

**ASSEMBLY BILL**

**No. 9**

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**Introduced by Assembly Member Ammiano**

September 21, 2010

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An act to add Section 23394.1 to, and to add Chapter 19 (commencing with Section 26000) to Division 9 of, the Business and Professions Code, to amend Section 68152 of the Government Code, to amend Sections 1596.795, 11014.5, 11054, 11357, 11359, 11364.5, 11370, 11470, 11488, 11532, 11703, and 11705 of, to add Article 6 (commencing with Section 11310) to Chapter 5 of Division 10 of, and to repeal Sections 11358, 11360, and 11485 of, the Health and Safety Code, to add Part 14.6 (commencing with Section 34001) to Division 2 of the Revenue and Taxation Code, to amend Sections 23222 and 40000.15 of the Vehicle Code, and to amend Section 18901.3 of the Welfare and Institutions Code, relating to marijuana.

LEGISLATIVE COUNSEL'S DIGEST

AB 9, as introduced, Ammiano. Marijuana Control and Regulation Act of 2010.

Existing state law provides that every person who possesses, sells, transports, or cultivates marijuana, concentrated cannabis, or derivatives of marijuana, except as authorized by law, is guilty of one or more crimes.

This bill would remove marijuana and its derivatives from existing statutes defining and regulating controlled substances. The bill would instead provide for regulation by the Department of Alcoholic Beverage Control of the possession, cultivation, and other conduct relating to marijuana and its derivatives, not including medical marijuana, by persons 21 years of age and older, for specified purposes. The bill would

set up a wholesale and retail marijuana sales regulation program to be administered and enforced by the department, to commence after regulations concerning the program have been issued by the department. The bill would ban local and state assistance in enforcing inconsistent federal and other laws relating to marijuana. The bill would provide for penalties for violations of its provisions regarding new marijuana laws and regulations, as specified.

By creating various crimes for violations of regulations and laws created by this act, this bill would impose a state-mandated local program.

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

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would become operative only if Proposition 19 is adopted at the November 2, 2010, statewide general election.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

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

- 1 SECTION 1. It is the intent of the Legislature in enacting this,
- 2 the Marijuana Control and Regulation Act of 2010, to do all of the
- 3 following:
- 4 (a) To further the purposes of the “Regulate, Control and Tax
- 5 Cannabis Act of 2010” added by initiative at the November 2,
- 6 2010, General Election, to establish a statewide regulatory system
- 7 for a commercial marijuana industry as specified in the initiative.
- 8 (b) To regulate marijuana and its derivatives for persons 21
- 9 years of age or older.
- 10 (c) To remove all existing civil and criminal penalties for
- 11 persons 21 years of age or older who personally cultivate, possess,
- 12 process, share, or transport a limited amount of marijuana, solely
- 13 for that individual’s personal consumption in a residence or other
- 14 nonpublic place, including premises licensed for that purpose, and
- 15 not for resale, without impacting existing laws proscribing
- 16 dangerous activities while under the influence of marijuana, or
- 17 certain conduct that exposes younger persons to marijuana.

1 (d) To regulate marijuana in order to more effectively limit  
2 access to marijuana by minors.

3 (e) To deprive the criminal market of revenue derived from the  
4 cultivation, smuggling, and sale of marijuana.

5 (f) To reduce the violence associated with the criminal market  
6 for marijuana.

7 (g) To prevent the environmental degradation that results from  
8 the production and eradication of marijuana associated with the  
9 criminal market.

10 (h) To address the overall failure of marijuana prohibition to  
11 protect the public health and safety.

12 (i) To raise funds and to discourage substance abuse by the  
13 imposition of a substantial fee on the legal sale of marijuana, the  
14 proceeds of which will support drug education and awareness  
15 programs.

16 (j) To impose a set of regulations and laws concerning marijuana  
17 comparable to those imposed on alcohol.

18 (k) To impose fines for violations of the noncommercial  
19 regulations and laws concerning marijuana.

20 (l) To prevent state and local agencies from supporting any  
21 prosecution for federal or other crimes relating to marijuana that  
22 are inconsistent with those provided in this bill.

23 (m) To exclude medical marijuana from the fees and regulations  
24 imposed by this act.

25 (n) To encourage the federal government to reconsider its  
26 policies concerning marijuana, and to change its laws accordingly.

27 SEC. 2. Section 23394.1 is added to the Business and  
28 Professions Code, to read:

29 23394.1. An off-sale general license, as provided for in Section  
30 23394, also authorizes the sale, to consumers only and not for  
31 resale, of marijuana, concentrated cannabis, or any of its derivatives  
32 pursuant to the provisions of Chapter 19 (commencing with Section  
33 26000) of this division.

34 SEC. 3. Chapter 19 (commencing with Section 26000) is added  
35 to Division 9 of the Business and Professions Code, to read:

1 CHAPTER 19. COMMERCIAL MARIJUANA PRODUCTION AND  
2 SALE  
3

4 26000. (a) This chapter is an exercise of the police powers of  
5 the state for the protection of the safety, welfare, health, peace,  
6 and morals of the people of the state, to eliminate the evils of  
7 unlicensed and unlawful production, selling, and disposing of  
8 marijuana, and to promote temperance in the use and consumption  
9 of marijuana. It is hereby declared that the subject matter of this  
10 chapter involves in the highest degree the economic, social, and  
11 moral well-being and the safety of the state and of all its people.  
12 All provisions of this chapter shall be liberally construed for the  
13 accomplishment of these purposes.

