civil enforcement, including fines as well as loss of license	Use tools of civil enforcement, including fines	Use civil enforcement, fines, fees, tax collection when appropriate
Criminal enforcement and penalties: follow existing roles of city, county and state law enforcement	Do not use any criminal penalties for these individuals and entities	Generally do not use criminal penalties, unless behavior is more serious	Use criminal justice system and penalties for large-scale and serious offenses.	Pursue alternatives to arrest and incarceration as a first response when appropriate. Apply similar penalties as unlicensed activity in other industries, like alcohol	Use criminal justice sanctions and make these types of activity the enforcement priorities

Enforcement of DUID on Roads and Highways

Driving under the influence of any drug, whether alcohol, marijuana or prescription drugs, is already against the law. The question is how we can prevent it in the first place, and how law enforcement can detect it and prove it in a court of law. The step of prevention requires public education generally, and consumer education specifically. Public education campaigns through the media or consumer education campaigns at the point of sale can instruct people on instructions for not driving while under the influence of marijuana and other drugs.

In the area of law enforcement, the scientific research and legal framework for driving under the influence of alcohol is very well developed. Careful research, conducted over several decades, has established a relationship between blood alcohol content, impairment, and crash risk, such that the measure of blood alcohol content is itself a crime (what is considered a *per se* standard). In the case of marijuana, THC can remain in the bloodstream long after the effects of intoxication have worn off, so the presence of THC is not in and of itself a reliable measure of intoxication. Research on the link between marijuana consumption and roadside impairment is increasingly being conducted.

In the area of law enforcement, the scientific research and legal framework for driving under the influence of alcohol is very well developed.

All stakeholders in the BRC process, from advocates to patients to police chiefs, agree that a person impaired and under the influence of marijuana, whether for medical or adult use, should not get behind the wheel of a car. In addition, existing standards apply whereby an officer may stop a motorist with probable cause based on erratic driving. Once stopped, existing protocols of a roadside impairment test can be conducted for the driver, whether impaired by marijuana, alcohol or prescription drugs. The difference emerges that a roadside test like the Breathalyzer to confirm blood alcohol content is not available for marijuana, which requires a blood test that officers cannot currently conduct on the side of the road. Because intoxication based on alcohol is relatively easy to measure, many agencies do not measure for other drugs after alcohol is found to be a factor, which limits the knowledge of the extent other drugs are a factor in intoxication.

A remaining question is whether the mere presence of THC in the blood, absent evidence of impairment, should be sufficient for a criminal justice sanction. One approach is the *per se* test, adopted by some states, which says that the presence of THC at a certain level is itself a crime. The problem with such an approach is that it is arbitrary and not based in science—at least not yet. A second legal approach, used in Colorado, is called permissive inference, which instructs juries that a certain level of THC measured in the blood can be used to infer that a crime occurred. This also is arbitrary. A lesser standard would be to allow for a civil fine, such as a ticket, but not a criminal penalty, for the mere presence of THC at a high level, without other signs of impairment. Another approach is to use a blood test or a mouth swab test for THC only as confirmation of impairment that is tested, observed and documented through a roadside impairment test, but not to consider it a valid measure of intoxication on its own.

The currently available strategies of *using probable cause* to make traffic stops and *using roadside impairment tests* to establish impairment are a reliable starting point. These strategies could be enhanced by 1) additional scientifically valid research on marijuana and crash risk to determine if a valid standard could be adopted linking THC presence with impairment, 2) development of additional tests of intoxication specific to marijuana, 3) training of officers as drug-recognition experts, 4) use of video footage of roadside impairment tests for evidence and 5) public and consumer education about marijuana consumption and DUID.

*The currently available strategies of **using probable cause** to make stops and using **roadside impairment tests** to establish impairment are a reliable starting point.*

Limiting Sales to Youth

Enforcement of the rules limiting access to people under the age of 21 requires special attention. Many of the issues affecting youth are considered in great detail in the Policy Brief released by the Youth Education and Prevention Working Group. In this section, we focus on enforcement strategies. In the investment section, we discuss the kinds of programs that are needed for prevention, education and treatment.

First, we need to consider that we are dealing with 1) minors under the age of 18, 2) adults between the age of 18 and 21 who are legally adults but would not be permitted access to the legal market, and 3) adults over age 21. California has already made simple possession of marijuana an infraction for all people, including minors.

Illegal sales by retailers. One of the issues that was raised in the public forum is that in some communities youth can access marijuana by standing outside a dispensary and waiting for an adult who will buy for them, sometimes while a guard simply looks the other way. The tobacco model may provide some insights, where retailers are checked by having people go in to purchase, resulting in penalties if the retailer sells to the minor or if the retailer fails to secure the area immediately around their location. In a regulated market, with oversight, licensing and training for retailers and employees, and stiff penalties, such practices can certainly be reduced from current levels.

Illegal sales to youth. Stepping away from the retailer, youth may access marijuana that is either diverted from the legal market or product that originated and stayed in the illicit market. All previous discussion related to control of the supply chain may limit diversion, but the existing illicit market remains an issue. Policymakers could maintain the current criminal justice penalties, change those penalties, or also add civil penalties to the tools available to limit these illegal sales to minors. Illegal sales by adults to minors should remain a public safety priority.

Illegal sales by minors and young adults. Youth or young adults involved in selling drugs are another factor to consider and an especially important one with respect to racial disparities. One factor for these age groups is that one young person may purchase marijuana, and then share it and split the cost with peers. While the transaction may appear as sale, it may not be sale for profit.

In general, youth and young adults selling small amounts of marijuana or first-time offenders should not be subject to incarceration in the juvenile justice or adult correctional system, due to the cascade of other harms that can occur and the dramatic racial disparities in these arrests (see Policy Brief from Youth Education and Prevention Working Group). A 20-year-old black adult selling marijuana on the street should no more be subject to arrest and incarceration than an affluent white student selling marijuana in a college dorm. Where possible, diversion even before the point of arrest would be preferable. This behavior does not need to be excused and should be addressed, but it also likely does not need to land a young person in jail. Policymakers should consider alternatives to arrest and jail wherever possible for youth involved in marijuana sales.

Policymakers should review the current rules for penalties for the sale of alcohol or tobacco products to and by youth, and determine how those penalties could be used in the marijuana context. Clear criteria should apply for the use of infractions, misdemeanors, felonies and probation for marijuana-related offenses. For example, there is considerable latitude to up-charge an infraction to a misdemeanor for possession of a small amount of marijuana. Repeat offenses could be considered differently than first offenses. Completion of an educational program could erase a fine imposed on a person, giving people with limited financial means a way to comply without spiraling fees and penalties.

Illegal Grows and Out of State Sales

Illegal cultivation, especially trespass grows on public and private land, will remain a problem that deserves attention even after legalization. A portion of the cannabis that is cultivated in California will be sold for consumption outside California, in violation of federal law. These types of illegal grows and large operations aimed at out-of-state sales would need to be enforcement priorities for the state, both to promote public safety and to comply with federal guidelines.

Historically, the enforcement strategies aimed at illegal cultivation and sales have had a limited impact on either the supply or the demand for marijuana. Taking a more heavy-handed approach to enforcement poses challenges even after legalization: it may simply drive the illicit cannabis industry deeper into public lands and into more remote areas. One approach would be to concentrate law enforcement resources on those operations 1) being carried out on public lands or trespassing private lands, 2) engaged in environmentally destructive practices, or 3) also engaged in other violent and serious crime. One overall challenge in this area is that much cannabis production takes place in low-population areas with fairly limited local resources.

This would leave the small grower who is otherwise complying with local standards as a low enforcement priority, regardless of the destination of the cannabis, but without the protection of a license. One question is whether local government should—or could—undertake policies or programs to mitigate the environmental harms of these grows. For example, agencies that focus on environmental quality could develop programs through which any marijuana that is cultivated should comply with environmental, natural resource and water protection standards, whether its ultimate destination is California or not. This may prove to be a difficult gray area for the state and local governments, given federal guidelines against out-of-state export. The state may also want to tax these producers, but would face the same challenge of compliance with the federal guidelines.

PREVIOUS RECORDS

In addition to the question of what new sanctions should be in place, there is a question of what to do with sanctions from the past. Should people with criminal records for non-violent offenses that relate to marijuana possession, cultivation or sales be able to expunge their records?

Policymakers can consider these questions in relation to specific offenses, which range from possession for personal use (from before it became an infraction), to possession for sale, to sale itself, to larger offenses for people operating larger enterprises. Policymakers should also recognize that racial disparities in marijuana enforcement mean that a larger share of people of color have these convictions on their records. If a goal of legalization is to further some sense of racial equity, then a mechanism to expunge some criminal records might be an appealing option. For example, as of July 2015, Oregon passed legislation to convert a number of marijuana felonies to misdemeanors or lesser felonies, and allow for a process to expunge previous records.

F. Data Collection and Monitoring

Gathering information about consumption and commerce critical to modifying existing regulations in order to meet policy goals.

From the outset, the state of California should be clear not only on its goals for legalization, but also the data it will collect to monitor and evaluate the impact of our policy choices in relation to those goals. The data and oversight system should:

- **Use metrics in relation to the policy goals** that policymakers and voters prioritize for marijuana legalization
- Collect data on age, gender, race, ethnicity and other **demographic characteristics**
- Be **funded to cover the costs** of gathering and analyzing data
- Inform state and local policymakers **to make adjustments** in the policy options governing the system, including the laws, regulations and investments, with recognition of the tradeoffs before and after legalization, and among the policy goals and policy options
- Cover **an array of research tools** from simple data collection, to surveys and focus groups, to scientifically valid research studies, to long-term longitudinal studies of cohorts and populations

Among the research topics, the BRC recommends:

Consumption and Its Impacts: Monitor cannabis use, both occasional and frequent, by youth and adults in the context of the use of other substances. The state should sponsor scientifically valid studies on the level of use, substitution and poly product use of marijuana and other substances, including alcohol, tobacco, other illegal drugs, the illegal use of prescription drugs, and method of ingestion (smoking, edible, e-cigarette, hookah, etc.). In addition to consumption, researchers should monitor for addiction and other indicators of cannabis use disorder as well as addiction to other substances, the impact on educational attainment and other social indicators for youth, and on employment, family well-being and other factors for adults. As the market matures, research should also be conducted on price elasticity for marijuana use (both occasional and heavy use by youth and adults) as has been done for other substances. Data should also be gathered on medical marijuana patients and trends in their use and access in the market.

Production, Sale and Industry Data: Measure marijuana production from seed to sale, measuring the amount of marijuana cultivated, processed, and sold in the legal market and its progress through the supply chain. The state should also monitor the types of products, the THC content, potency, etc. Data should be collected on the number of licensees, characteristics of the workforce, and impacts on the local

and state economy. Research should also measure, to the extent possible, the size and scope of the remaining illicit market.

Health and Safety: Conduct scientifically valid studies on DUI, crash risk and marijuana impairment, including interaction with alcohol and other drugs. Collect data on other safety and health risks involving marijuana, such as calls to poison-control centers. Conduct research and gather data on potential health benefits (including on medically valid research studies of marijuana as a treatment for a variety of medical conditions) and health risks of marijuana (including cardiovascular, respiratory and brain development/function).

Enforcement: Collect data on the number of infractions, misdemeanors and felonies for enforcement of marijuana laws for those breaking the rules or acting outside the legal market. Maintain data on the policy options that counties and cities adopt and conduct scientifically valid studies comparing those policy options to consumption, health, public safety and other outcomes, including the size of the remaining illicit market. Evaluate the effectiveness of different sanctions, both criminal and civil.

Investments: Document the amount of licensing fees and tax revenues collected, and the amounts invested in various strategies. Ensure that all investments have clear goals and are evaluated independently for effectiveness.

G. Using the New Revenue from Marijuana

Allocating revenue to cover the cost of new administrative burdens, new enforcement policies, and new protections for the public.

Types of Revenue and Local/State Relationship

There are three major sources of revenue in a legalized, regulated and taxed market. The first is from licensing fees (for cultivators, retailers and potentially individual workers). The second is from fines against business entities or individuals who do not comply with the law or regulations. And the third is from tax revenue.

In all three cases, some may be applicable to marijuana businesses the same as any other business, while some fees, fines and taxes may be unique to marijuana businesses. For each of these sources, consideration needs to be given to the local and state split, and whether revenue is earmarked for a specific purpose or the general fund. As discussed elsewhere, decisions have to be made about counties that opt out of certain aspects of the industry and the unique issues facing rural counties with heavy cultivation. These factors are shown in the Local/State Finance Revenue Matrix below.

Table 3: Local/State Finance Revenue Matrix

	State	Local	Opt Out Jurisdictions or High Producing Counties
License & Permit Fees - General	As current law	As current law	As current law
License & Permit Fees - Specific to Marijuana	State retains its licensing fee, use for costs of regulation specifically; determine whether jurisdiction where the licensee is located also gets a portion	Local jurisdiction retains any local fees, use for costs of processing and regulation	Opt-Out Jurisdictions- Not applicable. High Producing Counties - use for regulation
Fines - General	As current law	As current law	As current law
Fines - Marijuana	To be determined whether shared, whether both state and local authority exists for that enforcement action, and how revenue is used	To be determined whether shared, whether both state and local authority exists for that enforcement action, and how revenue is used	Opt-Out Jurisdictions - unlikely to receive any from licensed entities, could receive fines from enforcement of illicit market. High Producing Counties - necessary to receive income from these fines
Sales tax - general	As current law	As current law	Opt-Out Jurisdictions - as current law High Producing Counties - to extent tax is charged when cultivator buys supplies or sells wholesale (as well as local retail consumer sales)
Excise tax - specific, depends also on timing	Requires a policy decision as to sharing with local government and whether use is restricted	Requires a further policy decision if local jurisdiction imposes an additional tax beyond state, and whether use is restricted	Requires a policy decision as to sharing with opt-out counties and for high-producing counties and whether use is restricted

One of the major considerations is how the state and local jurisdictions (including cities and counties) would share in the various sources of revenue for marijuana. There is also a question about the extent to which both the state and local jurisdiction would have overlapping or separate enforcement powers, including the power to collect fines. In addition, consideration should be given as to whether schools would receive a portion of any excise tax.

Standard Sales Tax

The standard sales tax would be subject to existing sharing rules between local and state government, which include a portion for the state general fund (of which a substantial portion reaches schools and community colleges through Prop 98), and portions for state and local government to functions such as local public safety, mental health, public health, social services, etc. which can relate to goals of marijuana policy in general terms. To the extent that general fund state and local resources are used in relation to marijuana law implementation, a portion could be paid for through this general sales tax.

General or Designated Use of Funds

In terms of the uses of the fines and excise tax revenue, one major option is for the funds to accrue to the general fund of the state or local jurisdiction. This has the advantage that the resources can be used to meet whatever is the most important and urgent priority as determined by elected officials.

The basic challenge of this approach is that the tax revenue from marijuana legalization has so far come below projections in the states that have legalized. It is worth mentioning that recent estimates of tobacco product taxes in California generate less than $900 million per year, while the state's general fund budget is over $100 *billion* dollars per year. In other words, tobacco product taxes represent less than one percent of the general fund. No one should therefore expect the taxes on another plant, where there is continued competition with an illicit market, to fundamentally alter the state's fiscal picture.

Beyond the fact that the revenue will be limited, a drawback to leaving the revenue in the general fund is that the specific areas needing funding in order to implement and regulate marijuana legalization may not receive adequate investment. This may leave a number of the policy goals voters desire (such as protecting youth, public safety or public health) without the necessary resources the achieve them. Voters and policymakers may be left wondering what they got for the money, and not have a way to evaluate the measurable benefits of that money on marijuana-related policy goals relative to any potential burdens of legalization.

Uses of Revenue

Here we discuss the potential uses of revenue. We heard a number of potential recommendations for investment. The use of the revenue should be aligned with the goals that voters and policymakers ultimately prioritize. For example, when voters approved Proposition 99 to increase the tobacco tax, specific percentages were allocated to designated accounts, including for health education, hospitals,

physician services, and research. Whether the funding priorities described below are earmarked from an excise tax created in a ballot measure or derived from the general sales tax that flows to a variety of government programs, they are worthy of consideration by policymakers and voters as priority investments related to successful implementation. This list is by no means comprehensive, but it illustrates some of the important and relevant ways that revenue from marijuana taxes, fees and fines could be invested to generate returns in relation to state goals.

Experience from tobacco control shows that a complementary strategy to reach youth is broad-based education of the public as a whole, through which youth hear public health messages that are also aimed at adults.

Youth: Fund necessary programs to protect youth, including research-based education, prevention, treatment, and assistance to students in schools and community-based settings. Programs should equip youth with knowledge and resources to make responsible decisions, as well as provide needed assistance and treatment to youth who need it. One promising example is Student Assistance Programs that 1) provide broad-based education on marijuana, alcohol and other substance abuse issues, 2) target outreach to youth at risk of substance abuse and 3) assist youth who are abusing marijuana, alcohol and other drugs. Funding youth education and prevention, with a focus on school attendance and educational attainment is key, as is funding programs to support youth currently not in school through community-based services.

These investments should be 1) broader than just marijuana, to address other substances as well as the underlying social issues that may be driving substance abuse, 2) evidence based, informed by research at the front end and evaluated with data at the back end, and 3) go beyond abstinence to provide real information in an honest and comprehensive way.

These services should recognize the racial diversity of California's youth and the limited economic resources of many of their families. If funding is limited due to limited tax revenue or other legitimate priorities, priority for site-specific funds should be given to youth and schools in low-income communities. Funding can be managed through county departments of public health, county offices of education or through school districts but should encourage collaboration across these entities regardless.