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

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

25 26010. For purposes of this chapter, “marijuana” and  
26 “cannabis” are interchangeable terms that mean all parts of the  
27 plant *Cannabis sativa* L., whether growing or not; the resin  
28 extracted from any part of the plant; concentrated cannabis; edible  
29 products containing the above; and every active compound,  
30 manufacture, derivative, or preparation of the plant or resin.

31 26020. (a) The department shall license commercial cultivators  
32 of marijuana. The fee for the license shall be set at an amount that  
33 will reasonably cover the costs of ensuring compliance with the  
34 regulations to be issued, but may not exceed five thousand dollars  
35 (\$5,000) for an initial application, or two thousand five hundred  
36 dollars (\$2,500) per year for each annual renewal.

37 (b) Regulations adopted by the department pursuant to this  
38 chapter shall require background checks of applicants to be  
39 conducted. At the request of the department, the Attorney General  
40 or any local agency shall provide summary criminal history

1 information to the department as provided in Sections 11105 and  
2 13300 of the Penal Code.

3 26030. The department shall, with consideration for the risks  
4 posed by cultivation of a valuable crop with public health  
5 implications that is subject to significant fees, issue and enforce  
6 regulations concerning commercial cultivators of marijuana that  
7 provide for all of the following:

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

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

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

20 (d) Restrictions to ensure that marijuana is not used or consumed  
21 on the premises of a commercial cultivator.

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

26 (f) Recordkeeping consistent with the regulatory needs of the  
27 department.

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

31 26040. (a) The department shall license marijuana wholesalers,  
32 which shall be allowed to package and prepare marijuana for sale,  
33 and which shall be authorized to sell marijuana to licensed sales  
34 outlets. The fee for the license shall be set in an amount that will  
35 reasonably cover the costs of compliance with the regulations to  
36 be issued, but may not exceed five thousand dollars (\$5,000) for  
37 an initial application, or two thousand five hundred dollars (\$2,500)  
38 per year for each annual renewal.

39 (b) The department shall issue regulations that include a  
40 requirement that all applicants for licensure receive background

1 checks. At the request of the department, the Attorney General or  
 2 any local agency shall provide summary criminal history  
 3 information to the department as provided in Sections 11105 and  
 4 13300 of the Penal Code.

5 26050. The department shall, with consideration for the risks  
 6 posed by a valuable commodity with public health implications  
 7 that is subject to significant fees, issue and enforce regulations  
 8 concerning the sale, packaging, and labeling of marijuana by  
 9 wholesale licensees. Those regulations shall provide for all of the  
 10 following:

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

18 (b) Appropriate employment rules, including that no person  
 19 under 21 years of age shall be employed or involved in any  
 20 transaction concerning marijuana, including, but not limited to,  
 21 transporting, receiving, processing, packing, storage, and delivery  
 22 of marijuana.

23 (c) Restrictions to ensure that marijuana is not used or consumed  
 24 on the premises of a wholesaler.

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

29 (e) Recordkeeping consistent with the regulatory needs of the  
 30 department.

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

33 26060. The department shall issue and enforce regulations  
 34 concerning the sale of marijuana by off-sale general licensees.  
 35 Those regulations shall provide for all of the following:

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

1 (b) Marijuana shall be kept behind a counter in an area not  
2 directly accessible to any customer, and shall be stored in a case  
3 that is locked between sales.

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

5 (d) Punishments for violations in actions against licensees that  
6 are in substantial accord with those applicable to the regulation of  
7 alcohol sales, including heavy penalties for permitting persons  
8 under 21 years of age to purchase these products and other  
9 appropriate regulatory provisions concerning matters such as the  
10 time of sale, deliveries, and signage, in addition to the criminal  
11 penalties specified in Section 11361 of the Health and Safety Code.  
12 It is the intent of the people in enacting this act that the regulation  
13 of marijuana sales be consistent with the statutory guidance  
14 regarding alcohol sales in Chapter 16 (commencing with Section  
15 25600), to the extent that consistency is feasible.

16 (e) Recordkeeping consistent with the regulatory needs of the  
17 department.

18 26070. Beginning 30 days after the operative date of the  
19 regulations issued pursuant to this chapter, the department shall  
20 begin to enforce the provisions of this chapter.

21 26080. This chapter shall not apply to the medical use of  
22 marijuana which is regulated by Section 11362.5 and Article 2.5  
23 (commencing with Section 11362.7) of Chapter 6 of Division 10  
24 of the Health and Safety Code.

25 SEC. 4. Section 68152 of the Government Code is amended  
26 to read:

27 68152. The trial court clerk may destroy court records under  
28 Section 68153 after notice of destruction and if there is no request  
29 and order for transfer of the records, except the comprehensive  
30 historical and sample superior court records preserved for research  
31 under the California Rules of Court, when the following times  
32 have expired after final disposition of the case in the categories  
33 listed:

34 (a) Adoption: retain permanently.

35 (b) Change of name: retain permanently.

36 (c) Other civil actions and proceedings, as follows:

37 (1) Except as otherwise specified: 10 years.

38 (2) Where a party appears by a guardian ad litem: 10 years after  
39 termination of the court's jurisdiction.

- 1 (3) Domestic violence: same period as duration of the restraining  
2 or other orders and renewals, then retain the restraining or other  
3 orders as a judgment; 60 days after expiration of the temporary  
4 protective or temporary restraining order.
- 5 (4) Eminent domain: retain permanently.
- 6 (5) Family law, except as otherwise specified: 30 years.
- 7 (6) Harassment: same period as duration of the injunction and  
8 renewals, then retain the injunction as a judgment; 60 days after  
9 expiration of the temporary restraining order.
- 10 (7) Mental health (Lanterman Developmental Disabilities  
11 Services Act and Lanterman-Petris-Short Act): 30 years.
- 12 (8) Paternity: retain permanently.
- 13 (9) Petition, except as otherwise specified: 10 years.
- 14 (10) Real property other than unlawful detainer: retain  
15 permanently if the action affects title or an interest in real property.
- 16 (11) Small claims: 10 years.
- 17 (12) Unlawful detainer: one year if judgment is for possession  
18 of the premises; 10 years if judgment is for money.
- 19 (d) Notwithstanding subdivision (c), any civil or small claims  
20 case in the trial court:
- 21 (1) Involuntarily dismissed by the court for delay in prosecution  
22 or failure to comply with state or local rules: one year.
- 23 (2) Voluntarily dismissed by a party without entry of judgment:  
24 one year.
- 25 Notation of the dismissal shall be made on the civil index of  
26 cases or on a separate dismissal index.
- 27 (e) Criminal.
- 28 (1) Capital felony (murder with special circumstances where  
29 the prosecution seeks the death penalty): retain permanently. If  
30 the charge is disposed of by acquittal or a sentence less than death,  
31 the case shall be reclassified.
- 32 (2) Felony, except as otherwise specified: 75 years.
- 33 (3) Felony, except capital felony, with court records from the  
34 initial complaint through the preliminary hearing or plea and for  
35 which the case file does not include final sentencing or other final  
36 disposition of the case because the case was bound over to the  
37 superior court: five years.
- 38 (4) Misdemeanor, except as otherwise specified: five years.
- 39 (5) Misdemeanor alleging a violation of the Vehicle Code,  
40 except as otherwise specified: three years.



1 (6) Misdemeanor alleging a violation of Section 23103, 23152,  
2 or 23153 of the Vehicle Code: 10 years.

3 (7) Misdemeanor alleging a violation of Section 14601, 14601.1,  
4 20002, 23104, 23105, 23109, or 23109.1 of the Vehicle Code: five  
5 years.

6 (8) Misdemeanor alleging a marijuana violation under  
7 subdivision ~~(b), (c), (d), (a) or (e) (b)~~ of Section 11357 of the  
8 Health and Safety Code, or subdivision ~~(b)~~ of Section ~~11360~~ of  
9 the Health and Safety Code in accordance with the procedure set  
10 forth in Section 11361.5 of the Health and Safety Code: records  
11 shall be destroyed two years from the date of conviction or from  
12 the date of arrest if no conviction.

13 (9) Misdemeanor, infraction, or civil action alleging a violation  
14 of the regulation and licensing of dogs under Sections 30951 to  
15 30956, inclusive, of the Food and Agricultural Code or violation  
16 of any other local ordinance: three years.

17 (10) Misdemeanor action resulting in a requirement that the  
18 defendant register as a sex offender pursuant to Section 290 of the  
19 Penal Code: 75 years. This paragraph shall apply to records relating  
20 to a person convicted on or after September 20, 2006.

21 (11) Infraction, except as otherwise specified: three years.

22 (12) Parking infractions, including alleged violations under the  
23 stopping, standing, and parking provisions set forth in Chapter 9  
24 (commencing with Section 22500) of Division 11 of the Vehicle  
25 Code: two years.

26 (f) Habeas corpus: same period as period for retention of the  
27 records in the underlying case category.

28 (g) Juvenile.

29 (1) Dependent (Section 300 of the Welfare and Institutions  
30 Code): upon reaching age 28 or on written request shall be released  
31 to the juvenile five years after jurisdiction over the person has  
32 terminated under subdivision (a) of Section 826 of the Welfare  
33 and Institutions Code. Sealed records shall be destroyed upon court  
34 order five years after the records have been sealed pursuant to  
35 subdivision (c) of Section 389 of the Welfare and Institutions Code.

36 (2) Ward (Section 601 of the Welfare and Institutions Code):  
37 upon reaching age 21 or on written request shall be released to the  
38 juvenile five years after jurisdiction over the person has terminated  
39 under subdivision (a) of Section 826 of the Welfare and Institutions  
40 Code. Sealed records shall be destroyed upon court order five years

1 after the records have been sealed under subdivision (d) of Section  
 2 781 of the Welfare and Institutions Code.