Experience from tobacco control also shows that a complementary strategy to reach youth is broad-based education of the public as a whole, through which youth hear public health messages that are also aimed at adults.

Public Health: Funding should be available from the outset for a vigorous public health effort to educate the public and provide health-based solutions and responses to problem use. A lesson learned from tobacco is that a full suite of controls and "counter advertising" can be effective to limit use. One example of such an effort from tobacco control is a public education campaign that is aimed at the general population, which can also reach youth effectively. If the experience of tobacco control applies, limiting media campaigns to youth may have counterproductive effects. These campaigns should contain

themes and information that are important for achieving public policy goals and that are backed by evidence. These messages should not employ scare tactics that are out of sync with the daily experiences of youth and adults, such that the message loses credibility.

Topics for a public education campaign can include: 1) DUI and safety as it relates to driving, 2) risks of smoking and secondhand smoke (including to youth/children health), 3) the health risks associated with marijuana use (including heavy use) and dual use with other substances, 4) safer ways to use of marijuana for those who choose to, 5) the importance of delayed use by youth,and 6) other scientifically valid, evidence-based information that can influence responsible use. In addition, funding should be available for drug treatment, including for those with addiction to marijuana or other elements of cannabis-disorder syndrome. Public health and substance abuse treatment are two different systems at the local level, both of which need attention and support.

Public Safety: A transition to a legalized market will have some predictable and some unknown impacts on public safety. Marijuana is already very common, sold both in the illicit market and through medical marijuana dispensaries. Legalizing it for adult use will change how it is cultivated and sold, causing a disruption to the illicit market just as new oversight mechanisms get put in place. Funding should be provided for public safety priorities discussed earlier, for example, to limit diversion to youth and address trespass grows on public lands.

An important priority is DUI and road safety. In particular, funding should be provided for 1) training of law enforcement to be drug recognition experts who can detect impairment and conduct effective roadside impairment tests that can be used in prosecution, 2) research on ways to observe impairment for driving due to marijuana that may be different from alcohol and development of further roadside impairment tests, 3) research on marijuana consumption, impairment and crash risk, including for marijuana alone but also for consumption alongside alcohol and other drugs, 4) development of tests such as oral fluid sampling if supported by research as a valid link of impairment and crash risk and 5) public education campaigns on the risks of driving under the influence of marijuana.

Enforcement: Establish regulatory and oversight mechanisms, licensing procedures, etc. and cover all resulting administrative expenses. It is critically important that the capacity for new civil enforcement systems be in place, and in a timely manner, to accompany criminal justice and law enforcement strategies. Enforcement priorities should include illicit grows on public lands, grows that harm the environment, sale to minors and growers and sellers involved in other serious and violent crime. Funding can support additional burdens placed on enforcement entities: police, health inspectors, tax collection, forest rangers, agricultural officers, etc.

Workforce Development: Policymakers should recognize that illegal marijuana cultivation and sales have provided income that has kept individuals and families afloat. Particularly for individuals with limited educational attainment, few other job prospects, and living in communities with concentrated poverty, pathways to legal employment opportunities will be important both to shrink the illicit market and to respond to the fact that it is shrinking. Programs could provide training and legal employment both 1) for people to enter the legal marijuana industry, especially if the state imposes training or licensing

requirements for individual workers and 2) to target people in the current illicit market or in communities heavily impacted by drug arrests, unemployment and crime and move them toward legal employment in other larger, legal industries.

Environment: Develop and fund necessary environmental protection and restoration, land use and watershed monitoring. This is critically important, especially in the environmentally sensitive areas where numerous illegal grows occur. Investments can be used both to restore damage done by past illegal grows but also to prevent and address future damage.

Research and Data Collection: Gather the data and conduct the research to provide effective monitoring and implementation of the new law. Funding should be provided for the strategies described in the data collection section of the report, including on topics related to: 1) consumption and its impacts, including the use of other substances beyond marijuana, 2) production, sale and industry, including the legal and illicit market, 3) health and safety, 4) enforcement and 5) investments.

CONCLUSION

This report provides an overview of a range of broad approaches in a dynamic process of implementation. Legalization entails broad approaches that the state will undertake at the same time, including advancing the public interest, reducing the illicit market, providing the protection of the legal market and capturing and investing tax revenue. The state will need to define clear policy goals, and then deploy a set of policy options over time, and adjust those based on data throughout the process of implementation. Priority goals—such as those related to youth, public safety and public health—should be front and center in the regulatory and tax decisions of the state.

This report covers many topics, but it is certainly not exhaustive. Many of the issues in the report go well beyond what would be considered in a ballot measure, and would be the subject of subsequent legislation and specific regulations. Many of the topics require careful research and quantitative analysis to help inform the best decisions.

Invitation for Further Public Comment

The Blue Ribbon Commission invites further public comment. In particular:

1) Are there some things that this report gets wrong? The report covers many topics, and we were not able to research the full dimension of each topic. If we got something wrong, please tell us.

2) Do you think the report presents the core approaches and the goals correctly? If yes, why? If not, how would you look at it differently?

3) Do you agree or disagree with any of the recommendations in the report? If so, why?

4) The report lays out a range of policy options to achieve those goals. What policy options would you pick? Why?

Please submit comments to info@safeandsmartpolicy.org.

APPENDIX A:
Youth Education and Prevention Working Group Policy Brief

Executive Summary

Californians are reasonably concerned about the impact upon youth of adding marijuana to the drugs that are already legally available for adults, such as tobacco and alcohol. It is well known that marijuana use among youth has been a reality for decades. In some surveys, youth report that marijuana is more readily available and accessible than alcohol. While any marijuana use by youth is a central concern, the data show that the vast majority of youth who try marijuana only experiment with it in a limited or occasional manner. However, a minority of teens is at risk of experimenting at a very young age or engaging in more regular or more excessive use. This same demographic is also at greater risk for problems with alcohol and other substance abuse, disciplinary and other problems in school and are more likely to get caught up in the criminal justice system. These youth are the most vulnerable and in need of the best protection and assistance the state can provide. Our working group has focused on how to best protect the health and wellbeing of children and adolescents (especially these youth who are most at risk) if marijuana were to be legalized, taxed and regulated for adults.

Available data (provided in greater detail in the source materials we reviewed and which are available on the BRC website) support the following conclusions:

1) Regular or heavy marijuana use at an early age can be associated with reduced educational attainment and educational development.

2) Criminal sanctions for marijuana use and possession have multiple negative impacts on youth, especially for youth of color, with regard to educational attainment and employment opportunities, while also reducing law enforcement resources for addressing more serious crime.

3) Significant improvements are needed to make drug safety education more scientifically accurate and realistic.

4) Well-designed and implemented regulations have the potential to better protect youth.

5) Sufficient funding available from marijuana tax revenue, if effectively reserved for and spent on services for youth, could close many gaps in current community-based support for at-risk youth.

6) School-based approaches such as Student Assistance Programs (SAPs) are effective in improving school retention, academic achievement and reduction of drug use.

7) Universal availability of school-based services throughout California, combined with an evidence-based approach to drug education, could become a reality under a Tax and Regulate public health approach to marijuana policy.

Some assume that marijuana use by youth will increase in California as a result of the reduced perception of its risk. This working group reviewed data from the Netherlands and other countries that have reduced or removed criminal penalties for adult marijuana use. We also looked at the numerous states that have decriminalized possession and legalized and regulated some medical marijuana use, and found insufficient evidence to support this assumption. Data indicate that California's adoption of adult medical marijuana (1996) and decriminalization of marijuana possession for personal use (2011) were not followed by increases in availability or marijuana use by youth. However, as a commercial industry develops there are risks of targeted advertising similar to prior tobacco campaigns, and this should be taken into account in planning regulations.

For this report, our working assumption is that "adults" are defined as those 21 years and over. This is consistent with the four states (Alaska, Colorado, Oregon and Washington) that have legalized recreational marijuana use by adults. This leaves basic questions about how to deal with recreational marijuana use by younger individuals. We analyzed policy options with an eye toward delaying the onset of marijuana until adulthood and reducing marijuana-related harms. We also considered the unintended detrimental impacts of any criminal justice and school disciplinary sanctions for youth involved with marijuana. Under adult legalization, care must be taken to ensure that any responses to youth marijuana use are not unduly punitive, for the following reasons:

- Youth who are arrested become defined and treated as criminals, often permanently;
- Criminal arrests initiate youth into institutional cultures, such as probation and juvenile hall, which can produce psychological and re-entry problems;
- Racial disparities in law enforcement have detrimentally impacted minority communities;
- Ineligibility for federal school loans reduces educational opportunities;
- School expulsions and suspensions reduce supervision and remediation;
- Pre-employment screening of legal problems reduces job opportunities;
- Fines and attorney's fees place disproportionate burdens on the poor; and
- Immigration/naturalization problems are increased.

The data we have reviewed indicates that prevention strategies will be effective to the extent they are able to:

- Provide honest, science-based information in a non-judgmental and non-punitive setting;
- Prioritize safety and delay use through personal responsibility and knowledge; and
- Encourage abstinence, but also recognize the importance of moderation, self regulation, and harm reduction for those young people who will not abstain completely.

Many young people currently use marijuana under current legal prohibitions, so the standard for a new approach is not zero use, but delayed use and less use than is now occurring. Strict regulation and taxation of the marijuana industry, with protection of youth as its primary goal, could reduce availability from unregulated sources by significantly curtailing the illicit market, while earmarking tax revenues from legal sales to increase funding that would mitigate educational harms associated with adolescent marijuana use. Potential regulatory controls that would benefit youth (some of which, such as accurate labeling, would also aid adult users) include:

- Strictly enforcing an age 21-year marijuana distribution and possession law;
- Strictly limiting the number, type, location and sales practices of marijuana retail outlets;
- Limiting sale of products that are particularly attractive to young people, such as edibles that look like candy;
- Restricting marketing and advertising practices that appeal to youth;
- Establishing standards for labeling, potency, purity and total dose; and
- Developing *non-criminal* sanctions (such as infraction "fix-it tickets" requiring participation in education or Student Assistance Programs) for individuals under 21.

Although all of the consequences of adopting a tax and regulate policy cannot be anticipated at this time, the data the YEP working group has reviewed suggest that tax revenues dedicated to increase support services for at-risk youth would be beneficial. Those drafting a ballot initiative, legislation and subsequent regulations should strongly consider (a) adopting rules designed to protect youth that will be consistently enforced, (b) prioritizing sufficient tax resources for youth services, both for youth who are not in school, and to create and maintain school-based services such as Student Assistance Programs in California high schools and (c) adopting a public health approach to youth marijuana use.

Marijuana tax revenues could help improve school retention and performance if sufficient funds are reserved to create and maintain school-based programs, e.g., Student Assistance Programs (SAPs), in California high schools. SAPs emphasize learning skills, remediate academic performance, improve

school climate and school retention, and promote peer group interventions, family engagement and reduced drug use. The data this working group reviewed indicate that SAPs using a three-tiered (Institute of Medicine) approach to prevention are effective tools that could be employed to further these goals, if sufficient and stable funding is provided. History suggests that unless the initiative or implementing regulations specify a mechanism for ensuring stable funding over time, there is a danger that the level of funding necessary for effectively sustaining programs such as SAPs will not be maintained.

Any community or school programs funded for this purpose should be evidence based and evaluated for effectiveness. Research will allow policymakers to assess the effectiveness of the regulatory system at reducing age of onset, regular use, and access to marijuana. Long-term outcomes studies by California universities and research institutes will allow evaluation of SAPs and similar programs funded by tax revenue to measure impact upon school performance, retention and dropout rates, use of marijuana and other drug/alcohol use among students.

School districts disproportionately impacted by high dropout rates could have preferential funding for student support and treatment services. Tax revenues could also be directed toward support services for youth under 21 impacted by marijuana use who are no longer in school and for clinical care for disadvantaged and uninsured youth suffering the most severe end of the cannabis use disorder spectrum.

A system that regulates, controls, and taxes marijuana has the potential to reduce youth access to marijuana, provide effective prevention, improve drug education, mitigate current harms and improve school retention and performance if adequate regulations are written (and strictly enforced) to protect youth, and if sufficient funding from marijuana tax revenue is committed to school-based services for youth.

Invitation for Public Comment and Feedback

This policy brief of the Youth Education and Prevention Working Group is intended to stimulate further dialogue on these important issues. In addition, the June 3rd Public Forum of the Blue Ribbon Commission will consider what tax and regulatory policies can best further the goal of limiting youth access to marijuana. We invite you to submit further comments and feedback (via email at info@safeandsmartpolicy.org) on the topics contained in this paper or other related issues:

- Are there points raised in this paper with which you disagree? If so, why?
- What role can peers, parents, families, and communities play in delaying and reducing youth use of marijuana?
- What role can schools, public health and law enforcement entities play in limiting youth access and responding to youth who do use marijuana?
- What tax policies and regulations could help limit youth access to marijuana?
- What treatment and responses are most effective for youth who are regular and heavy users of marijuana?

Data and Analysis

Public Health Concerns

Youth are one of the groups most at risk for experiencing harms associated with regular marijuana use, but California's current enforcement-oriented marijuana policy is failing to protect them. Marijuana is readily available to youth (73% of California's 11th graders say marijuana is "fairly" or "very easy" to obtain). Despite easy access to marijuana, however, our youth have only limited access to quality drug education, counseling or treatment when needed.

Lifetime prevalence rates exaggerate the risk of addiction for youth, since the majority of lifetime users never become regular or heavy users. Concern should focus on the rate of regular use (10-19 days/month) and heavy use (at least 20 days/month) among youth. The California Healthy Kids Survey reports that 2-3% of California high school students are regular users and another 7-8% are heavy users, which translates into 48,500 and 131,000 respectively (out of a total student population of nearly 2 million). It is impossible to accurately predict whether these numbers are likely to increase or decrease under a new tightly regulated adult recreational market. Nonetheless, these data, about youth use under the current unregulated system, are relevant to determining the funding necessary to fully support services for youth most likely to be detrimentally impacted by marijuana use.

The YEP Working Group has reviewed scores of research studies finding associations between regular and heavy marijuana use and psychosocial harms including poorer school performance, higher school dropout rates, poorer cognitive performance, and limited success in education, employment, and income. Such problems can extend into adulthood. Associations with poorer performance has been observed in multiple cognitive domains, including memory, learning, executive functions and emotion.

An important limitation of these studies is the inability to draw conclusions about causality because most human marijuana studies are not prospective and compare findings in users to non-using controls that are matched for as many variables as possible. Nor is it possible to subject humans to the kinds of intrusive brain research conducted with animals, and long-term prospective cohort studies tracking individual changes over time remain rare. The National Institute of Health (NIH) has planned a 10-year prospective Adolescent Brain and Cognitive Development (ABCD) study that will provide much needed longitudinal change data.

Whenever discussing problematic youth behavior it is also important to recognize that "at-risk" youth often experience multiple stressors, including poverty, physical and sexual abuse, hunger, living in an environment of violence and racism, to list only a few. In addition, a child's ability to succeed in school depends, to a great extent, on family and social factors affecting the child's life well before the child begins school. Marijuana use constitutes only one risk factor for impaired learning. It is extremely difficult to tease out cause and effect for complex problems.

But one need not resolve the myriad open research questions in order to conclude that a leading policy goal should be to delay youth marijuana use, and to reduce regular or heavy use. Those readers seeking more analysis of current science are referred to the numerous source materials on the BRC website. For the purposes of this report, the working group assumes general support for the policy goals of minimizing youth marijuana use, and especially regular or heavy use, and protecting the most at-risk youth to the greatest extent possible.

Professional Treatment

Although most teenaged users of marijuana are experimental, occasional, or episodic users, there is a subgroup of about 11% of juniors and seniors in California high schools who are regular or heavy users. This is the group in which schoolwork and school retention are at greater risk, and this cohort contains youth among whom a diagnosis of DSM V cannabis use disorder is most likely.

Unfortunately, teens in severe trouble rarely seek professional help, until pressured by parents or authorities. In treating marijuana-dependent teens, clinicians typically find that their closest friends use drugs; that they have a high level of denial that the marijuana use has any negative behavioral effects; and, that they are not addicted ("I can stop anytime I want"). A washout period of a month or more is often needed before cognitive benefits of stopping use are recognized. As in all addiction treatments, relapses are the rule rather than the exception and should not be punished.

In the community, there are typically few organized treatment venues for youth, apart from consultations with school counselors, pediatricians, and child psychiatrists. In refractory cases, families with means often turn to residential wilderness programs or therapeutic boarding schools to extract the teen from the environment and provide for extended socialization in the principles of recovery. For families without means, school-based counseling and the juvenile justice system remain the "treatments" of last resort.

A Comprehensive Assessment of Harm

The question of "harm" caused by marijuana is often distorted in two important ways. First, negative outcomes in the lives of marijuana users are too often automatically interpreted as *caused* by the drug rather than *associated* with both marijuana and a multitude of other factors that place youth at risk. Second, "harms" are often defined only in medical/biological terms, failing to account for the harms caused by enforcement-based marijuana policies.

Engagement with our criminal justice system has its own potential for long-lasting harms:

- Criminal arrest records, initiation into probation and juvenile hall's incarceration subculture ("crime school"), psychological and re-entry traumas
- Ineligibility for federal school loans
- School expulsions and suspensions
- Employment screening problems

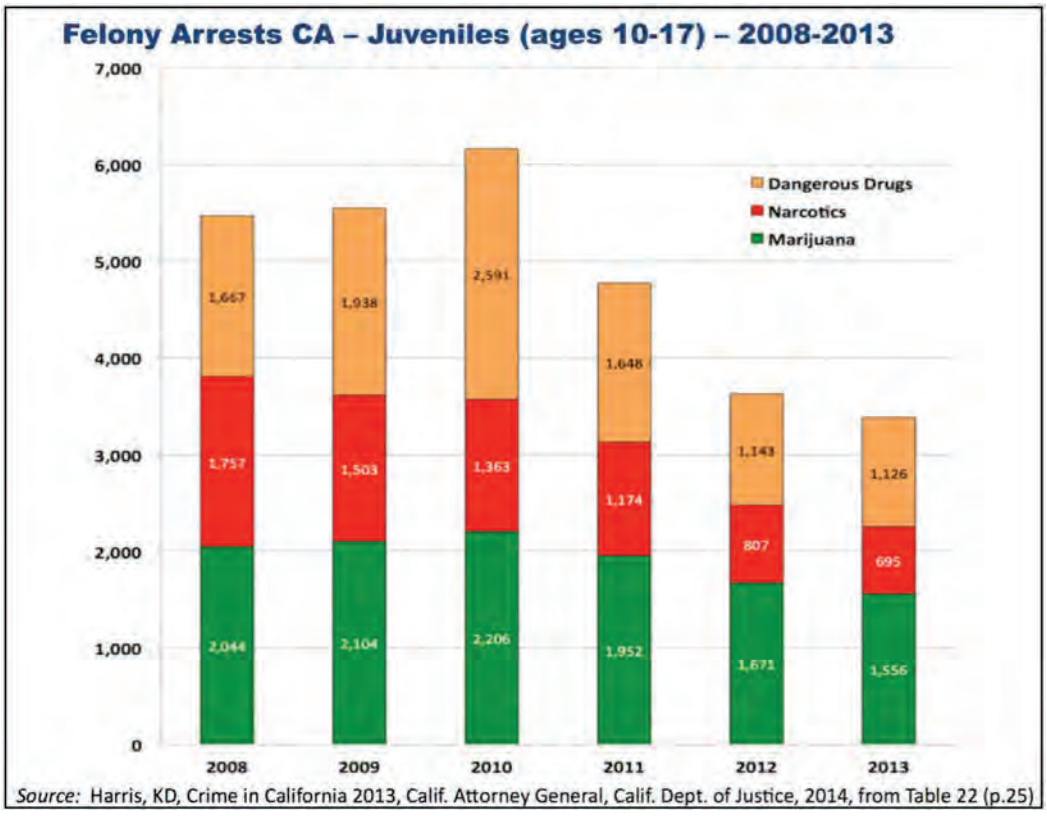
- Racial discrimination in arrest and adjudication
- Fines and attorney's fees, which place the greatest burden on the poor
- Immigration/naturalization problems

If marijuana use and possession are legalized for California adults in 2016, it is only those under 21 years of age for whom possession and use will remain illegal. Penalties should not exceed the harms of the drug itself. A 2010 law that downgraded possession of less than 1 ounce of marijuana to an infraction significantly reduced arrests. But policymakers could go beyond this to develop *non-punitive* sanctions to support families, school retention and remediation for the minority of youth using marijuana regularly or heavily.

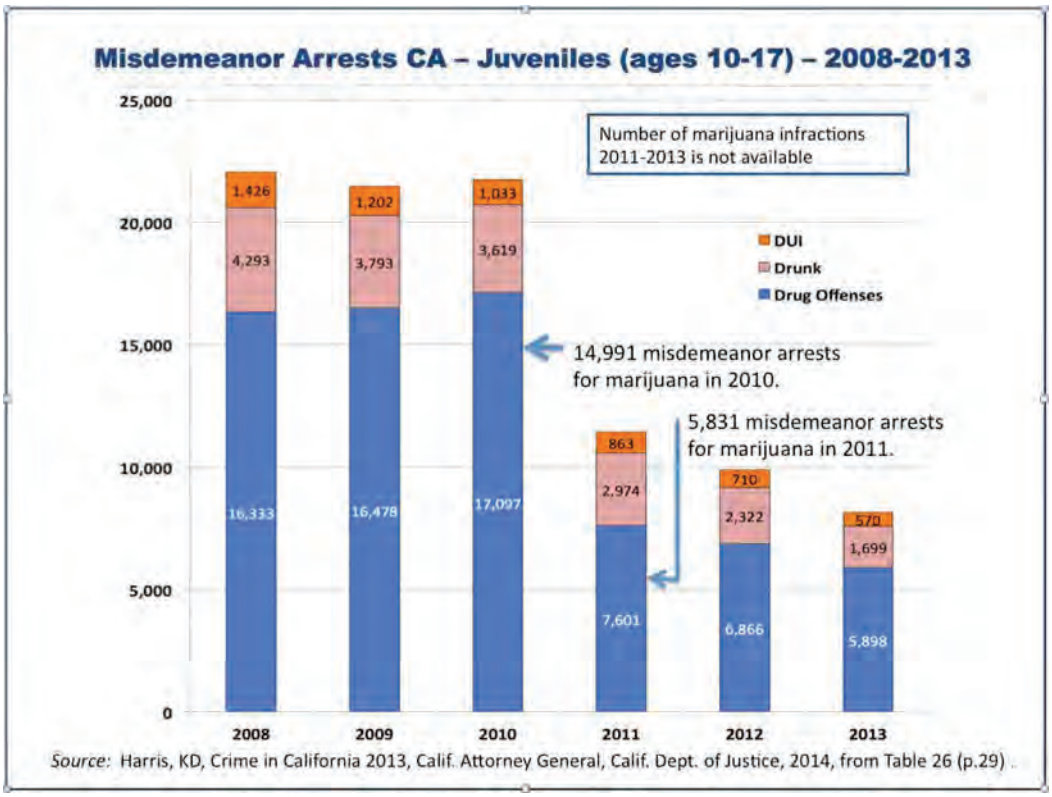
Since a decriminalization law was enacted in late 2010, juvenile marijuana misdemeanor arrests have dropped dramatically while juvenile marijuana felony arrests have declined much more slowly.

In 2011, three-fourths of California's declining marijuana possession arrestees (5,800/7,800) were under age 18, up from one-third in 2010.

The criteria for so many continuing misdemeanor arrests are not clear. Unfortunately there is no California Department of Justice data tabulating the rates of marijuana infraction citations; and the law enforcement distinctions between a juvenile misdemeanor and an infraction remain unclear, poorly documented, and are likely to vary in practice according to locale. At present there appears to be no systematic collection of marijuana infraction data.



Source: Harris, KD, Crime in California 2013, Calif. Attorney General, Calif. Dept. of Justice, 2014, from Table 22 (p.25)



A legalization initiative in California could provide an effective arrest record expungement process for individuals under 21 years of age. If it does, the experience with Proposition 36, enacted in 2000, should be considered: Although successful addiction treatment completers could have their records expunged under Prop. 36, online computer searches, in many cases, can still easily find a historical record of arrests.

Under legalization, youth and communities will also benefit if the nature of marijuana legal charges and the attendant penalties or sanctions are clearly stated and understandable to everyone. In particular, there should be clear criteria established for discriminating among infractions, misdemeanors, and felonies for youth. The level of criminal sanction and its duration should be appropriately linked to the level of the offense.

Non-Criminal Sanctions

A middle ground of community and school-based sanctions that neither criminalizes nor medically pathologizes youthful marijuana users is critically important. The Office of the California Attorney General should seriously consider developing a systematic tracking system for marijuana-related infractions (while individual offenders should be anonymized in state and local databases). Charging minors with infractions rather than misdemeanors, whenever possible, is necessary to minimize the detrimental impacts of criminal convictions upon educational and life opportunities. Fix-it tickets that call for education (similar to traffic school) and/or enrollment in a Student Assistance Program (SAP) might be appropriate. An infraction ticket for a minor could require a parental notification. Infraction fines (approximately $100) could be waived for minors after completion of sanctioned education.

Protecting Youth under Adult Marijuana Use Legalization

It is impossible to fully predict what the consequences of a Tax & Regulate framework will be in California. Without adult legalization, it has already proven impossible to ensure that adolescents delay initiating marijuana use until adulthood. However, with a Tax and Regulate framework, it should be possible to promote various forms of harm reduction based on an honest presentation of the scientific rationale for delay. Most prevention and remediation work is best done in the school system. Additional efforts to reach youth should be made through community and public health systems.

Regulations

Legalization requires regulation, just as legalization of alcohol and tobacco has been accompanied by intense regulations and public health efforts at dissuasion. A wide range of regulations governing a legal cannabis industry would have significant impact on adolescents, including the following:

- Strict enforcement of laws against distribution of marijuana to individuals under 21;
- Maintenance of artificially high price, without being high enough to foster an underground market;
- Strict limits on the number, type, location and sales practices of marijuana retail outlets;
- Strict limits on sale of products that are particularly attractive to young people (no candy edibles);
- Restrictions on marketing and advertising practices that appeal to youth; and
- Accurate quality assurance and labeling of potency, purity and total dose.

If marijuana use is legalized, taxed and regulated for adult consumption, policymakers should consider what tools will limit access and consumption by children and youth. In all considerations of regulations, youth must be a top priority.

The Influence of Marijuana Price on Youth Use

Young people have less disposable income than adults, which makes them what economists call a "price-sensitive" population. For this reason, taxes that raise the price of cigarettes are particularly effective in deterring youth tobacco use. The same principle may apply to marijuana under legalization: Lower prices may be particularly tempting for youth, higher prices will help deter use. A fall in marijuana's price after legalization is certain (Washington State's prices have declined by 50% in the past 12 months) because it is simply cheaper to do business in a legal market than an illegal one. That said, there are a number of ways that regulators might choose to keep the price from falling so far that youth use increases dramatically. For example, as has been done with alcohol in some countries, a minimum price could be set under which marijuana could not legally be sold (e.g., $5/gram). Another approach is to make any tax on marijuana an excise tax rather than a tax based on a percentage of price (e.g., $50 an ounce versus 20% of sale price). This would ensure that marijuana could not be sold for less than whatever the amount of the excise.

Because lower prices have the advantage of helping eliminate illicit markets, concerns about not letting prices fall so low that they incite increased youth use must be balanced with concerns about illicit market reduction. Whatever choice is made in this domain, it should be noted that price regulation is a potent way to affect youth use, regardless of where a young person lives and whether they are in school.

Student Assistance Programs

Marijuana tax revenues could help ensure that school retention and performance are improved. Funds could be preferentially allocated to school-based programs, e.g., Student Assistance Programs (SAPs) for high schools, that emphasize learning skills, remediation of academic performance, school climate, school retention, peer group interventions, family engagement and reduced drug use, as well as to support services for vulnerable youth populations no longer in school. Our review indicates that SAPs are effective over the short term (long-term studies of SAP impacts are lacking). There are many SAP working models to consider, both in-state and elsewhere in the U.S. The key goals should emphasize school retention, cognitive/learning assessments, and academic remediation, as well as referrals for professional care when indicated. The research suggests that this approach will yield better outcomes than punitive policies (zero-tolerance suspension/expulsion policies or random toxicology testing). Tax revenues could also help fund ongoing outcomes research to allow policymakers to assess the effectiveness of various aspects of the marijuana regulatory system in improving school performance, retention and dropout rates, availability and use of marijuana and other drug/alcohol use among students, and co-occurring behavior problems.

SAPs are modeled on the confidential services provided for adults by Employee Assistance Programs (EAPs). The "workplace" for youth is the classroom. SAPs can provide the three-tiered range of prevention services outlined by the Institute of Medicine (IOM) by addressing three levels of risk:

1) *Universal* prevention strategies provide drug education for every student.
2) *Selected* prevention strategies target subgroups known to be at elevated risk (e.g., those just entering high school or with a family history of addiction).
3) *Indicated* prevention strategies focus on individuals known to have initiated risky behaviors (e.g., marijuana use or binge drinking).

Prevention conceptually encompasses all services provided *before* a diagnosis of substance use disorder is made and before treatment is needed. In most cases marijuana-related problems will result in learning problems before they rise to the level of an addiction diagnosis *per se*. The most effective SAPs also involve students' families as genuine partners in early intervention. SAPs can successfully respond to students at different levels of risk, providing universal preventive education for every student, specialized education for selected at-risk populations, and focused interventions when indicated.

The following table summarizes SAP's multi-tiered prevention and mitigation approach to supporting adolescents to delay and limit marijuana use.

Key Findings	Implications
1. Early onset (ages 13-16) of marijuana use is a significant risk factor.	a) Universal and selected prevention activities that seek to **delay initiation** of marijuana use. b) Engagement of cohesive **peer groups**. c) **Family engagement** for at-risk youth.
2. Regular (10-19 days/month) and heavy users (at least 20 days/month) are more likely to show cognitive slippage than occasional users. 3. There will likely be 49,000 regular users (3%) and 130,000 heavy users (8-9%) in California high schools (2015-16), before any change in access or use attributable to a legalization initiative.	a) Indicated intervention by **Student Assistance Programs** (SAPs) b) SAPs need to include **cognitive and learning assessments**. c) SAP referral mechanisms for **learning skills training and professional assistance** for drug dependence.
4. Regular and heavy users are more likely to skip school, drop out and not proceed to further education.	a) Evidence-based programs to improve **school climate**. b) **Engagement methods** for unaffiliated schools.
5. Transitions of marijuana use are common after high school, but are poorly studied.	a) **Recovery support** b) Long-term **outcome research** needs to be funded by new marijuana tax revenues.

SAPs are valuable interventions for young people. Additionally, individual school districts and schools may wish to adopt different strategies to protect youth, and innovative designs with outcomes measures could also be considered for funding from marijuana tax revenues. The critical requirements are that (1) the program fits well with the cultural, social and educational needs of the district or school concerned and (2) The program has a solid evidence base. Beyond SAPs, some programs meeting these criteria include prevention programs that help teachers promote pro-social, task-focused classrooms (e.g., The Good Behavior Game http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3188824/) and programs that help communities come together to intervene effectively for a range of youth development issues, including but not limited to substance use.

For example, the Communities that Care (CTC) program is based on a system developed by researchers and distributed in a variety of formats by the University of Washington Center for Communities that Care. The Center helps communities learn about CTC and install it, and offers personalized support to help implement it. CTC was tested in a randomized controlled trial involving 24 communities across seven states matched in pairs within each state and randomly assigned to either receive CTC or serve as control communities. A total of 4,407 students from CTC and control communities were followed and surveyed annually from the fifth grade. By the spring of the eighth grade, significantly fewer students from the CTC communities had health and behavior problems than those from the control communities. Compared to the control groups, students from CTC communities were: 25% less likely to have initiated

delinquent behavior; 32% less likely to have initiated the use of alcohol and; 33% less likely to have initiated cigarette use. These significant effects were sustained through tenth grade, one year after the intervention phase of the trial ended. By the end of the tenth grade, students from CTC communities also had 25% lower odds of engaging in violent behavior in the past year than those from control communities.

Reforming Drug Education

There is little dispute that *abstinence* is the best choice for teenagers, for a host of sociological, psychological and physiological reasons. However, given the persistence of marijuana use among young people, and despite our best efforts to date, a more comprehensive strategy is required.

We do not find evidence to support the efficacy of "scare them straight" programs. Most drug education programs are aimed solely at *preventing* marijuana and other drug use. After instructions to abstain, the lessons end. No information is provided about how to avoid problems or prevent abuse for those who do experiment. Abstinence is treated as the sole measure of success, and the only acceptable teaching option. The abstinence-only mandate puts adults in the unenviable position of having nothing to say to the young people we most need to reach—those who refuse to "just say no" to marijuana use, thereby foregoing the opportunity for having real conversations about how to reduce risk and stay safe.

The educational/prevention components of school-based programs could be much more effective in preventing, delaying and mitigating harms of use by:

- Providing science-based information on the effects of cannabinoids,
- Providing data in support of delay of marijuana use,
- Encouraging moderation, self-regulation and harm reduction when abstinence is not practiced, and
- Development of universal education for all age groups.

Research on Long-Term Outcomes

Those drafting any reform initiative or subsequent legislation, budgets or regulations should strongly consider ensuring adequate, stable funding for outcomes research to guide revisions to the law focusing on topics such as:

- School retention, dropout rates;
- School performance, cognitive functions, further education;
- Levels of marijuana and cannabinoid use among students, other drug use, including alcohol and tobacco, and;
- Co-occurring behavior problems.

Conclusion

Under legalization for adults, a school-based approach to delaying initiation, harm-reduction, mitigation and academic support holds promise for protecting the health of adolescents. The goals of reducing drug use and improving school retention and performance have not been achieved under prohibition. However, without a mechanism for ensuring ongoing sufficient funds to provide support needed by at-risk youth, school-based services such as Student Assistance Programs (SAPs) will remain underused, despite their proven value. A Tax and Regulate policy legalizing marijuana use by adults has the potential to reserve sufficient revenue to provide universal access to programs such as SAPs that emphasize learning skills, remediation of academic performance, improved school climate, school retention, peer group interventions, family engagement and more effective drug education, prevention and counseling programs. School districts disproportionately impacted by high dropout rates should have enhanced funding for student outreach, support and treatment services. Tax revenue could also be committed to support clinical care for disadvantaged and uninsured youth in the most severe end of the cannabis use disorder spectrum as well as services for high-risk youth no longer in public schools. A framework of regulations governing the marijuana industry designed to protect youth will also be needed to limit youth access to marijuana and foster an environment for prevention and education programs to be maximally effective.

Please visit the Publications section of www.safeandsmartpolicy.org for source materials and additional studies reviewed by the Youth Education and Prevention Working Group.

Appendix B:
Summary of Blue Ribbon Commission Report Recommendations

The 58 total recommendations from the Pathways Report of the Blue Ribbon Commission on Marijuana Policy (BRC) are numbered and outlined below with accompanying report text for clarity and context. The recommendations begin with four core strategies and nine goals, followed by 45 additional recommendations related to taxation and regulation. These additional recommendations can be used as policy options to achieve the nine goals within a framework created by the four core strategies.