3 (3) Ward (Section 602 of the Welfare and Institutions Code):  
 4 upon reaching age 38 under subdivision (a) of Section 826 of the  
 5 Welfare and Institutions Code. Sealed records shall be destroyed  
 6 upon court order when the subject of the record reaches the age  
 7 of 38 under subdivision (d) of Section 781 of the Welfare and  
 8 Institutions Code.

9 (4) Traffic and some nontraffic misdemeanors and infractions  
 10 (Section 601 of the Welfare and Institutions Code): upon reaching  
 11 age 21 or five years after jurisdiction over the person has terminated  
 12 under subdivision (c) of Section 826 of the Welfare and Institutions  
 13 Code. May be microfilmed or photocopied.

14 (5) Marijuana misdemeanor under subdivision ~~(e)~~ (b) of Section  
 15 11357 of the Health and Safety Code in accordance with procedures  
 16 specified in subdivision (a) of Section 11361.5 of the Health and  
 17 Safety Code: upon reaching age 18 the records shall be destroyed.

18 (h) Probate.

19 (1) Conservatorship: 10 years after decree of termination.

20 (2) Guardianship: 10 years after the age of 18.

21 (3) Probate, including probated wills, except as otherwise  
 22 specified: retain permanently.

23 (i) Court records of the appellate division of the superior court:  
 24 five years.

25 (j) Other records.

26 (1) Applications in forma pauperis: any time after the disposition  
 27 of the underlying case.

28 (2) Arrest warrant: same period as period for retention of the  
 29 records in the underlying case category.

30 (3) Bench warrant: same period as period for retention of the  
 31 records in the underlying case category.

32 (4) Bond: three years after exoneration and release.

33 (5) Coroner’s inquest report: same period as period for retention  
 34 of the records in the underlying case category; if no case, then  
 35 permanent.

36 (6) Court orders not associated with an underlying case, such  
 37 as orders for destruction of court records for telephone taps, or to  
 38 destroy drugs, and other miscellaneous court orders: three years.

39 (7) Court reporter notes: 10 years after the notes have been taken  
 40 in criminal and juvenile proceedings and five years after the notes

1 have been taken in all other proceedings, except notes reporting  
2 proceedings in capital felony cases (murder with special  
3 circumstances where the prosecution seeks the death penalty and  
4 the sentence is death), including notes reporting the preliminary  
5 hearing, which shall be retained permanently, unless the Supreme  
6 Court on request of the court clerk authorizes the destruction.

7 (8) Electronic recordings made as the official record of the oral  
8 proceedings under the California Rules of Court: any time after  
9 final disposition of the case in infraction and misdemeanor  
10 proceedings, 10 years in all other criminal proceedings, and five  
11 years in all other proceedings.

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

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

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

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

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

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

26 (15) Naturalization index: retain permanently.

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

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

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

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

39 (1) By order of the court on its own motion, or on application  
40 of a party or an interested member of the public for good cause

1 shown and on those terms as are just. A fee shall not be charged  
 2 for making the application.

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

5 SEC. 5. Section 1596.795 of the Health and Safety Code is  
 6 amended to read:

7 1596.795. (a) The smoking of tobacco *or marijuana* in a  
 8 private residence that is licensed as a family day care home shall  
 9 be prohibited during the hours of operation as a family day care  
 10 home and in those areas of the family day care home where  
 11 children are present. Nothing in this section shall prohibit a city  
 12 or county from enacting or enforcing an ordinance relating to *the*  
 13 smoking *of tobacco or marijuana* in a family day care home if the  
 14 ordinance is more stringent than this section.

15 (b) The smoking of tobacco *or marijuana* on the premises of a  
 16 licensed day care center shall be prohibited.

17 SEC. 6. Section 11014.5 of the Health and Safety Code is  
 18 amended to read:

19 11014.5. (a) “Drug paraphernalia” means all equipment,  
 20 ~~products~~ *products*, and materials of any kind ~~which~~ *that* are  
 21 designed for use or marketed for ~~use~~; *use* in planting, propagating,  
 22 cultivating, growing, harvesting, manufacturing, compounding,  
 23 converting, producing, processing, preparing, testing, analyzing,  
 24 packaging, repackaging, storing, containing, concealing, injecting,  
 25 ingesting, inhaling, or otherwise introducing into the human body  
 26 a controlled substance in violation of this division. It includes, but  
 27 is not limited to:

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

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

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

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

- 1 (5) Scales and balances designed for use or marketed for use in  
2 weighing or measuring controlled substances.
- 3 (6) Containers and other objects designed for use or marketed  
4 for use in storing or concealing controlled substances.
- 5 (7) Hypodermic syringes, needles, and other objects designed  
6 for use or marketed for use in parenterally injecting controlled  
7 substances into the human body.
- 8 (8) Objects designed for use or marketed for use in ingesting,  
9 inhaling, or otherwise introducing ~~marijuana, cocaine, hashish, or~~  
10 ~~hashish or cocaine~~ into the human body, such as *the following*:
- 11 (A) Carburetion tubes and devices.
- 12 (B) Smoking and carburetion masks.
- 13 (C) Roach clips, meaning objects used to hold burning ~~material,~~  
14 ~~such as a marijuana cigarette,~~ *material* that has become too small  
15 or too short to be held in the hand.
- 16 (D) Miniature cocaine spoons, and cocaine vials.
- 17 (E) Chamber pipes.
- 18 (F) Carburetor pipes.
- 19 (G) Electric pipes.
- 20 (H) Air-driven pipes.
- 21 (I) Chillums.
- 22 (J) Bongs.
- 23 (K) Ice pipes or chillers.
- 24 (b) For the purposes of this section, the phrase “marketed for  
25 use” means advertising, distributing, offering for sale, displaying  
26 for sale, or selling in a manner which promotes the use of  
27 equipment, products, or materials with controlled substances.
- 28 (c) In determining whether an object is drug paraphernalia, a  
29 court or other authority may consider, in addition to all other  
30 logically relevant factors, the following:
- 31 (1) Statements by an owner or by anyone in control of the object  
32 concerning its use.
- 33 (2) Instructions, oral or written, provided with the object  
34 concerning its use for ingesting, inhaling, or otherwise introducing  
35 a controlled substance into the human body.
- 36 (3) Descriptive materials accompanying the object which explain  
37 or depict its use.
- 38 (4) National and local advertising concerning its use.
- 39 (5) The manner in which the object is displayed for sale.

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

4 (7) Expert testimony concerning its use.

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

11 SEC. 7. Section 11054 of the Health and Safety Code is  
 12 amended to read:

13 11054. (a) The controlled substances listed in this section are  
 14 included in Schedule I.

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

20 (1) Acetylmethadol.

21 (2) Allylprodine.

22 (3) Alphacetylmethadol (except levoalphacetylmethadol, also  
 23 known as ~~levo-alpha-acetylmethadol~~ *levo-alpha-acetylmethadol*,  
 24 levomethadyl acetate, or LAAM).

25 (4) Alphameprodine.

26 (5) Alphamethadol.

27 (6) Benzethidine.

28 (7) Betacetylmethadol.

29 (8) Betameprodine.

30 (9) Betamethadol.

31 (10) Betaprodine.

32 (11) Clonitazene.

33 (12) Dextromoramide.

34 (13) Diampromide.

35 (14) Diethylthiambutene.

36 (15) Difenoxin.

37 (16) Dimenoxadol.

38 (17) Dimepheptanol.

39 (18) Dimethylthiambutene.

40 (19) Dioxaphetyl butyrate.

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

- 1 (3) Benzylmorphine.
- 2 (4) Codeine methylbromide.
- 3 (5) Codeine-N-Oxide.
- 4 (6) Cyprenorphine.
- 5 (7) Desomorphine.
- 6 (8) Dihydromorphine.
- 7 (9) Drotebanol.
- 8 (10) Etorphine (except hydrochloride salt).
- 9 (11) Heroin.
- 10 (12) Hydromorphenol.
- 11 (13) Methyldesorphine.
- 12 (14) Methyldihydromorphine.
- 13 (15) Morphine methylbromide.
- 14 (16) Morphine methylsulfonate.
- 15 (17) Morphine-N-Oxide.
- 16 (18) Myrophine.
- 17 (19) Nicocodeine.
- 18 (20) Nicomorphine.
- 19 (21) Normorphine.
- 20 (22) Pholcodine.
- 21 (23) Thebacon.
- 22 (d) Hallucinogenic substances. Unless specifically excepted or
- 23 unless listed in another schedule, any material, compound, mixture,
- 24 or preparation, which contains any quantity of the following
- 25 hallucinogenic substances, or which contains any of its salts,
- 26 isomers, and salts of isomers whenever the existence of those salts,
- 27 isomers, and salts of isomers is possible within the specific
- 28 chemical designation (for purposes of this subdivision only, the
- 29 term “isomer” includes the optical, position, and geometric
- 30 isomers):
- 31 (1) 4-bromo-2,5-dimethoxy-amphetamine—Some trade or other
- 32 names: 4-bromo-2,5-dimethoxy-alpha-methylphenethylamine;
- 33 4-bromo-2,5-DMA.
- 34 (2) 2,5-dimethoxyamphetamine—Some trade or other names:
- 35 2,5-dimethoxy-alpha-methylphenethylamine; 2,5-DMA.
- 36 (3) 4-methoxyamphetamine—Some trade or other names:
- 37 4 - m e t h o x y - a l p h a - m e t h y l p h e n e t h y l a m i n e ,
- 38 paramethoxyamphetamine, PMA.
- 39 (4) 5-methoxy-3,4-methylenedioxy-amphetamine.