The work of the Commission was divided into three working groups: Youth Education and Prevention, Public Safety, and Tax and Regulatory. While the third group, Tax and Regulatory, detailed the 45 additional recommendations, the Pathways Report also included the findings and recommendations of the other two working groups, Youth and Public Safety, which appear in this appendix as well. Their findings and recommendations are not counted as part of the report's 58 total recommendations because the work of these two groups informed and guided much of the Commission's work, including providing a rationale and basis for all subsequent decisions regarding recommendations.

The *Process* of Legalization: Core Strategies

One of the major findings of the Blue Ribbon Commission's work is that the legalization of marijuana would not be an event that happens in one election. Rather, it would be a *process* that unfolds over many years requiring *sustained attention to implementation.*

That process of legalization and regulation will be *dynamic*. It will require the continued engagement of a range of stakeholders in local communities and at the state level. The Commission recommends that the process the state would embark upon must be based on four macro-level strategies operating concurrently:

1) **Promote the public interest** by ensuring that all legal and regulatory decisions around legalization are made with a focus on protecting California's youth and promoting public health and safety.

2) **Reduce the size of the illicit market** to the greatest extent possible. While it is not possible to eliminate the illicit market entirely, limiting its size will reduce some of the harms associated with the current illegal cultivation and sale of cannabis and is essential to creating a well-functioning regulated market that also generates tax revenue.

3) **Offer legal protection to responsible actors** in the marijuana industry who strive to work within the law. The new system must reward cooperation and compliance by responsible actors

in the industry as an incentive toward responsible behavior. It must move current actors, current supply and current demand from the unregulated to the regulated market. And the new market will need to out-compete the illicit market over time.

4) **Capture and invest tax revenue** through a fair system of taxation and regulation, and direct that revenue to programs aligned with the goals and needed policy strategies for safe legalization.

Goals of Legalization and Regulation

The Commission believes any legalization effort should be clear on the goals it is setting out to achieve for the people of California. Other stakeholders may propose different or additional goals. The Commission recommends the following nine goals:

5) Promote the health, safety and wellbeing of California's youth, by providing better prevention, education and treatment in school and community settings and keeping youth out of the criminal justice system. Limit youth access to marijuana, including its concurrent use with alcohol and tobacco, and regulate edible products that may appeal to children.

6) Public Safety: Ensure that our streets, schools and communities remain safe, while adopting measures to improve public safety.

7) Equity: Meet the needs of California's diverse populations and address racial and economic disparities, replacing criminalization with public health and economic development.

8) Public Health: Protect public health, strengthen treatment programs for those who need help and educate the public about health issues associated with marijuana use.

9) Environment: Protect public lands, reduce the environmental harms of illegal marijuana production and restore habitat and watersheds impacted by such cultivation.

10) Medicine: Ensure continued access to marijuana for medical and therapeutic purposes for patients.

11) Consumer Protection: Provide protections for California consumers, including testing and labeling of cannabis products and offer information that helps consumers make informed decisions.

12) Workforce: Extend the same health, safety and labor protections to cannabis workers as other workers and provide for legal employment and economic opportunity for California's diverse workforce.

13) Market Access: Ensure that small and mid-size entities, especially responsible actors in the current market, have access to the new licensed market, and that the industry and regulatory system are not dominated by large, corporate interests.

Evaluating Various Policy Options

The Commission studied policy options in seven major areas related to regulation and taxation of the industry, which is the primary focus of the *Pathways Report*. The goals of protecting youth and public safety are embedded throughout the report, but additional information on those specific topics is also available on the Blue Ribbon Commission website.

Although these major policy areas overlap to some extent, they are discussed separately in the *Pathways Report* for ease of presentation. Beyond the above 13 recommended strategies and goals, the Commission offers additional and related recommendations within the following policy areas for the public, policymakers, and lawmakers to consider:

A. Defining the Marijuana Industry Structure
B. Regulating Marijuana Cultivation and Processing
C. Regulating Marijuana Marketing, Sales and Consumption
D. Taxing Marijuana
E. Enforcing the New Rules
F. Data Collection and Monitoring
G. Using The New Revenue from Marijuana

Policy Option Recommendations

In this section, we summarize the recommendations of the BRC as they relate to tax and regulatory decisions, the third working group. It is important to note that many of the tax and regulatory recommendations are informed by the goals relating to youth and public safety. The beginning recommendations are listed as general recommendations, followed by other recommendations grouped into the seven major policy areas outlined above.

General Recommendations

14) Develop a highly regulated market with enforcement and oversight capacity from the beginning, not an unregulated free market; this industry should not be California's next Gold Rush.

15) Build ongoing regulatory flexibility and responsiveness into the process, while ensuring regulatory agencies are engaged constructively to ensure successful and faithful implementation.

16) Establish a coordinated regulatory scheme that is clearly defined with a unified state system of licensing and oversight, as well as local regulation.

17) Designate a central person, agency or entity with the authority and responsibility to coordinate the implementation process and to engage all relevant state agencies and local governments in their respective roles in the process.

18) Any boards, commissions or agencies that oversee the legal marijuana industry should represent all the public interests of the people of California rather than being dominated by individuals with an economic stake in the industry itself.

19) State officials should engage the federal government, both to ensure industry compliance with current federal enforcement priorities and to help change other federal rules that may be obstacles to safe legalization at the state level.

Marijuana industry structure

20) Consider options that limit the size and power—both economic and political—of entities in the marijuana industry, through limits on the number and types of licenses that are issued to the same entity or owners, limits on the size of any one license, encouragement of non-commercial options and incentives for smaller players. The goal should be to prevent the growth of a large, corporate marijuana industry dominated by a small number of players, as we see with Big Tobacco or the alcohol industry.

21) Require participants in the cannabis industry to meet high standards of licensing and training, and provide paths of entry to the industry for California's diverse population.

22) Licensing fees should be set at reasonable levels to cover the cost of regulation, certification and oversight by state and local government. They should not be so onerous as to limit smaller actors from participating in the industry.

23) Business entities involved in the marijuana industry should be required to hold both state licenses and local permits.

24) Provide flexibility and authority for local government to adopt additional measures responsive to public health, safety and economic development, as well as to regulate business practices of licensees in their jurisdiction. Apart from this local authority to regulate commerce, the state should set uniform minimum guidelines related to personal cultivation, possession and consumption.

25) Urge the federal government to provide better access to banking in order to help the state meet its goals, and also help California comply with federal guidelines.

26) Accommodate the medical and recreational uses of marijuana based on conscious policy decisions as to which functions of the two systems will be merged and which will remain separate.

To the extent any functions are merged, ensure certain key guidelines are met to ensure medical access. To the extent any functions are separate or provide a benefit to patients, establish clearer guidelines for who can qualify as a patient.

Regulating marijuana cultivation and processing

27) Protect the ability of individuals to consume, possess or cultivate marijuana within certain uniform statewide guidelines, apart from the additional authority granted to local government.

28) Provide for a designated level of legal licensed cultivation at the state level, and in coordination with local government, to supply the demand in California, without diversion to other states.

29) Establish a statewide seed-to-sale tracking system ensuring that marijuana is cultivated, distributed and sold through the licensed, regulated system, with the minimum amount of diversion out to—or in from—the illicit market.

30) Current cannabis cultivators who have been responsible actors, and are willing to be licensed and abide by regulations should be given consideration for the new recreational licenses.

31) Existing environmental laws must be enforced. State and local agencies responsible for this enforcement should have the authority and resources to ensure marijuana cultivation meets environmental standards.

32) Afford the same protections and rights to cannabis workers as other workers in the similar industries.

33) Testing of cannabis—for potency as well as for pesticides, molds and other contaminants — should occur near the points of harvesting and/or processing.

Regulating marijuana marketing, sales and consumption

34) Testing and oversight of the supply chain (through a seed to sale tracking system) should be in place throughout the process -- including at the stage of retail sales to ensure consumer safety and to limit diversion to and from the illicit market.

35) The state should regulate the retail sales environment (ID and age requirements to enter stores, public health information, sale of alcohol or tobacco stores that sell marijuana) and what marijuana products can legally be brought to market (including limits on THC content, products such as concentrates and different forms of edibles).

36) All products should have consistent labeling, especially as to dosage and concentration of key cannabinoids.

37) Through their permitting, land use, and regulatory authority, local governments can limit the number of marijuana retailers, limit retailer density and maintain cannabis-free zones near places like schools and parks.

38) Place limits on advertising and marketing of marijuana, in accordance with constitutional standards, with the particular aim of limiting or prohibiting tactics aimed at youth or that encourage heavy and problematic use.

39) Comply with public smoking, smoke-free, and public consumption laws.

Taxing marijuana

40) Adjust the taxation of the industry periodically throughout implementation, including the base, type, timing and level of tax.

41) When determining changes to the level and type of tax, consider the four core strategies (public interest, legal actors, illicit market, and capture revenue) and specific policy goals (youth, public health, medical access) as the basis for those changes.

42) The state should engage the federal government on changing IRS rules that prohibit marijuana-related businesses from deducting normal business expenses from their federal taxes; this change will help responsible actors pay tax at whatever stage of production the state determines is best for public policy.

43) A successful tax system will raise the money needed to pay for the increased education, public health and enforcement costs associated with marijuana use and new regulations. However, this commission feels strongly that maximizing revenue – which would depend on higher levels of consumption - should not be the focus of cannabis tax policy.

Enforcing the new rules

44) Deploy a spectrum of enforcement tools appropriate to the offense, with clarity regarding state and local responsibilities using a) inspections and demands for correction for licensed entities that regularly comply with the law, recognizing the higher cost of compliance they have relative to the illicit market, b) civil enforcement tools of fines, suspensions and license revocations for entities that regularly fail to meet standards, c) alternatives to incarceration for low-level offenses in the illicit market, and d) the most serious criminal justice penalties for individuals who cultivate on public land, engage in large-scale trafficking, operate enterprises to sell to youth or engage in other violent or serious crime.

45) State law needs to clarify how enforcement responsibilities will be divided between state and local agencies.

46) Illegal sales by adults to minors, as well as illegal cultivation on public and private lands, must remain enforcement priorities.

47) Policymakers should consider alternatives to arrest and jail wherever possible for youth involved in marijuana sales.

Collecting Data

48) Conduct research and collect and analyze data on key indicators to make further, evidence-based decisions through the course of implementation.

49) Data collection should include demographic factors, such as race, age, income bracket, etc.

50) Data collection and research should cover a range of topics, with metrics and indicators aligned to the core strategies (for example, the size of the illicit market) and policy goals the state adopts (for example, youth, public health, etc.)

51) Research and data collection related to youth, public health and public safety should include marijuana as well as tobacco, alcohol, illegal drugs, abuse of prescription drugs, etc.

52) This research and monitoring function should be paid for from marijuana tax revenue.

53) The state should periodically publish reports of comprehensive data, with information about progress, successes and challenges of implementation and provide for public and stakeholder feedback for course corrections.

Using the new revenue

54) Revenue raised from marijuana taxes should be used to help further the public interest in achieving the policy goals directly associated with legalization. Governments should not view marijuana taxes as a potential source of general fund revenue. All investments should be evaluated for their impact on the desired goals.

55) The state must fund—and make universally available—programs to protect youth, including evidence-based education, prevention and treatment in schools and community-based settings, for example Student Assistance Programs.

56) Funding should be available from the outset for a vigorous public health effort to educate the public and provide health-based solutions and responses to problem use.

57) Funding should be provided for public safety, such as better research on impaired driving, and enforcement priorities, such as sales to minors and grows on public lands.

58) Funding should be provided to invest in communities with high levels of unemployment, high levels of crime, and large numbers of drug arrests to provide general job training and employment opportunities.

Findings and Recommendations of Youth and Public Safety Working Groups

Youth Education and Prevention Working Group

Based on its research and a public forum held in Oakland, the working group issued these findings and recommendations:

- Regular or heavy marijuana use at an early age can be associated with reduced educational attainment and educational development.

- Criminal sanctions for marijuana use and possession have multiple negative impacts on youth, especially for youth of color, with regard to educational attainment and employment opportunities, while also reducing law enforcement resources for addressing more serious crime.

- Significant improvements are needed to make drug-safety education more scientifically accurate, realistic and effective at protecting youth.

- Sufficient funding available from marijuana tax revenue, if effectively reserved for and spent on services for youth, could close many gaps in current community-based support for at-risk youth.

- School-based approaches such as Student Assistance Programs (SAPs) are effective in improving school retention, academic achievement and reduction of drug use.

- Universal availability of school-based services throughout California, combined with an evidence-based approach to drug education, could become a reality under a Tax and Regulate public health approach to marijuana policy.

- Well-designed and implemented regulations have the potential to better protect youth.

Public Safety Working Group

The deliberations of the working group as well as the public forum hosted on this topic in Los Angeles led to several important findings and recommendations:

- DUID, Road and Highway Safety: A number of steps can be taken to improve road and highway safety as it relates to Driving Under the Influence of Drugs and marijuana impairment specifically. These include support for currently available tools (such as roadside impairment tests available for all drugs) as well as research to develop new scientifically valid tools specific to marijuana.

- Banking: Current federal policy means limited access to banking for marijuana businesses, causing many cultivators and dispensaries to operate on a cash basis. This makes businesses the target of crime, and reduces transparency of financial information. The state should engage the federal government to provide some safe harbor for licensed businesses to access the banking system.

- Masking the Illicit Market: A third major concern is the ways in which a legal market can be a cover for illegal activity, whether small-scale illegal sales to youth or large-scale cultivation and distribution for sales inside or outside California. Many of the recommendations in the Policy Options section of this report focus on available tools to separate the legal and illicit market and to prevent diversion to and from the illegal market, which can be associated with other violent and serious crime.

- Other Dimensions of Safety: Environment, Consumer and Worker. The BRC process addressed other concerns related to public safety that are not currently prominent elements of enforcement, given that law enforcement resources are limited and must be prioritized in other areas. Protection of the environment, consumers and workers can be addressed through civil enforcement and, where appropriate, through criminal enforcement.

EXHIBIT 14

WILDSTAR

SENT CERTIFIED MAIL RETURN RECIEPT REQUESTED
Doc No. 7020 1290 0000 5327 5081

July 19, 2021

Mr. Robert Andres Bonta, Attorney General
Office of the Attorney General
1300 "I" Street
Sacramento, CA 95814

Re: Submission of My Intention to Repeal Prop 64, Adjudicate Damages in State Court on Behalf of Those Parties Damaged by Prop 64 and To Provide Bridge Legislation, AKA as The PERON ACT to Accompany a State Court Issued Temporary Restraining Order That Will Suspend All State and Local Government Licensing Applications, Enforcement, Fee's, and Collections Associated with All Licensed, For Profit Cannabis Activities as Had Been Mandated Under Prop 64 Within the State of California.

Dear AG Bonta:

The Control, Regulate and Tax Adult Use of Marijuana Act, No. 15-0103 (AUMA) was referred to the voters for consideration in State Proposition No. 64 (Prop 64) within the November 08, 2016, elections. Prop 64 was voter approved and signed into law making it legal within the state for adults aged 21 years or older to possess and use marijuana for recreational purposes. The measure created two new taxes, one levied on cultivation and the other on retail price. Prop. 64 was designed to allocate revenue from the taxes to be spent on drug research, treatment, and enforcement, health and safety grants addressing marijuana, youth programs, **and preventing environmental damage resulting from illegal marijuana production.** As it relates to my stated intentions to repeal Prop 64, I have the following:

1. I am currently a gubernatorial candidate having qualified on the 07/17/21 CA Secretary of State List of Qualified Candidates for the recall election of current CA Governor Gavin Newsom.

2. Based on the language used within the voter approved version of Prop 64, I believe it to be an illegal instrument that were lies to the voters of California and were only used with the intention of seeing "recreational", for-profit, taxable cannabis as a way to monopolize the industry and create undue hardships for the less profitable, medical cannabis community.

3. I am a medical cannabis patient that has seen my rights, as well as the rights of numerous other medical cannabis patients in California, been violated by the passage of Prop 64. Furthermore, despite that fact it is illegal to begin with, the reconciliation of Prop 64 and MMRSA have caused the elimination of medical cannabis, due to market forces, despite the fact that Washington State already exemplified this problem.

4. My campaign promise to repeal Prop 64, on my first day in office is based on the fact that since Prop 64 was an illegal initiative, that protects the state under the 10th amendment but mandates licensees, to enlist in a licensing scheme that requires they break federal law by trafficking in a controlled substance, cannabis, in a for-profit, recreational licensing scheme wherein they have no 10th amendment protections for having done so. As such I would request a federal judge to weigh in on this.

5. I will repeal Prop 64, based on it being an illegal initiative that promoted its passage by language, such as what is to be found in Section 11, as not having "positive conflict with higher federal law" that is a lie and without legal basis. Prop 64 went on to be signed into law by Governor Newsom and since 2016 has been an illegal law in California. Since this "positive conflict" language has yet to be explicitly challenged, I will construct this writ to be very narrow in its scope thereby allowing for a legal determination to be made by a federal court strictly on this "positive conflict" language.

6. Should a federal judge decide that the "positive conflict" language is NOT representative of any state v federal law conflict, then I will NOT repeal Prop 64 on my first day in office. **Alternatively, should a federal judge decide that there IS positive conflict between state and federal law, I WILL, as promised, repeal Prop 64 my first day in office!**

7. As a medical cannabis patient and a governor elect, I believe I have standing in this matter. As such I would ask that my writ and the federal decision be expedited so I would have that decision prior to assuming office. If the matter has not been decided by a federal court as I assume office, I will go forward on the first day in office to repeal Prop 64, comfortable in the knowledge that the executive authority I have been granted by the vote of the people electing me to office and the expected decision by the federal judiciary, would support my decision for having done so.

8. Upon a federal court ruling that positive conflict does exist, I would sign bridge legislation to be known as the PERON ACT that would cease all future state and local licensing of "for profit" cannabis licenses.

9. I would allow all existing Prop 64 licenses that have been granted by state and local government to stand until such time that the matter of damages has been determined under res judicata in a state court proceeding. The caveat being that the licensees would have to acknowledge they are knowingly conducting business in violation of the Supremacy Clause and more specifically the Doctrine of Preemption.

10. Existing license applications could, if desired, continue those applications under the same conditions as previously set forth or they could elect to cancel the application and be refunded all monies spent during that process.

11. All monies that have been spent on non-refundable applications that were denied by any local or state government cannabis licensing agency would be eligible for a refund.

12. The way cannabis related funds have been managed by those in charge will be immediately stopped and investigated for potential criminal activity. In Prop 64 ALL state cannabis tax, fee, licensing, abatement, and enforcement monies which is to be collected and have, per Section 7 Subsection 34018 (a-c) **REQUIRED** that these funds be deposited not in the General Fund but instead in a Special Trust Fund(s) known as the California Marijuana Tax Fund, where they have not been subject to the normal fiscal controls and review as set forth in the General Fund public audit and accounting practices for state revenues.

    While Special Trust Funds have no business in housing the people's money as they are, by design, not transparent and lend themselves to financial improprieties, Prop 64 goes even further by stating, within that same Section 34018 (a-c) that all cannabis revenues will not be considered "moneys" for purposes of the regulatory practices as set forth in Prop 64. **Since I will be repealing Prop 64 based on it being an illegal initiative, I will be demanding, within 60 days from my request, a complete accounting of all "moneys" or whatever else you want to call those revenues (funds), to determine exactly where those funds went, how the money was spent and who the previously undisclosed beneficiaries have been!!!** If there is ANY evidence found of criminal wrongdoing, at any level, I will DEMAND that those accused parties be held accountable by your office for their actions!

13. Upon a complete accounting of all cannabis related Special Trust Funds a portion of that money will be used to cover reimbursement of those parties damaged under the implementation and illegal enforcement of any activities associated with perfecting regulations as defined in Prop 64. After five years, any funds left over from the Special Trust Funds would be deposited into the General Fund.

14. I would expect that there would be a substantial state class action response when parties realize that they had been damaged by an illegal state initiative. No doubt that will be a difficult financial burden for the state, and many local governments, to bear. I actually empathize with that looming financial crisis our governments will face. The rush, i.e., blind greed, to capture these revenues left the taxpayers in the hands of very poor leadership. As usual it will be the taxpayers that foot the bill. But all is not lost. As will be seen in the PERON ACT, state and local governments can realize revenues, not on a tax basis *(which is illegal under federal and international law. See the United Nations Single Convention on Narcotics Article 49 Para 2(f) which only allows cannabis for scientific and medical purposes, not recreational in any form)* but as just one method, on a fee per sq-ft basis. I would propose that the state apply a percentage of that new revenue to pay down the claims that will be coming from a pending class action. This is a case of don't shoot the messenger and indeed, even though the state warned us not to invest in licensed cannabis, as it was likely to be "unreasonably impracticable", it wasn't enough of a warning. No, the investor lines formed and many have lost fortunes in what is now seen as a failed dream. A dream that if left to carry on, the financial damages, to investors as well as local and state government, would have only gotten worse.

15. Upon assuming office I will immediately disband the newly formed Department of Cannabis Control (DCC) which replaces the previous agency Bureau of Cannabis Control (BCC) all which had been designed to CONTROL cannabis law and regulation within the state. I will immediately set up a new agency to be known as the Department of Cannabis Administration (DCA) which will ADMININISTER cannabis law and regulation within the state and as will be defined in the forthcoming PERON ACT.

As a black man seeking justice, I do so not just on my own behalf, but on behalf of EVERY MINORITY PERSON, who for generations have been disproportionately affected by our nation's war on drugs! As the GOVERNOR ELECT, I speak on behalf of ALL PEOPLE WHO RELY ON MEDICAL CANNABIS! I speak on behalf of ALL PEOPLE who rely on state cannabis law and regulation to be fair, impartial and NOT AT ODDS WITH FEDERAL LAW! **We, as in NONE OF US,** want to be jailed under federal law for ever accessing medical cannabis and even though we may be state licensed, the Controlled Substance Act still remains the overriding law that, should it be applied, would jail those of us who are being required to be state "legal" under the ILLEGAL RULE AND REGULATION AS SET FORTH IN PROP 64!

While it is extremely distressing to me and my community that in the year 2021 people of color are still the most affected by our nations war on drugs, I am buoyed by the recent statements made by the Supreme Court Justice Clarence Thomas that illustrates the federal courts desire to see the inconsistencies between state and federal cannabis laws be resolved. I believe the upcoming federal court ruling on my writ, signifying there is a "positive conflict" would then force those states with recreational cannabis laws to remedy that conflict and would go a long way to begin that reconciliation process. That process would almost immediately unclutter the federal court dockets who have seen an increasing number of federal cannabis cases that go to, inter alia, civil rights and antitrust law violations would not have foundation if the state court law they were built upon were fundamentally at odds with federal drug laws. These cases end up back in state court as you simply cannot use the courts to enforce an illegal contract. Period!

I have produced this communication so that you will have an early indication of what will be asked of you and your office once I am sworn into office. With only a year before the General Election I do plan on hitting the ground running. However, please be advised that should I not be elected in this special election I fully intend on running again in the 2022 General Election. Which means these matters, while some would argue are strictly cannabis related and I would strongly disagree, are instead a result of poor, systemic, corrupt governance that is not meant to be inclusive and provide for the best interest of the people, but instead to enrich the few who would attempt to monopolize this industry and this plant. I intend to change that AG Bonta.

As an attorney you, and every attorney associated with the passing and implementation of Prop 64 have taken a sworn oath, to uphold the integrity of our laws. The State of California, by virtue of what has been required of its cannabis licensees, is violating that Duty of Candor oath by aiding and abetting the violation of higher federal drug law. The question now becomes can I count on you and your office to assist me in my efforts to undo the crimes which Prop 64 has promulgated upon the citizens of this great state?

Please understand this about me. I will not be dissuaded by anything that attempts to cast me or this message in a negative light. I speak on behalf of tens of thousands of medical cannabis patients, as well as those who have refused to violate higher federal law and have had their properties raided and seized by quasi-military force, who have tried to become licensed but have been denied or have been mired in an endless application process, all designed to financially bankrupt them while those with the political connections have sailed through these same processes.

I speak on behalf of the neighbors who have not been heard as megalithic cultivation sites are approved and their regional quality of life is destroyed.

I speak on behalf of the next generation and those generations that follow them so that medical cannabis is not seen as something that can only be found in a plastic package.

I speak on behalf of the farmers who for generations have worked growing a plant they love and protected with nurtured genetics that have been found to have real, lasting effects on medical conditions that traditional medicine has responded to with prescription drugs that are oftentimes highly addictive in nature and damaging in the long term.

I speak on behalf of the environment. Where are our state agencies in determining the statewide water use impact of all the licenses that have been issued, and will continue to be issued, under Prop 64? It's clear that no one in Sacramento is taking responsibility for the overall water usage demand that these licensed operations will collectively represent on our available water resources. I've made these calls. I know this to be true. While the current drought conditions are BAD, they are only likely to get worse and the fact that the BCC and DCC are issuing PROVISIONAL LICENSES WITHOUT COMPLETED AND APPROVED ENVIRONMENTAL IMPACT REPORTS (EIR) OR THE LESS DETAILED CALIFORNIA ENVIRONMENTAL IMPACT REPORTS (CEQA) IS CRIMINAL MISCONDUCT BY THOSE IN CHARGE AND THE ENVIRONMENTAL AGENCIES WHO HAVE BEEN TASKED WITH PROTECTING THESE RESOURCES**! Simply put, Prop 64, while masquerading as an environmental watchdog, has not only been a crime against the people and OUR RIGHTS, but it has also been a crime against the environment and the resources it was tasked to protect!**

I do NOT speak on behalf of those who would grow cannabis at a commercial scale that takes over entire homes for indoor grows. Who steal power. Who risk others health, safety and welfare. Who poison the plant and their extractions all in the name of profit. Who rape our environment, our forests, our public lands with massive grows that leave trash everywhere, exploit workers and hold no regard to the nutrients and pesticide issues their unlicensed crop cultivation techniques cause our air, wildlife and downstream water resources. Under my administration, these issues will be dealt with swiftly, and severely, as there is no room in our tomorrow for the bad actors in cannabis we see today.

I will not be dissuaded by competing candidates who would argue Prop 64 can be repaired to be compliant with federal law. That it can be made less restrictive. That it protects the environment

with controls that had not been in place prior to its passing. That it serves as a banishment of black-market cannabis trade, etc., I could go on and on, but the reality is that EACH of these arguments are addressed in the PERON ACT and for the purposes of this correspondence **DO NOT MATTER ANYWAY!** Prop 64 was an illegal initiative, and that, AG Bonta is ALL you and I will have to address once I take office!

In closing, within two weeks I will be sending you a follow up to this letter that will include a copy of my federal writ as well as numerous other statements and affidavits, by parties who would like YOU to know how the passing of Prop 64 has impacted them, their families, their friends, their employees, their futures, their quality of life, their finances and their view of licensed cannabis. I will be soliciting these affidavits and forwarding them to you for review and action under my new administration. Should you wish to reach me, my cell number below is best with a follow up email will expedite our connection. Thank you for your consideration. I do look forward to working with you.

In anticipation of your reply I will remain,

Nickolas Wildstar, Governor Elect
wildstar@governorwildstar.com

EXHIBIT 15

The Modesto Bee

BUSINESS

California pot companies warn of impending industry collapse

BY MICHAEL R. BLOOD *ASSOCIATED PRESS*

DECEMBER 19, 2021 6:13 AM

FILE - In this Jan. 12, 2018, file photo, a bud tender prepares marijuana for a customer at Med Men a dispensary in West Hollywood, Calif. Leading California cannabis companies Friday, Dec. 17, 2021, warned Gov. Gavin Newsom that the state's legal industry was on the verge of collapse and needed immediate tax cuts and a rapid expansion of retail outlets to steady the marketplace. (AP Photo/Richard Vogel,Ffile)
RICHARD VOGEL *AP*

LOS ANGELES

Leading California cannabis companies warned Gov. Gavin Newsom on Friday that the state's legal industry was on the verge of collapse and needed immediate tax cuts and a rapid expansion of retail outlets to steady the shaky marketplace.

The letter signed by more than two dozen executives, industry officials and legalization advocates followed years of complaints that the heavily taxed and regulated industry was unable to compete with the widespread illegal economy, where consumer prices are far lower and sales are double or triple the legal business.

Four years after broad legal sales began, "our industry is collapsing," said the letter, which also was sent to legislative leaders in Sacramento.

The industry leaders asked for an immediate lifting of the cultivation tax placed on growers, a three-year holiday from the excise tax and an expansion of retail shops throughout much of the state. It's estimated that about two-thirds of California cities remain without dispensaries, since it's up to local governments to authorize sales and production.

The current system "is rigged for all to fail," they wrote.

"The opportunity to create a robust legal market has been squandered as a result of excessive taxation," the letter said. "Seventy-five percent of cannabis in California is consumed in the illicit market and is untested and unsafe."

"We need you to understand that we have been pushed to a breaking point," they told the governor.

Newsom spokeswoman Erin Mellon said in a statement that the governor supports cannabis tax reform and recognizes the system needs change, while expanding

enforcement against illegal sales and production.

“It’s clear that the current tax construct is presenting unintended but serious challenges. Any tax-reform effort in this space will require action from two-thirds of the Legislature and the Governor is open to working with them on a solution,” Mellon said.

Companies, executives and groups signing the letter included the California Cannabis Industry Association, the California arm of the National Organization for the Reform of Marijuana Laws, the Los Angeles-based United Cannabis Business Association, Flow Kana Inc., Harborside Inc., and CannaCraft.

In a conference call with reporters, Darren Story of Strong Agronomy said tough market conditions forced him to cut loose more than half his staff. He said taxes that will increase next year make it an easy choice for shoppers. With prices in the underground half of what they see on legal shelves, he said “most consumers are going to take off.”

The companies asked Newsom to include their proposals in his upcoming budget proposal, which will be released early next year.

"The solution to these issues and the possibility of saving this industry lies in your hands," they wrote.

EXHIBIT 16

THE RESTORATION ACT

11/27/21

FORWARD

Whereas in November 1996, medical cannabis became legal under Prop 215,

Whereas in October 2003, medical cannabis guidelines were further established and codified into law under SB 420,

Whereas in July 2015, Governor Gavin Newsom chaired a Blue Ribbon Steering Committee that would set policy option for regulating marijuana in California, titled the Pathways Report,

Whereas in November 2016, a **recreational** cannabis initiative, Prop 64, was approved by the voters that would assume control of cannabis law and regulation including all previous medical cannabis laws under Prop 215 and SB 420. Under Prop 64, § 11362.45 "Nothing in § 11362.1 shall be construed or interpreted to amend, appeal, affect restrict or preempt …(i) Laws pertaining to the COMPASSIONATE USE ACT OF 1996" yet, as shown be its title, the very next section of Prop 64; SECTION 5 USE OF MARIJUANA FOR MEDICAL PURPOSES. Sections 11362.72, 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*** [emphasis added] to read;

Whereas on July 19, 2021, in a letter to California Attorney General Robert Bonta, Gubernatorial Candidate Nickolas Wildstar provided statements to AG Bonta as to why Prop 64 was an illegal initiative and as such must be repealed; as the state cannot be in the business of violating higher federal law where it arguably assert protection through the 10th Amendment, while mandating cannabis licensees, de facto, must waive their 5th Amendment protection against involuntary self-incrimination to obtain state licensing but are not afforded that same defense.

Whereas in both the above mentioned and the follow up letter to CA AG Bonta on July 27, 2021 Wildstar provides his points and authorities to support his contention that Prop 64 was an illegal initiative, one that should have never been presented to the voters, and which with its passage and subsequent enactment in SB 94 has, contrary to the stated intent of Prop 64 as passed, damaged large numbers of people who have attempted to transition from the traditional "illegal" market into the regulated "legal" market who will likely be seeking recovery for those damages.

SECTION 1. PURPOSE AND INTENT

1) The suspension and/or repeal of Prop 64 will result in a certain amount of confusion and disruption within the licensed cannabis industry. This is to be expected. The purpose and intent of the **RESTORATION ACT (RA)** is to provide a regulatory framework that minimizes that confusion and disruption by setting forth regulations that are in compliance with **BOTH** the will of the citizenry of Prop 215 and Prop 64; and with federal and international law as detailed herein.

2) The current state agency that provides oversight of Prop 64 cannabis licensees is the **Department of Cannabis Control (DCC)** or its predecessor agency, the **Bureau of Cannabis Control (BCC)**, will be disbanded.

   a. All regulated cannabis activities within the state will require a permit from the newly formed **Department of Cannabis Administration (DCA).**

   b. All current subagencies to DCC or BCC will have duties under the DCA, including but not limited to;

      i. State Water Resources Control Board
      ii. Department of Fish and Wildlife
      iii. California Regional Water Control Boards
      iv. Board of Forestry and Fire Protection
      v. Department of Food and Agriculture
      vi. Department of Public Health
      vii. Traditional State Law Enforcement Agencies

   c. The DCA will be governed by a Director, who is appointed by the Governor.

      i. The DCA will divide California into 4 separate regions with each region having a Deputy Director who serves under the Director. The Director shall appoint each Deputy Director.

      ii. A 16-member, **DCA-Cannabis Advisory Panel (DCA-CAP**) will be created that will consist of 4 members for each of the four regions. Members will be appointed based on industry skillsets determined by the Deputy Director and confirmed by the Director for 3-year engagements.

   d. The DCA will allow those current Prop 64 Licensee(s), to continue to operate in a for-profit status, under such limitations in size and scope as were originally enumerated in Prop 64, specifically, the original size on caps, number of licenses. And lack of out of state investment/eligibility for licensure as the voters intended and approved, until such time that those licenses expire under the following conditions:

      i. The Prop 64 Licensee will be required to sign a statement whereby they acknowledge they are knowingly violating higher federal law by maintaining a for-profit operation. This in no way should be seen as immunizing the Prop 64 licensee from criminal jeopardy at a federal level should they elect to operate under Prop 64 licensing standards until such time that the licensees license would expire.

      ii. Retail will not be paying state point of sales taxes as no state agency can accept those revenues without being party to aiding and abetting a Prop 64 Licensee in violating higher federal law.

e. Prop 64 Licensee Farms will no longer be paying any cultivation taxes on harvested product as the DCA cannot legally accept "for profit" revenues from these transactions.

i. METRC reporting and tagging of plants will no longer be required.

ii. Alternatively, to those preceding Prop 64 Licensee options the Prop 64 Licensee may elect to transition into a not-for profit status and like new licensees be required to submit to all the conditions as set forth in Paragraph 2 as a DCA Licensee would be given a one-year DCA fee abatement for having done so. This offer will only be offered to those Prop 64 Licensees with more that 6 months left on a provisional or annual license as had been granted by the previous BCC or DCC agencies.

iii. Those Prop 64 Pending Licensees who are in a local application status can elect to continue with that application process and once granted would be afforded the same terms and conditions as set forth in the Prop 64 Licensee conditions.

iv. Alternatively, to those pending Prop 64 Licensees they may elect to discontinue that local application process and request a full refund of all application fees that have been charged for that application. LOCAL governments will be given a maximum reimbursement amount which they may apply for from the STATE to help offset these refunds.