- 1 (5) 4-methyl-2,5-dimethoxy-amphetamine—Some trade or other  
2 names: 4-methyl-2,5-dimethoxy-alpha-methylphenethylamine;  
3 “DOM”; and “STP.”
- 4 (6) 3,4-methylenedioxy amphetamine.
- 5 (7) 3,4,5-trimethoxy amphetamine.
- 6 (8) Bufotenine—Some trade or other names:  
7 3-(beta-dimethylaminoethyl)-5-hydroxyindole;  
8 3-(2-dimethylaminoethyl)-5 indolol; N,N-dimethylserolonin,  
9 5-hydroxy-N,N-dimethyltryptamine; mappine.
- 10 (9) Diethyltryptamine—Some trade or other names:  
11 N,N-Diethyltryptamine; DET.
- 12 (10) Dimethyltryptamine—Some trade or other names: DMT.
- 13 (11) Ibogaine—Some trade or other names: 7-Ethyl-6,6beta,  
14 7,8,9,10,12,13-octahydro-2-methoxy-6,9-methano-5H-pyrido  
15 [1',2':1,2] azepino [5,4-b] indole; Tabernantheiboga.
- 16 (12) Lysergic acid diethylamide.
- 17 ~~(13) Marijuana.~~
- 18 (14) Mescaline.
- 19 (15) Peyote—Meaning all parts of the plant presently classified  
20 botanically as *Lophophora williamsii* Lemaire, whether growing  
21 or not, the seeds thereof, any extract from any part of the plant,  
22 and every compound, manufacture, salts, derivative, mixture, or  
23 preparation of the plant, its seeds or extracts (interprets 21 U.S.C.  
24 Sec. 812(c), Schedule 1(c)(12)).
- 25 (16) N-ethyl-3-piperidyl benzilate.
- 26 (17) N-methyl-3-piperidyl benzilate.
- 27 (18) Psilocybin.
- 28 (19) Psilocyn.
- 29 (20) ~~Tetrahydrocannabinols.~~—Synthetic *tetrahydrocannabinols*  
30 *not derived from cannabis plants.* Synthetic equivalents of the  
31 substances contained in the plant, or in the resinous extractives of  
32 *Cannabis*, sp. ~~and/or~~ or synthetic substances, derivatives, and their  
33 isomers with similar chemical structure and pharmacological  
34 activity such as the following: delta 1 cis or trans  
35 tetrahydrocannabinol, and their optical isomers; delta 6 cis or trans  
36 tetrahydrocannabinol, and their optical isomers; delta 3,4 cis or  
37 trans tetrahydrocannabinol, and its optical isomers.
- 38 (Since nomenclature of these substances is not internationally  
39 standardized, compounds of these structures, regardless of  
40 numerical designation of atomic positions covered).

1 (21) Ethylamine analog of phencyclidine—Some trade or other  
2 names: N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl)  
3 ethylamine, N-(1-phenylcyclohexyl) ethylamine, cyclohexamine,  
4 PCE.

5 (22) Pyrrolidine analog of phencyclidine—Some trade or other  
6 names: 1-(1-phenylcyclohexyl)-pyrrolidine, PCP, PHP.

7 (23) Thiophene analog of phencyclidine—Some trade or other  
8 names: 1-[1-(2 thienyl)-cyclohexyl]-piperidine, 2-thienyl analog  
9 of phencyclidine, TPCP, TCP.

10 (e) Depressants. Unless specifically excepted or unless listed  
11 in another schedule, any material, compound, mixture, or  
12 preparation which contains any quantity of the following substances  
13 having a depressant effect on the central nervous system, including  
14 its salts, isomers, and salts of isomers whenever the existence of  
15 those salts, isomers, and salts of isomers is possible within the  
16 specific chemical designation:

17 (1) Mecloqualone.

18 (2) Methaqualone.

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

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

32 (1) Cocaine base.

33 (2) Fenethylamine, including its salts.

34 (3) N-Ethylamphetamine, including its salts.

35 SEC. 8. Article 6 (commencing with Section 11310) is added  
36 to Chapter 5 of Division 10 of the Health and Safety Code, to read:

Article 6. Marijuana

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11310. For purposes of this article, “marijuana” and “cannabis” are interchangeable terms that mean all parts of the plant *Cannabis sativa* L., whether growing or not; the resin extracted from any part of the plant; concentrated cannabis; edible products containing the above; and every active compound, manufacture, derivative, or preparation of the plant or resin.

11310.1. (a) It is lawful and not a violation of California law for a person 21 years of age or older to personally possess, process, share, or transport not more than 16 ounces of marijuana solely for the individual’s consumption and not for resale.

(b) Possession of more than 16 ounces of marijuana, except as authorized by paragraph (iii) of subdivision (a) of Section 11300 or another applicable law, is a violation of this article.

11310.2. (a) It is lawful and not a violation of California law to sell at retail in licensed premises, as provided in Chapter 19 (commencing with Section 26000) of Division 9 of the Business and Professions Code, not more than one ounce of marijuana per marijuana transaction to a person 21 years of age or older.

(b) Any sale of marijuana inconsistent with subdivision (a) or by a person not licensed as required after the date determined by Section 26070 of the Business and Professions Code is a violation of this article. This subdivision shall not preclude prosecution or enforcement pursuant to regulations adopted pursuant to Chapter 19 (commencing with Section 26000) of Division 9 of the Business and Professions Code, Section 11361, or any other applicable law.