3) The DCA will operate much differently than the previous agency functions. They will consider cannabis and hemp as agricultural products, subject to the same rules and regulations as traditional crop cultivation with the following exceptions:

a. Cannabis will be treated as a state regulated and licensed, medical, not for-profit crop as it had been previously considered in Prop 215 and SB 420.

b. While Prop 64 is an illegal initiative that had to be repealed it did teach us some things that have been incorporated into the RA and that will serve to improve the language and intent of those previous medical cannabis laws. Those improvements, as will be defined herein, will go to compassion, regulation, environmental protections, reduction of greenhouse gasses, labor law and protections, doctor-patient cannabis relations, personal grow, pesticide toxicity levels, social equity, and a method of reporting that will not be over burdensome and allow the market to accept a wider range of participants allowing the state to benefit from a transparent and cross-communicative relationship with the Licensee.

c. Anyone transacting in regulated cannabis will be required to have a state issued license by the DCA.

d. Those that do not have a state license will be subject to potential criminal prosecution if they are found to be trafficking in unlicensed cannabis.

e. The state DCA licenses will be given only to **not-for-profit collectives (DCA Licensee)**. The annual fee for a DCA Licensee will be $2,000.00.

f. A first-year fee abatement or $2,000.00 may be given to a qualified DCA Licensee who has demonstrated that they have been a victim of the war on drugs relative to previous cannabis laws.

g. A state DCA license will NOT be given to a cooperative whereby a cooperative, while a recognized statutory entity, can generate profits whereas a collective cannot.

h. A **not-for-profit collective** will be defined and recognized as a statutory legal entity as being a group of people who have formed an association or organization where all members are equal owners.

i. All members will be equal owners of the "collective".

ii. For purposes of plant counts, each outdoor collective will be allowed to grow up to 6 flowering and 12 vegetative plants per member and/or a combined total of 18 lbs. of combined finish flower and/or extracts.

iii. For the purposes of plant counts, each indoor or greenhouse collective will be allowed to grow up to 6 flowering and 12 vegetative plants per member and/or to possess dried cannabis flower in an amount equaling 24 oz (1.5 lb) as an 18 lbs/year cumulative total.

iv. Each collective may have up to 24 clones per member.

v. The **DCA-Anti-Diversion-Division (DCA-ADD)** will track individual member "equitable reimbursements" so as to not to exceed a maximum annual purchase amount of 18lbs/year or 5.6oz/week of combined finished flower and concentrates/extracts.

vi. Certain members will be given managerial and task functions for which they will be compensated for.

vii. The collective will not make a profit. Any revenues created above and beyond the actual operating costs of the collective are to be reinvested into improving the collectives needs.

4) As a DCA licensed cultivator, **(DCA-Farm**) would pay an annual per sq-ft **DCA Baseline Cultivation Fee (DCA-BCF)** of $1/100 sq-ft payable within 180 days of license issuance.

i. A DCA-Farm may designate up to 25% of their processed and tested approved cannabis to "compassionate use" needs. This cannabis will be labeled as **DCA-Compassionate Use (DCA-CU)** materials that are available free of charge to any patient that the licensed dispensary deems financially eligible for that free cannabis. The DCA will look for any DCA-CU transactions to be entered into the DCA database so that, when necessary, the amount of DCA-CU product that licensed dispensary has on hand and labeled as DCA-CU, meets the stated amount they've been gifted for these types of gifted patient transactions.

ii. If, at any point in time, it is determined a DCA licensed dispensary is charging more than an equitable contribution for the DCA-CU products that licensee will be subject to fines, suspension and possible license revocation.

iii. The licensed dispensary is under no obligation to have DCA-CU products in their inventory and would only have them if the collective(s) were able to offer them,

b. Annual **DCA-Farms/Indoor (DCA-F/I)** licenses may, if qualified, be granted up to 20,000 sq-ft if the local government and all DCA environmental conditions for license approval had been met.

i. The DCA will not allow any state cultivation license to be issued without an attached California Environmental Quality Act **(CEQA)** report to accompany it. The DCA will be authorized to accept a ONE YEAR provisional license, that will NOT be extended, to those current Prop 64 Licensees since that form of licensing is a leftover ramification of the Prop 64 rules and regulation. However, if that Prop 64 licensee **is NOT** able to qualify for the DCA license, they **will NOT be afforded the same extendable provisional protections** that Prop 64 and/or any local government protections, offered under prior DCC and BCC license administration.

ii. Upon Annual Renewals, DCA will allow the **DCA-F/I** licensee to expand their crop canopy cultivation license by up to 50% from that of the previous year, providing they have had not had any DCA violations, are current on fee's and are within acceptable environmental and local government protocols for the proposed expansion. This section may be applied up to 5 renewals at which time the licensee will be at the DCA maximum indoor capacity of 100,000 sq-ft. There is no way to buy this size indoor grow. It must be earned.

iii. In addition to the BCF cultivation fee. a **DCA-F/I** Licensee will be required to pay an additional $10 per 100 sq-ft annual environmental surcharge to be used for carbon reduction programs due within 180 days of license issuance.

iv. A **DCA-F/I** Licensee may not exceed a 40 watts per sq-ft load, for cultivation, as measured at the canopy. If, upon spot inspections or through the use of Time of Use utility metering, it is determined the Licensee has exceeded those maximum load conditions, the Licensee will, upon written notice, be given 30 days to bring

their facility to within those parameters. The first notice of violation will not result in a fine. Subsequent violations will result in fines, suspension, and possible license revocation.

c. Annual **DCA-Farms/Greenhouse (DCA-F/GH)** licenses are $1/100 sq-ft due within 180 days of licensing, may, if qualified, be granted up to **1 acre (43,560 sq-ft)** and would allow the licensee to expand their crop canopy cultivation license by up to 100% from that of the previous year, providing they have had not had any DCA violations, are current on fee's and are within acceptable environmental and local government protocols for the proposed expansion. This section may be applied up to 3 renewals at which time the licensee will be at the DCA maximum greenhouse capacity of 3 acres (130,680 sq-ft). There is no way to buy this size greenhouse grow. It must be earned. There is no additional environmental surcharge to be applied on DCA-F/GH licenses.

d. Annual **DCA-Farms/Outdoor (DCA-F/O)** licenses are $1/100 sq-ft due within 180 days of licensing, if qualified, be granted up to 2 acres (87,120 sq-ft) and would licensee to expand their crop canopy cultivation license by up to 100% from that of the previous year, providing they have had not had any DCA violations, are current on fee's and are within acceptable environmental and local government protocols for the proposed expansion. This section may be applied up to 3 renewals at which time the licensee will be at the DCA maximum outdoor capacity of 6 acres (261,360 sq-ft). There is no way to buy this size greenhouse grow. It must be earned. There is no additional environmental surcharge to be applied on DCA-F/O licenses.

e. Annual **DCA-Manufacturing (DCA-M)** licenses will be available at an annual $200 per sq-ft basis.

   i. The DCA-M Licensee agrees to providing the DCA with access to the Licensees Time of Use utility metering.

   ii. The DCA-M Licensee agrees to pay an environmental surcharge of $0.50 per kW/hr whenever they exceed 200 kWh/day or 6,000 kWh/month. The DCA will require that the Licensee monitor these overages. When the DCA spots usage in excess of these values an electronic invoice will be sent to the licensee on 30-day cycles at which point that the charges become due within 14 days of having received that invoice.

f. Annual **DCA-Distribution (DCA-D)** licenses will be granted to those businesses that will transport the finished cannabis products to Retail Cannabis Dispensaries. No Licensee will permit the trade or exchange of cannabis products from a licensed cultivation or manufacturing facility. A DCA-D Licensee assures that the product being collected for delivery to a testing lab and/or dispensary has been properly tested and approved by a third party, independent, testing lab and the information has been uploaded to the DCA website for customer review. The DCA-D will provide security and transportation in unmarked, reinforced vehicles that maintain GPS and video tracking while underway.

i. A DCA-D Licensee must carry a $1,000,000 theft and liability bond that protects their cargo during transportation.

g. Annual **DCA-Testing (DCA-T)** licenses will be granted to those qualified businesses that are qualified under regulations as established by the Department of Health for third party testing labs. There may be no co-ownership between the principal parties of a DCA-T type license and any other DCA license being offered.

i. DCA-T labs will test products provided to them by batch samples from the DCA-D Licensee. The batch samples will then be uploaded to the DCA website at which time they are given a pass or fail by the DCA-T lab.

ii. If the test batch is given a fail and it can be remediated to bring the products being tested into compliance with quality and safety standards as promulgated by the Department of Public Health would allow that product to be uploaded to the DCA website as a passed product.

iii. Both DCA-T and DCA-D sign-offs must be made on the DCA website for the batch being tested. This will reduce the chances of batch swapping for the purposes of clearing products that do not meet threshold safety limits.

iv. DCA-T testing fees shall be paid by the Licensee Growers submitting product.

v. Products that fail testing standards must be destroyed in an environmentally sensitive manner so as to not be diverted into the unlicensed cannabis market.

5) The **DCA-Cannabis Advisory Panel (DCA-CAP)** functions will include:

a. Processing license requests and assuring the local government approvals have been met for Land Use Regulations and environmental compliance in a timely fashion.

b. Would restrict the use of genetically modified cannabis seeds.

c. Would eliminate the unfair practice of drug testing for cannabis metabolites which can be retained in the human body for months. Impairment testing for non-metabolized cannabis as a more effective and accurate measurement for impairment or recent usage, would replace the metabolite test.

d. Would prohibit California Law Enforcement agencies from assisting Federal Drug agents from attempting to enforce federal cannabis laws in DCA licensed or personal gardens as defined within this ACT.

e. Medical cannabis users' right to bear arms shall not be restricted.

f. Child Protective Services shall not use a medical cannabis patients access to their medical cannabis as an element of the decision to remove any children under their care from that home.

g. Removes medical cannabis from the California Uniform Controlled Substances Act, which currently allows the federal government to regulate medical cannabis as a schedule 1 drug.

h. Would mandate that the state establish impairment-based standards, similar to those established for alcohol, to determine levels of impairment for the safe operation of motor vehicles and/or other equipment.

i. Maintaining spot surveillance and cumulative water usage does not exceed stated demands.

j. Spot checking of site conditions to assure that all Fire, Life and Safety protocols are in place and being followed. Should areas of improvement be found the DCA will provide written "Incident-1" notification to the Licensee as to what must be corrected. The Licensee will have up to 60 days to make those Incident-1 corrections and notify the DCA of the completion at which time, upon confirmation, the incident would be closed. Should the incident not be closed the DCA has increased authority under enhanced incident levels to extend the time for correction, issue fines, suspend or even revoke a license depending upon the situation.

k. Confirm all cannabis has been tested for residual chemicals that would be in excess of the limits that had been set forth in Prop 64.

l. Provide a website portal that allows patients to take images of the product bar code and confirm the DCA Licensee status when the product was harvested and the product profile.

m. When applicable, adjust DCA regulations to meet those specific regions regulatory needs.

n. The DCA website will be modeled after the California Contractor State License Board (CSLB) website in that this is a format that works exceptionally well for the contractors and the consumers. It's also a very successful government agency that reports their funds to the General Fund, is highly accountable to the public, **operates at a profit and is fee, not tax based.** The DCA does not have to recreate the wheel. The wheel is already there and spinning.

    i. The CSLB website invites unlicensed contractors to work towards licensing, provides the customer a way to research the contractor and his employees and provides ongoing education to help those who are in need of information, a central portal to do so.

    ii. The DCA website will be the primary portal for customers, licensees and physicians to provide and access their records.

iii. Per SECTION 1. para 3 (g)(v) the DCA-ADD will track member purchases so as to not exceed 18lbs. over 12 months or 5.6 oz per week from the activation date of their license. Members that have reached those levels will be denied access to the RCD.

iv. The DCA website will be an educational portal to develop industry education and accreditation.

v. The DCA will incorporate new and existing cannabis curriculums to serve as educational partners in the DCA accreditation programs.

vi. The DCA website will provide cannabis history.

vii. The DCA website will address legal, law enforcement and judicial issues that go to the constitutional integration of both licensed and unlicensed cannabis activities.

viii. The DCA website will include real time, topic-based blogs to answer questions and discuss the industry conditions.

ix. The DCA website will promote sustainable cultivation practices and post those current programs that promote the latest in green energy and water savings products and techniques.

o. The DCA will operate under a big tent philosophy. We want our legacy farmers to have a seat at the table. As long as local government is satisfied that the legacy farmer is not breaking any Land Use Regulations specific to that location, the DCA will bend over backwards to process and approve, within 90 days, those applications that have provided the supporting EIR/CEQA and paid the licensing fees.

p. Once a DCA License has been issued the License will not start timing out until the Licensee notifies the DCA that they are ready to begin operations. At that time the licensee shall have the requisite video and water metering up-linked and streaming to the DCA website. The DCA will also require that all local permits, inspections, and Certificates of Occupancy have been made prior to finalizing the state DCA License and converting the Application to a license under an **Annual Operating Agreement & License (AOAL).** Licensees are given up to 120 days to convert from an Application to an AOAL status. If they require longer, that's fine it will not prevent them from eventually getting that AOAL status, it's just the DCA will not wait longer than that to convert an application to an AOAL status for remaining time on the license.

q. The DCA Licensee agrees to make their property accessible to any DCA authority that would want to spot check the site to assure compliance.

r. Under a DCA AOA License the DCA inspector is only authorized to check those areas that are listed in the Licensees Area of Operations. If the DCA inspector has reason to believe there is cannabis activity occurring outside the claimed area of operations the

inspector may ask to see that area but if they are refused it will be within the Licensees 4th and 5th amendment rights to do so. The inspector can note any suspicions they have on their spot report; but unless further evidence of **unlicensed activities**, nothing further will come of it.

s. If additional information comes to light and is then proven that a licensee is engaged in unlicensed operations the fines and penalties for those unlicensed activities will be retroactive to when the original report denoted those activities.

t. The DCA Licensee acknowledges that these are state fees only. The local government may have licensing fees and regulations that would apply which are in addition to the ones required by DCA.

u. If local government licensing requirements are not being met, that local government may elect to notify DCA of the infraction. DCA will send a letter out that gives the Licensee, 7-30 days, depending on the infraction, to correct it and restore that local government license to good standing. Failure to do so can result in a state license suspension and/or a revocation should the matter fail to be resolved.

v. Licensees may appeal any ruling with the regional DCA Rulings Panel. This 5-member panel, made up of appointed officials by the Regional Director will serve 5-year terms to hear grievances and decide matters that may occur during the Licensees AOA term. Upon hearing the evidence these decisions are made within 14 days of the hearing. There is a $1,500.00 nonrefundable charge. However, there is a compassionate waiver to this charge that may apply should the licensee prove financial hardship a complaint with the DCA Rulings Panel.

w. If the Licensee is unsatisfied with the decision of the regional DCA Rulings Panel they may appeal it to a 3 member Appeals Panel, appointed under 3-year terms by the Director of the DCA based in Sacramento. The Appeals Panel will review the evidence presented to the regional DCA Ruling Panel and would consider any additional information and evidence the Licensee wishes to provide the Appeals Panel. These Appeals Panel decisions are made within 14 days from the completion of the arguments. There is a $2,000.00 nonrefundable charge however if a compassionate waiver was applied in the lower court it would continue to apply in the Appeals court when filing an appeal. The decisions of the Appeals Panel are final.

x. If either the DCA Ruling or the DCA Appeals decision goes, regardless of the percentage in that decision, to the Licensee, the DCA is authorized to add up to 180 days to the Licensees Annual Operating Agreement to help offset the fees.

6) All DCA Licensee Requirements:

a. All DCA Licensees must have, or offer proof of having applied for, a non-profit 501C3 status at the time of the application.

b. The DCA Licensee agrees to open and transparent communication with the DCA. We're learning here too. The DCA Licensee is not guilty until proven innocent. If there are systems and procedures that will improve our abilities to grow the worlds finest cannabis and improve our patients' experience, then we want to be a part of that process. As such we will ask our DCA Licensees to meet, where applicable, the following conditions:

i. All cultivators will provide real-time ultra-sonic flow meters to determine the actual water use for their farm. If the actual water use is greater than 50% above what the application stated, the licensee will either be required to pay an environmental surcharge for the overage or reduce their water demand to the stated values in the application.

ii. All Licensees shall agree to allowing DCA electronic access to the utility metering for the area of operation being licensed. DCA monitoring is to be used only to assure that the Licensee is staying within the terms of their energy use agreement as denoted in the Annual Operating Agreement and that any sign of unusual increased load activity is cause for investigation by the DCA.

iii. All DCA Licensees shall agree to 24/7 live video surveillance of the area claimed under their areas of operation.

iv. All DCA Licensees will agree they, prior to litigation, arbitrate any decisions that may apply against them at the DCA Rulings and Appeals Panels. Licensees may retain counsel and be represented during those hearings.

SECTION 2. PERSONAL USE

1) Unless specifically disallowed under local ordinance the DCA recognizes the need for **Personal Use Growth (PUG)** medical cannabis products and deems up to 12 flowering plants and 16 vegetative plants indoors or 6 flowering, 12 vegetative outdoor plants and 24 clone plants, to be within the scope of personal growth requirements for an individual patient. Patients requiring greater amounts of cannabis then what these personal limits allow are encouraged to join a collective and retain them to assist the patient in meeting their requirements for the genetics and amount of cannabis that their physician has recommended for their condition.

2) Patients that grow in excess of their own personal use needs and therefore have **Personal Excess Cannabis (PEC)** may bring that extra plant material to a licensed collective (see SECTION1 para 4 (i)) of which they are a member, would be given a receipt for the PEC materials they brought in, and that material could then be available to other collective members once DCA-Testing had been completed. Upon satisfaction that the materials were suitable for the market, the PUG would receive an equitable reimbursement for that material and the transfer of physical possession would be noted in the DCA database as having taken place between that PUG and that licensed collective. At no point, during any calendar year, can a PUG contribute more than the total amounts they are allowed to possess in a year for personal use. DCA-PEC transactions may

ONLY be done through a licensed collective and offered to licensed dispensaries AFTER the testing has been completed. No PEC transactions will be done directly between a licensed dispensary and the PUG.

a. A PUG must be registered with the DCA when they have PEC they wish to supply to the market.

b. The PUG may trade PEC to a licensed collective, with proper identification and documentation. The collective may take that material in where it will then be tested. Upon satisfaction of the materials testing being within toxicity limits, that PUG will receive an equitable reimbursement from the collective.

SECTION 3. MEDICAL PATIENT REQUIREMENTS

1) Each patient shall have a current physician's recommendation.

   a. Under the Health Insurance Portability and Accountability Act **(HIPAA)** privacy laws the DCA will not share individual medical patient records with any private or government agency unless the patient has authorized the release of that information or there is a court order to do so.

2) Upon receiving their physician's recommendation, each patient will agree to a minimum of one physician follow up per year to discuss usage, results prescription interactions, overall quality of life and any recommendations to adjust their needs.

3) To those patients over 21, who are afflicted with terminal or incurable conditions they will only have to purchase a onetime physician's recommendation. The DCA will issue have a **Terminal Conditions Medical Cannabis Patients A Card (GOLD)** that will never have to be renewed.

4) Physicians will approve the **General Conditions Medical Cannabis Patients B Card (WHITE)** which will be generated by DCA and sent to the patient directly. Physicians that are enrolled in the DCA program will agree to a per patient cap of $75 per year with some charging less. Once the patient is approved, the DCA will issue a digital record at no charge. Physicians can issue cards if they like but it's not mandatory as the DCA record will be tracked as the patient enters a licensed dispensary. A doctor's card will not replace a DCA record.

5) Physicians may write recommendations to patients 21 and under. Those patients will be given a **Minor Medical Cannabis Patients C Card (RED)** who are in need of medical cannabis. To those RED CARD patients, they will be required to renew annually until such time that they turn 21 and would qualify for a WHITE or RED CARD.

6) Physicians may write medical cannabis recommendations for those patients who see their access to cannabis as a religious liberty exercised by their use of cannabis as a sacrament. These **Medical/Religious D Card (GREEN)** would require an annual physician's and a once yearly, follow up prior to the renewal.

7) All, or a portion to be negotiated based on each individual's financial condition, of each medical cannabis patient's equitable reimbursements for their medication will be subject to private and public insurance thru **DCA Compensation (DCA-COMP)** at the **DCA-Point of Sale (DCA-POS).** This portion of the COMP will be DCA identified on the individual patient's card and deducted from the total shown at the POS. DCA will then bill the health care provider for the deducted amount.

SECTION 4. RETAIL CANNABIS DISPENSARIES AND DELIVERY SERVICES

1) The DCA will license Retail Cannabis Dispensaries under an annual DCA-RCD not for profit license.

2) The DCA will require a per sq-ft fee for the dispensaries entire indoor area or **Dispensary Floor Area (DFA)** of operation.

3) A DCA-RCD Licensee will have armed security at various points within their facility.

    a. All Security, whether contract or employed, must be licensed by the DCA (DCA-SEC) to wear on display, a photo ID that shows the identity of the guard and their DCA ID No.

    b. The DCA-SEC will be identified by varying levels of authority.

    c. All DCA-SEC employees must be covered by a minimum $1,000,000 liability insurance with the Licensee named as an additional insured.

    d. A **DCA-SEC1** licensee is a state certified position who will be responsible for the entire security protocols of the dispensary. That will be assuring that all aspects of the dispensary are being managed by the Licensee to assure the safety of the Licensee, the employees, and the patients.

        i. The SEC1 Licensee will by the security point of contact with the DCA.

        ii. The SEC1 Licensee will be responsible for the actions of those SEC licensees below them.

        iii. The SEC1 Licensee will assure that video surveillance is active, stored for a minimum of 60 days and is signal acquired by the DCA.

        iv. The SEC1 Licensee will assure and authenticate video signal acquisition on a daily basis through a Licensee log in portal on the DCA website.

v. The SEC1 Licensee will, at close of business, provide the DCA with a daily number of patients who have entered the DFA.

vi. Monthly totals of patients accessing the DFA would be authenticated by the SEC1 Licensee and would require the RCD Licensee to pay a per **Patient Access Fee (DCA-PAF)** of $2.50 per patient. This payment would be self-calculated and would require that payment to DCA be made within 15 days of the prior months close of books.

e. A DCA-SEC2 Licensee will be responsible for assuring that all products brought into the dispensary has been delivered by a licensed DCA-D and that the products have the DCA bar code on those products being delivered.

i. The SEC2 Licensee will scan the incoming products bar code and if the products are not registered on the DCA website they cannot be accepted as inventory until such time that they have been registered on the DCA website.

f. There will be a **DCA-Dispensary Screening Area (DCA-DSA)** that patients must check in to assure they have a current physician's recommendation as well as the licensed DCA Collective Farm ID No. they are a member of. Once security ascertains that patient has an active patient ID card, the patient will be allowed access onto the DFA.

g. The RCD will put the guard checking the patient ID behind bullet proof glass.

h. The DSA will not allow a patient to access the DFA until such time that the doors securing the DSA have been closed. Only then will the patient be granted access to the DFA.

i. To access the DFA the patient will have to walk through a metal detector. No guns, knives or weapons will be allowed on the DFA.

j. To leave the DFA the dispensary will also be required to have a **DCA-Dispensary Secure Exit (DCA-DSE)** which like the DSA access protocols secures the DFA by independent controlled passage.

k. The DCA-SEC will provide the DCA with a real time accounting of the number of patients who gain access to the DFA. This will be referred to as **Patient Traffic Counts (PTC).**

4) There will be an annual $200 per employee fee for that dispensary.

a. RCD Bud Tenders will be classified under three separate license classifications.

b. An **RCD-Bud Tender1 (RCD-BT1)** is a general-purpose level 1 employee that has less than 1 year in the industry and has not completed any of the DCA curriculum that identifies strains and what their consensus has been for the homeopathic and naturopathic

reports of others achieving homeostasis through its use, dosing and with or without any combination of prescription medications.

c. An **RCD-Bud Tender2 (RCD-BT2)** has over one year experience at bud-tending and will have completed the DCA-BT2 online course curriculum that identified certain genetics with patient conditions. They are not doctors, nor will they give medical advice. They will be able to inform patients of the latest information concerning which medical cannabis chemical ensembles are reported as being most effective for certain conditions.

d. An **RCD-Bud Tender3 (RCD-BT3)** is required to have over 5 years' experience in any combination of medical cannabis cultivation, manufacturing, science, and retail dispensing. They will be responsible, as the last line of defense to the patient for assuring to as great a degree as possible, the accuracy and efficacy of the products and information being offered, that a database is maintained that would provide those doctors doing patient follow ups information regarding the patients' genetics, dosing and any feedback they are willing to report to the RCD-BT3 Licensee. The BT3 level certification will be available through the DCA as an online accreditation.

e. When PTC levels are less than 50 patients a day or 150 during a month, an RCD Licensee will only be required to, at a minimum, have one RCD-BT1 and one RCD-BT2 on staff during normal business hours. For those low, (<150/month) PTC level dispensaries, a BT-3 level licensee would still have to be employed but they can be hired under contract and work offsite. The only requirement being that they must have access to the RCD patient database to assure accuracy of the information being available.

f. When PTC levels are greater than 150 patients a month, the RCD must employ an on-site BT-3 level licensee.

g. When PTC levels are greater than 400 patients a day that RCD would agree to allow the employees to engage in collective bargaining under Labor Peace Agreements. The DCA would then post the **DCA-Labor Peace Agreement (DCA-LPA)** on the DCA website so that customers would know that this dispensary is one that values its employees and maintains their rights under these LPA agreements.

5) The DCA will require all owners, managers, and employees to be registered with the DCA with their identities available on the DCA website and badges with pictures to be worn indicating their state DCA identification number.

6) The RCD Licensee must confirm that any transaction between a patient and the Licensee is accompanied by a current physician's recommendation. No transaction can occur without the physician's recommendation.

7) The DCA-RCD Licensee will not charge ANY taxes at the point of transfer.

8) The DCA will issue **Delivery Service Licenses (DCA-DS)** under the following conditions:

a. The DCA-DS Licensee is operating under the oversight of the RCD Licensee.

SECTION 5. CONSTRUCTION AND INTERPRETATION

The provisions of this act are meant to stand in accordance with any federal laws and not present a positive conflict with federal drug, tax, health or environmental law. It is meant to meet our international obligations under the United Nations Single Convention on Narcotics Section 49 Para 2(f) in that cannabis may be used by member nations for medical and scientific purposes only. In addition, the provisions of this act are meant to address the following conditions.

1) Culture: for generations many of the citizens of our nation have endured and been the victims of the War on Drugs. This has included cannabis when it was considered illegal at the state and federal level. Times are changing. The science is available to support the medical benefits of cannabis and with that the laws have been slowly changing to make medical cannabis an acceptable part of our lives. But that does not change the fact that there has been a history of involuntary servitude through unlawful raids, excessive force, corruption seen in law enforcement, elected and appointed officials. Lawyers and even our judiciary. This has created an atmosphere of hate and distrust amongst many who have toiled in the cannabis industry, in some cases for generations, where the "pay to play" way of doing business was considered the norm or the minority communities that would be targeted for the color of their skin with the sentences and incarceration rates being 10X greater than that of white defendants. Where our state and federal cannabis laws discriminated against our veterans, our formerly incarcerated, parents who would lose children for medical cannabis use, the "no knock" warrants that destroyed our lives, and the list goes on. These have ALL been subjective and oppressive manifestations of the "progressive" cannabis reforms we have seen under initiatives such as Prop 64. Under the RESTORATION ACT the DCA clearly has its work cut out for them but in the spirit of mending fences and serving their constituency they intend on doing so.

2) Social Equity: the benefit of medical cannabis is that it should not discriminate by race, gender, religion, sexual preference, who you know, who your family is or how much money you have. We all have times in our lives where medical cannabis could be used to improve a physical condition that would normally be addressed with alcohol or prescription drugs. We owe it to those generations who will come after us to give them an opportunity to learn and engage in the business that is cannabis. The DCA will actively work with those social equity applicants who will be living and working in their home communities to bring safe, secure, licensed cannabis to their medical patients.

3) Enforcement: There is no room for those bad actors in cannabis who will blow themselves and others up with unsafe extraction methods, steal power, take over our forests with pirate grows that threaten our air and water with pesticides and heavy metals, risk those who would accidently come across them in the wild, divert water, leave trash, leave workers in inhumane living conditions or traffic in unlicensed cannabis products. When the DCA, or any of its subagencies, are made aware of these conditions, the response will be swift and will include all remedies to eradicate the products, the equipment, recover the interdiction costs, if warranted, file criminal charges and prevent the problem from reoccurring.

4) Preemption: The RESTORATION ACT will always be seen as a ruling regulatory framework for not-for-profit medical cannabis. In the event that higher federal, or international law, reschedules cannabis so that it might be regulated in a "recreational" form whereby various sales and excise taxes can be applied and collected, those enactments shall never be comingled under the regulatory authority of the DCA. This shall not be interpreted nor construed that the DCA may not also regulate social use cannabis but the records for social use aka "recreational" or adult use SHALL NOT be comingled with those of medical cannabis. The laws, rules and regulations for medical cannabis SHALL stand as defined in the RESTORATION ACT and shall not be altered to accept any co-regulation of for-profit, "recreational" cannabis law and regulation that may be enacted at some future date.

5) Sentencing Expungement: As had been a part of Prop 64, the RESTORATION ACT will continue the process of allowing anyone who has been sentenced for cannabis related charges, prior to the issuance of the RESTORATION ACT will be eligible for early release and/or the expungement of any charges they would have been convicted of. Unlicensed cannabis activities after the issuance of the RESTORATION ACT that fall outside of PERSONAL USE may result in criminal prosecution, depending on the nature of the crime.

   a. No DCA Licensee Applicant will be denied a DCA license based on past cannabis related charges or convictions.

   b. A DCA Licensee Applicant shall be denied a DCA license if;

      i. They have been convicted of any crimes that caused damage to the environment including but not limited to, protections for instream flow and water quality for a actions that occurred within the 10 years prior to their having submitted an application. An otherwise qualified applicant may post an annually-renewed $1M Environmental Impact **(DCA-EI)** bond that would be used as a waiver, allowing them to submit a license application.

      ii. They have been convicted of a felony violent crime in the 20 years prior to their date of application.

      iii. They have been convicted of a felony crime involving fraud, deceit or embezzlement within the 20 years prior to their date of application.

      iv. The applicant or any of its officers, directors or owners had been sanction by a local or state authority for unauthorized commercial cannabis activities on public lands.

SECTION 6. BANKING AND CURRENCY TRANSACTIONS

Historically, banking related functions within the cannabis industry, licensed or not, have been a challenge. Cannabis is mostly a cash business and the amount of cash generated and trying to get that cash into mainstream financial institutions has been a major headache for the cannabis industry. The

DCA will authorize a unique crypto-currency to be known as DCA-Bucks to be used for any transactions that occur within and by those DCA licensed operations.

1) The DCA will identify those banking institutions that will convert DCA-Bucks into traditional currency and what their rate of exchange will be.

2) If the market is slow to react the DCA may create their own credit unions to service those regional licensees with converting DCA-BUCKS into traditional currencies.

SECTION 7. REPORTING AND RECORD KEEPING

The DCA would request that all licensees provide product manifests to the DCA website that would reconcile the amount of product being cultivated (based on sq-ft values) to the amount being taken by distribution. Ultimately that product is tracked through the retail cannabis dispensary and the values should reconcile. If they do not, the DCA reserves the right to open an investigation and determine through audit processes where the failure has occurred. Other records that the DCA would require be submitted electronically for public viewing would be;

1) Collective Members Records

2) Two years of tax returns

3) Local government operational licenses

SECTION 8. INDUSTRIAL HEMP

The DCA shall have an Industrial Hemp Advisory Board (DCA-IHAB) that will work to establish programs to incentivize the use of hemp for industrial applications and bioremediation projects.

1) The DCA will issue annual licenses to industrial hemp Licensees at a cost of $1.00 per acre for **Bio-Remediation Hemp Licenses (DCA-BRH).**

2) The DCA will issue annual licenses for industrial hemp for all other **Full Market Hemp (DCA-FMH)** applications at a cost of $300 per acre per year.

3) The DCA will issue annual licenses for industrial **Hemp Research and Educational (DCA-HRD)** applications at $ 100 per acre.

4) All Licensees must maintain industrial hemp crops at tested levels below three-tenths of 1 percent.

5) The DCA shall limit the licensing of hemp to those applications received for sites which are a minimum of 10 miles away from any DCA-Licensed cultivator of high (>0.03%) THC cannabis. While research has shown that pollen can travel much farther than 10 miles, the amount of pollen

transported between these crops decreases logarithmically with increasing distance from the source.

SECTION 9. LOCAL LAW AND REGULATION

The DCA website will act as the central portal to ascertain that all licensing requirements as have been described herein have been met. All city, town or county governments (LOCAL) will have internal communication access for direct communication with DCA regarding general or specific licensing issues. The DCA will allow specific licensee issues that are actionable to be uploaded to the DCA Licensee account to be time stamped and if actionable will be tracked for action and response by the appropriate DCA agency under the following conditions;

1) Local governments will have their own fee-based licensing requirement. They will not collect tases for any portion of the licensed cannabis industry.

2) The DCA Licensee agrees to pay these fees and stay current with payments being made directly to those LOCAL governments.

3) The DCA Licensee agrees to obey all LOCAL rules and regulations for the operation of the license.

4) The LOCAL government would agree to not take any specific action against a DCA licensee that has not been accompanied by notice to the DCA that action is being taken which would prevent that Licensee from operating in accordance with the Licensees state authorized AOAL.

    a. The Local government will issue any **DCA- Local Government Licensing (LGL**) that would maintain the Licensees state authorized AOAL.

    b. Require any Local government that had voted yes on Prop 64 and would make it unlawful to license medical cannabis within their regional control to pass a local ordinance opting out of cannabis licensing as defined under the new DCA guidelines.

SECTION 10: MEDICAL CANNABIS RESEARCH AND SCIENCE

With the rising numbers of prescription overdoses, addiction and side-effects that are worse than what the medication causing them is supposed to treat, we owe it to humanity to understand what other options are available to us.

At present, those of us seeking to expand our knowledge of how medical cannabis can be used to treat certain conditions are standing on the edge of the Grand Canyon, blindfolded and hooded, on a pitch-black night, firing a shotgun and hoping we'll find something to cook for breakfast when we climb down to the bottom.

When considering the state of cannabis research, that is not an overly broad analogy. We know that cannabis works best when the terpenes, terpenoids, cannabinoids, etc. are present in the correct levels relative to each other.

In Chemistry, when chemical work together to produce an effect none of them have by themselves this is referred to as a "synergistic effect." (The cannabis science pioneer—Dr. Raphael Mechoulam and his associate—Ethan Russo have mislabeled this "the entourage effect." The phrase has caught on in the world of cannabis chemistry, but if we aren't going to use the proper chemical term, at least let's use proper English. We stand with Dr. Lester Grinspoon in calling this "The Ensemble Effect." Entourages follow a star around and ensembles work together to create something.)