11310.3. (a) It is lawful and not a violation of California law for a person 21 years of age or older to smoke or ingest marijuana in a residence or other nonpublic place, or on licensed premises open to the public that are licensed pursuant Chapter 19 (commencing with Section 26000) of Division 9 of the Business and Professions Code.

(b) It is a violation of this article to smoke marijuana in a public place.

11310.4. It is lawful and not a violation of California law, except as provided in subdivision (f) of Section 647 of the Penal Code, or Section 11729, for a person 21 years of age or older to be under the influence of marijuana.

1 11310.5. It is unlawful for a person not licensed pursuant to  
2 Chapter 19 (commencing with Section 26000) of Division 9 of the  
3 Business and Professions Code to cultivate marijuana, except in  
4 compliance with the following requirements:

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

7 (b) Marijuana may be cultivated and possessed in compliance  
8 with Section 11300.

9 (c) A licensed nursery may cultivate seedlings for sale to persons  
10 21 years of age or older, but shall destroy any seedling if it has not  
11 been purchased by a consumer before it reaches maturity.

12 (d) Except for the sale of seedlings by a licensed nursery,  
13 marijuana cultivated pursuant to this section may not be sold.

14 (e) For the purposes of this article, “seedling” means a marijuana  
15 plant with no observable flowers or buds.

16 11310.6. (a) Unlawful cultivation of marijuana is a violation  
17 of this article.

18 (b) Providing or selling marijuana to, or purchasing or  
19 cultivating marijuana for, a person under 21 years of age is a  
20 violation of this article. However, this article is not intended to  
21 preclude prosecution under Section 11361, Section 272 of the  
22 Penal Code, or any other applicable provision.

23 (c) Selling, providing, or transporting marijuana, or possessing  
24 marijuana with the intent to sell, provide, or transport that  
25 marijuana, into a state in which the receiving, purchasing, or  
26 possessing of marijuana would violate that state’s laws is a  
27 violation of this article.

28 (d) Possession or use of marijuana by a person under 21 years  
29 of age is a violation of this article.

30 11310.7. Violations of this article shall be penalized as follows:

31 (a) A violation of subdivision (b) of Section 11310.1 is an  
32 infraction punishable by a fine not exceeding one hundred dollars  
33 (\$100).

34 (b) A violation of subdivision (b) of Section 11310.2 is a  
35 misdemeanor.

36 (c) A violation of subdivision (b) of Section 11310.3 is an  
37 infraction punishable by a fine not exceeding one hundred dollars  
38 (\$100).

1 (d) A violation of subdivision (a) of Section 11310.6 is a  
2 misdemeanor punishable by imprisonment in a county jail not  
3 exceeding 10 days.

4 (e) A violation of subdivision (b) of Section 11310.6 is an  
5 infraction punishable by a fine not exceeding one hundred dollars  
6 (\$100).

7 (f) A violation of subdivision (c) of Section 11310.6 is a felony.

8 (g) A violation of subdivision (d) of Section 11310.6 is an  
9 infraction punishable by a fine not exceeding one hundred dollars  
10 (\$100).

11 11310.8. Notwithstanding any other law, it is lawful and not  
12 a violation of California law to possess, transport, or sell the mature  
13 stalks of the plant *Cannabis sativa* L., fiber produced from the  
14 stalks, oil or cake made from the seeds of the plant, any other  
15 compound, manufacture, salt, derivative, mixture, or preparation  
16 of the mature stalks (except the resin extracted therefrom, which  
17 is regulated as marijuana), fiber, oil, or cake, or the sterilized seed  
18 of the plant that is incapable of germination.

19 11310.9. State or local funds shall not be expended on, and  
20 state or local law enforcement or other personnel shall not assist  
21 in, the enforcement of any federal or other laws that are inconsistent  
22 with this article, or provide for greater sanctions than those in state  
23 law for conduct prohibited by this article.

24 11311. This article shall not be construed to affect or limit any  
25 criminal statute that forbids impairment while engaging in  
26 dangerous activities like driving, or that penalizes bringing  
27 marijuana to a school enrolling pupils in kindergarten or any of  
28 grades 1 to 12, inclusive.

29 11311.1. This article shall not be construed to affect the rights  
30 of employers concerning employees who use marijuana.

31 11311.2. This article shall not apply to the medical use of  
32 marijuana which is regulated by Section 11362.5 and Article 2.5  
33 (commencing with Section 11362.7).

34 SEC. 9. Section 11357 of the Health and Safety Code is  
35 amended to read:

36 ~~11357. (a) Except as authorized by law, every person who~~  
37 ~~possesses any concentrated cannabis shall be punished by~~  
38 ~~imprisonment in the county jail for a period of not more than one~~  
39 ~~year or by a fine of not more than five hundred dollars (\$500), or~~

1 by both such fine and imprisonment, or shall be punished by  
2 imprisonment in the state prison.