Adding to the challenge in this is that, because of genetic or biochemical factors, each patient may react differently to the same Medical Cannabis Chemical Ensemble (MCCE). This is referred to as "patient individuation." This makes our search for ailment specific therapeutic regimens MUCH tougher than if we were hunting for single molecule medications. We seek to understand how and why these patient/cannabis experiences have seemed just shy of unique because one of the things which Allopathic ("Western") medicine has required before relying on a medication is the ability to give a quantifiable dose with repeatable effects.

The reader may be wondering what this has to do with striking down Prop 64/SB94 and replacing it with a system of cannabis regulation which: a) is not in positive conflict with federal and international law; b) allows almost universal access to cannabis for those who need it; c) provides a way to protect our legacy, multi-generational and artisanal growers and d) will advance our knowledge of the therapeutic effects of cannabis by, at the rate we've been going, decades per year for at least the next 5-10 years. (Be patient just a little longer and it will all be made clear.)

DCA will, as part of its mission, work to make and keep California in the forefront of medical cannabis research. DCA recognizes that much of this research has been done without the help of government approval and authority. DCA also recognizes that this is important work and is determined to see that the government to academic research corridors be open to those who would contribute to a better understanding of the complex nature these ensemble effects affect given medical conditions. In recognition of California's decades long contributions towards the research and science of medical cannabis cultivation, genetics development and extractions the DCA will endeavor to make research and science more accessible to those institutions that wish to pursue this science.

Suffice it to say federal and state government, law and regulation has not been a part of the collaborative medical cannabis research which this highly complex field demands. As a result of these undercoordinated research efforts, the majority of recommendations regarding the therapeutic use of medical cannabis currently being made are about what "Indica" or "Sativa" do. At a very slightly more advanced level we might hear a particular "strain" mentioned as being effective with a particular condition. These anecdotal reports get gathered into collections like "Grannie Storm Crow's List." These collections are a step in the right direction and have led to several specific strains being recommended for specific conditions and even a few being looked at

for pre-clinical studies. **However, relying on this approach at the current pace we won't have a close to complete picture of which MCCE work best in treating what symptoms of which diseases and for which patients, in under 100 years, give or take a decade.**

For research to be meaningful the data it's based on must be valid. This goes lab accuracy and reliance on reported results. So, one axiom for any proposed research is that uniform protocols and/or calibrated standards must be used in all testing. For this reason, ANY/ALL cannabis used in DCA-MCRS research shall be tested for both active ingredients and contaminants--biological chemical or minerals. It is in the best interests of both those who would federally seek to regulate cannabis (the FDA/DEA) and those who seek to research its potentials to have uniform, industry-wide testing standards. These standards need to be at least as high as those currently imposed on the nutraceutical/dietary supplement and pharmaceutical industries. This has not appeared to be possible where “for-profit” labs have been competing for the same pool of customers. The DCA intends enforce either standardized protocols for each metho by testing labs, or to operate testing labs at non-profit, actual cost, and centered in the 11 U of Cal. institutions.

The DCA also recognizes that under current state Prop 64 cannabis law, the for profit, “recreational” aspects of licensing cannabis puts the state and those licensees in "Positive Conflict" with federal law under the **Controlled Substances Act (CSA)** and the USA's treaty obligations under the United Nations' "Single Convention Treaty for the Control of Dangerous Narcotics," under the terms of which only medical and research uses of cannabis with a THC content > 0.03% are permitted; and which the United States of America is bound to comply with as a signatory nation.

The DCA, through its **Medical Cannabis Research and Science (DCA-MCRS)** licensing intends to coordinate with those federal agencies licensing requirements to see that this research meets research guidelines when it comes to medical cannabis cultivation, genetics development and extractions. Among other benefits of coordinated research licensing is that those multi-generational and "legacy" cannabis growers willing to comply with the FDA's rules governing security of facilities for the manufacture of controlled substances would be able to do so as contracted vendors under one of several advanced studies to be conducted at U of Cal’s 11 major institutions, including but not limited to, **"How Epi-genetic Factors Influence Chemo-typical Expression in known Genotypes of Cannabis."** To that end the DCA will be petitioning the Administrator of the FDA to change a technical rule to allow the subjects of a formal study to pay an "Administration Fee" each time they receive a sample.

The coordination of this research licensing would help to determine the relative levels of cannabinoids, thiols, terpenes, flavonoids present in determining how a particular “vintage” of cannabis will affect a particular patient. The percentage by dry weight of the dose's mass which is comprised of these active ingredients frequently determines the strength of the dose's effects.

This research would systematically collect Patients’ Subjective Reports of Effect, collate them and mine them for data useful in advancing our knowledge of cannabis therapeutics. In order to know how different MCCEs affect different conditions we will need thousands of growers, growing thousands of kinds, thousands of different ways in order to determine the

MCCE influence, if any, based on assignment of appellation (region). In order for the region to be terroir would the epigenetic factors that shape terpene percentage and terpene levels as terpenes may be primarily responsible for cannabis medical with the cannabinoids being the potentiating synergistic ensemble have an influence in patient response? We just don't know. Essentially what we are describing here is akin to the wine industry where soil, sun, water, temperatures, local micro-climates shape the characteristics of that vintage cannabis. Additional DCA-MCRS research will expand upon this area.

There is no legitimate reason, except for the current federal legal status of non-medical cannabis, that testing for potency and contaminants are being done by labs which are not ISO-certified. Many ISO certified labs have not been willing to do analytical testing on cannabis because of its status as a Schedule I Controlled Substance. This will not be the case when a DEA license for the "Manufacture a Controlled Substance for Research Purposes" is in place and coordinated through DCA licensing.

This research would systematically collect Patients' Subjective Reports of Effect, collate them and mine them for data useful in advancing our knowledge of cannabis therapeutics. In order to know how different MCCEs affect different conditions we will need thousands of growers, growing thousands of kinds, thousands of different ways in order to determine how epigenetic factors influence chemo-typical expression. This would apply to cannabis grown exclusively under lights, in light supplemented greenhouses, in non-supplemented Greenhouses and entirely sungrown from the beginning of the vegetative stage until the end of flowering, outdoors.

Additionally, the DCA will establish and maintain a system for assigning an optional Appellation to purely sun-grown cannabis. This system would be based on how Appelations are assigned to wines. Essentially what we are describing here is akin to the wine industry where soil, sun, water, temperatures, local micro-climates shape the characteristics of that vintage cannabis. Additional DCA-MCRS research will expand upon this area. To be assigned a regional Appellation will require that the 100% of the crop have originated within the geographic confines of said Appellation. Besides the Appellation, cultivators will be required to list the kind or kinds which are in that particular batch and to list what inputs were used in growing it on the DCA Patient Website. These last two requirements apply to all DCA-registered products. Each outdoor cannabis plantation within an Appellation may also use a brand name

There is no legitimate reason, except for the current federal legal status of non-medical cannabis, that testing for potency and contaminants are being done by labs which are not ISO-certified. Many ISO certified labs have not been willing to do analytical testing on cannabis because of its status as a Schedule I Controlled Substance. This will not be the case when a DEA license for the "Manufacture a Controlled Substance for Research Purposes" is in place and coordinated through DCA licensing.

What is the solution to this conundrum? Wide-spread, focused, research that should be at the heart of what the world has come to know as: The California Cannabis Experience.

To that end DCA shall actively work to create a research collaborative, centered in the University of California system to determine, among other things, which MCCE might merit further study in treating

specific conditions or symptoms. DCA will reach out to all cannabi-centric organizations, government agencies concerned with regulating cannabis, currently functioning cannabis testing labs and researchers to facilitate the development and acceptance of uniform testing protocols. The particular area where the need for such a collaborative is strongest is gathering the information on which to base future studies of particular MCCE interactions. The FDA/DEA is almost certainly going to impose regulations requiring testing to a stricter standard than most states are currently requiring. Those who don't conform won't be able to get the necessary permits to do legal cannabis research. The DCA intends on being at the forefront of these standards and regulatory requirements.

"What would it look like?"

DCA-MCRS members will be associated with the University of California system and other Universities and/or state Departments of Agriculture. Other members would include leading and lesser-known cannabinologists, researchers in closely related fields and every physician currently working with cannabis in patient treatments. DCA-MCRS physicians will register their patients with us in return for the right to access the information as to which MCCE, in the dynamic database, are indicated for which conditions/symptoms. As more and more "questionnaires" are answered, our information will get more and more accurate. Patients will be able to find the closest thing available to what they need through the sample location/questionnaire app. Science and medicine will receive a flood of information that will allow us to start pre-clinical studies on treating hundreds of specific symptoms/disorders with specific MCCE.

"How will it work?"

As previously defined in the RA, Retail Cannabis Dispensaries (RCD) will function as "sample distribution points" to distribute known samples whose MCCE have been determined using standardized testing protocols to patients enrolled by their doctors as part of qualifying study to be held under their care. Medical cannabis patients who are participating in MCCE research would be required to undergo a thorough physical workup. This is done so we can follow up on the data gathered when the patients fill out their electronic questionnaires about how the random MCCE they pick up at participating RCD affected their symptoms. The patient takes home the "samples" they've picked out and prior to accepting their next "sample study" they must fill in the information on what they got and how they reacted.

Patients will be asked a number of questions, how the sample affected their symptoms, how and how often they administer it. etc. Patients will be able to use the app to locate the MCCE genetics available in their area which are closest to what they need.

"Why do we need it?"

We need at least 30,000 of these to begin datamining for the clusters of patients who report relief from specific symptoms and/or diseases. Let's say that of 30,000 patients tested 1700 report a particular range of similar MCCE reduces their spasticity and another 500 report that a different range helps them. The

first thing we look to determine is what the two ranges have in common? The second we wish to understand would be to find out what the members of each group has in common with each other and what the two groups have that distinguishes them from each other. Is the benefit limited to those with only one condition or is the benefit to all who suffer a particular symptom, regardless of the underlying disease? The coordinated research work that the DCA-MCRS licensees does will enable many dead end studies to be avoided before the time and money of going down them is spent.

"Who will manage this portion of the DCA?"

As has been previously defined in SECTION 1, Para 2 (c)(i-ii) of the RA, there will be a 16-member Cannabis Advisory Panel (DCA-CAP) that will serve the state over 4 distinct regions. The DCA-MCRS division will be comprised of an additional 4-member **MCRS Advisory Group (MCRS-AG)** that will meet to coordinate all research and science licensing directly under their own DCA-MCRS Deputy Director. DCA-MCRS licensing will be conducted and coordinated statewide by the MCRS-AG and that supervising Deputy Director to facilitate the regional and statewide research that this division of the DCA will promulgate.

"Who will fund this research?"

The DCA-MCRS licensees will be self-funded through their traditional grant writing processes. In addition, the DCA will work to provide an investment pool opportunity whereby investors can contribute to a fund that is managed by the MCRS-AG and given to those licensees that have exhibited a need for capitalization which could benefit the overall goals of this research. There will be strict protocols associated with DCA grant money that the licensee must abide by. Any financial irregularities by the licensee may jeopardize their standing throughout the DCA programs.

ACRONYM LIST

RA	The Restoration Act	Page 1
DCA	Department of Cannabis Administration	Page 1
DCC	Department of Cannabis Control	Page 1
BCC	Bureau of Cannabis Control	Page 1
DCA-CAP	Cannabis Advisory Panel	Page 2 & 7
DCA-BCF	Baseline Cultivation Fee	Page 4
DCA-CU	Compassionate Use	Page 4
DCA-ADD	Anti-Diversion Division	Page 4
DCA-F/I	Indoor Farms Cultivation License	Page 5
CEQA	California Environmental Quality Act	Page 5
DCA-F/GH	Greenhouse Farms Cultivation License	Page 5
DCA-F/O	Outdoor Farms Cultivation License	Page 5
DCA-M	Manufacturing License	Page 6
DCA-D	Distribution License	Page 6
DCA-T	3rd Party Testing License	Page 6

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151 Farmers

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Todd Russell, Mary Jane Rathbun (Brownie Mary), Pebbles Trippet, Wayne Justmann, Dennis Peron, Jack Herer, Anthony Contento, Colin Disheroon, Jeremy Maddux, Ronnie Bell, JoAnn (Jo Jo) Hoyt, Caira & Leah Christopher, Alex Carney, Steve Kubby, Charlotte Figi, George Boyadjian, Phillip Redd, Christopher Matthews, Richard Smith, Sean Parker and George Soros.

IN DEDICATION TO: All those who have been pure of heart and worked to advance the benefits of non-opioid treatments, such as medical cannabis, to enhance the quality of life for those afflicted with medical conditions in which certain strains of cannabis have shown to improve homeostasis. To all the researchers, activists, to those who have fought to keep their properties from an onslaught of government might and authority when there have been thousands of these farms that were not commercial enterprises but existed to provide the medical cannabis patient the medicine that they needed and to those who have fought the monopolization of cannabis by resisting the enactment of law and regulation that would allow only a select few to participate in an industry that by its legacy should be inclusive and fairly controlled for all. It has been your stories, and your work, that has been the inspiration for the RESTORATION ACT.

EXHIBIT 17

Name	City	State	Postal Cod	Country	Signed On
Darrryl Cotton	San Diego	CA		US	11/20/2021
Kendall Steinmetz	Valley Center	CA	92082	US	11/20/2021
Sotero III Diaz	San Diego	CA	92672	US	11/20/2021
Alex Wright	San Diego	CA	91942	US	11/20/2021
Chaz Bolin	San Diego	CA	92115	US	11/20/2021
Lee Tannenbaum	El Dorado Hills	CA	95762	US	11/20/2021
Peter Guthrie	Kissimmee	CA	92054	US	11/20/2021
Kevai Floyd	Las Vegas	NV	89139	US	11/20/2021
Tracy Carroll	Hemet	CA	92543	US	11/21/2021
Farid Torabian	Hayfork	CA	96041	US	11/21/2021
Tara Saldivar	Modesto	CA	95356	US	11/21/2021
Erin O'Neil	Elverta	CA	95626	US	11/21/2021
Monica Gray	Ventura	CA	93003	US	11/21/2021
Heidi Grossman	Rackerby	CA	95972	US	11/21/2021
Chris Bane	Willits	CA	95490	US	11/21/2021
Lisah Ramirez	Orange Count	CA	92801	US	11/21/2021
marnie birger	Covelo	CA	95428	US	11/21/2021
Robert Steele	San Francisco		94117	US	11/21/2021
Bell Ronnie	Anza	CA	92539	US	11/22/2021
Thomas Edrington	Eureka	CA	95501	US	11/22/2021
Rhonda Olson	Orleans	CA	95556	US	11/23/2021
Ann Borges	Ukiah	CA	95482	US	11/23/2021
Susan McDonald	Niantic		6357	US	11/23/2021
Colin Dupray	Fremont		3044	US	11/23/2021
George M Head	Hayward	CA	94541	US	11/23/2021
Murafa Ka	Forest hills		11375	US	11/23/2021
Jacob Handschumacher				US	11/23/2021
Julie Morgan	Fort Jones		96032	US	11/23/2021
Sheila Howe	Kansas City		64138	US	11/23/2021
Sheldon Norberg	San Leandro	CA	94577	US	11/24/2021
Deborah Smith	Lakeside	CA	92040	US	11/26/2021
Martin James	San Diego	CA	92115	US	11/26/2021
Dylan Smith	Lakeside	CA	92040	US	11/26/2021
Yoav Getzler	North Hollywo	CA	91601	US	11/28/2021
Patrick Thornton	Palm Beach G	FL	33418	US	11/30/2021
Wayne Hudson	Riverside	CA	92505	US	11/30/2021
Heather Haglund	Willits	CA	95490	US	12/1/2021
Brenda Choi	Las Vegas	NV	89121	US	12/3/2021
JoAnn Hoyt	Van Nuys	CA	91401	US	12/3/2021
Yordanos Gebregiorgis	Seattle	WA	98125	US	12/3/2021
Sion Mooradian	Bloomfield Hills		48304	US	12/3/2021
vincent cherian	ronkonkoma		11779	US	12/3/2021
Tessa Duclos-Mazzone	Cambridge		2139	US	12/3/2021
Bennett Sarowitz	Brooklyn		11208	US	12/3/2021
Elijah Garland	Atlanta		30344	US	12/3/2021
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Kristy Atwood	Escondido	CA	92027	US	12/14/2021
Ron Mattson	Bridgeville	CA	95526	US	12/16/2021
Danielle Mattson	Ontario	CA	91764	US	12/16/2021
randy kraege	Anaheim	CA	92804	US	12/17/2021
Kenn Glenn	Denver	CO	80208	US	12/17/2021
Gregory Ledbetter	San Francisco	CA	94115	US	12/18/2021
Carly Brannin	Sacramento	CA	95815	US	12/19/2021
Kiera Long	North Highlan	CA	95660	US	12/19/2021

PETITION

We, the undersigned residents of the State of California petition the Court in **support of Repealing Proposition 64,** as enacted in Senate Bill 94, as it is incontrovertibly in positive conflict with federal law, and in support of the Court enabling a smooth return by California to regulation and law, as proposed in the Restoration Act, which is NOT in positive conflict with federal law, as a way to bridge any chaos which might result from suspension Of SB 94 until such time as the Legislature enacts a system of regulation which incorporates the tenets of the Restoration Act as a way to restore our rights and to provide a smooth path of transition for those who have been negatively impacted by SB 94, which since its passage has, through the overreaching authority it granted state and local authorities, virtually decimated the cottage industry which Prop 64 proposed to render licit by bringing those in the traditional market into the regulated market.

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PETITION

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12/14/21		MALIA ROJAS	greyunlimitedinc@gmail 951.224-5841	

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