3 (b) Except as authorized by law, every person who possesses  
4 not more than 28.5 grams of marijuana, other than concentrated  
5 cannabis, is guilty of a misdemeanor and shall be punished by a  
6 fine of not more than one hundred dollars (\$100). Notwithstanding  
7 other provisions of law, if such person has been previously  
8 convicted three or more times of an offense described in this  
9 subdivision during the two-year period immediately preceding the  
10 date of commission of the violation to be charged, the previous  
11 convictions shall also be charged in the accusatory pleading and,  
12 if found to be true by the jury upon a jury trial or by the court upon  
13 a court trial or if admitted by the person, the provisions of Sections  
14 1000.1 and 1000.2 of the Penal Code shall be applicable to him,  
15 and the court shall divert and refer him for education, treatment,  
16 or rehabilitation, without a court hearing or determination or the  
17 concurrence of the district attorney, to an appropriate community  
18 program which will accept him. If the person is so diverted and  
19 referred he shall not be subject to the fine specified in this  
20 subdivision. If no community program will accept him, the person  
21 shall be subject to the fine specified in this subdivision. In any  
22 case in which a person is arrested for a violation of this subdivision  
23 and does not demand to be taken before a magistrate, such person  
24 shall be released by the arresting officer upon presentation of  
25 satisfactory evidence of identity and giving his written promise to  
26 appear in court, as provided in Section 853.6 of the Penal Code,  
27 and shall not be subjected to booking.

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

33 (d) Except as authorized by law, every person 18 years of age  
34 or over who possesses not more than 28.5 grams of marijuana,  
35 other than concentrated cannabis, upon the grounds of, or within,  
36 any school providing instruction in kindergarten or any of grades  
37 1 through 12 during hours the school is open for classes or  
38 school-related programs is guilty of a misdemeanor and shall be  
39 punished by a fine of not more than five hundred dollars (\$500);

1 or by imprisonment in the county jail for a period of not more than  
2 10 days, or both.

3 (e)

4 11357. (a) Except as authorized by law, every person 18 years  
5 of age or over who possesses marijuana or concentrated cannabis  
6 upon the grounds of, or within, any school providing instruction  
7 in kindergarten or any of grades 1 to 12, inclusive, during hours  
8 the school is open for classes or school-related programs is guilty  
9 of a misdemeanor and shall be punished by a fine of not more than  
10 five hundred dollars (\$500), or by imprisonment in the county jail  
11 for a period of not more than 10 days, or both.

12 (b) Except as authorized by law, every person under the age of  
13 18 18 years of age who possesses not more than 28.5 grams of  
14 marijuana, other than marijuana or concentrated cannabis, upon  
15 the grounds of, or within, any school providing instruction in  
16 kindergarten or any of grades 1 through 12 during hours the school  
17 is open for classes or school-related programs is guilty of a  
18 misdemeanor and shall be subject to the following dispositions:

19 (1) A fine of not more than two hundred fifty dollars (\$250),  
20 upon a finding that a first offense has been committed.

21 (2) A fine of not more than five hundred dollars (\$500), or  
22 commitment to a juvenile hall, ranch, camp, forestry camp, or  
23 secure juvenile home for a period of not more than 10 days, or  
24 both, upon a finding that a second or subsequent offense has been  
25 committed.

26 SEC. 10. Section 11358 of the Health and Safety Code is  
27 repealed.

28 11358. ~~Every person who plants, cultivates, harvests, dries, or  
29 processes any marijuana or any part thereof, except as otherwise  
30 provided by law, shall be punished by imprisonment in the state  
31 prison.~~

32 SEC. 11. Section 11359 of the Health and Safety Code is  
33 amended to read:

34 11359. ~~Every~~ Except as authorized by law, every person who  
35 sells or possesses for sale any marijuana, ~~except as otherwise  
36 provided by law, shall be punished by imprisonment in the state  
37 prison~~ is guilty of a misdemeanor punishable by a fine not to exceed  
38 five thousand dollars (\$5,000), or imprisonment not exceeding one  
39 year in a county jail, or both the fine and imprisonment. The court

1 *shall order that any fines assessed be deposited in the Drug Abuse*  
2 *Prevention Supplemental Funding Account.*

3 SEC. 12. Section 11360 of the Health and Safety Code is  
4 repealed.

5 ~~11360. (a) Except as otherwise provided by this section or as~~  
6 ~~authorized by law, every person who transports, imports into this~~  
7 ~~state, sells, furnishes, administers, or gives away, or offers to~~  
8 ~~transport, import into this state, sell, furnish, administer, or give~~  
9 ~~away, or attempts to import into this state or transport any~~  
10 ~~marijuana shall be punished by imprisonment in the state prison~~  
11 ~~for a period of two, three or four years.~~

12 ~~(b) Except as authorized by law, every person who gives away,~~  
13 ~~offers to give away, transports, offers to transport, or attempts to~~  
14 ~~transport not more than 28.5 grams of marijuana, other than~~  
15 ~~concentrated cannabis, is guilty of a misdemeanor and shall be~~  
16 ~~punished by a fine of not more than one hundred dollars (\$100).~~  
17 ~~In any case in which a person is arrested for a violation of this~~  
18 ~~subdivision and does not demand to be taken before a magistrate,~~  
19 ~~such person shall be released by the arresting officer upon~~  
20 ~~presentation of satisfactory evidence of identity and giving his~~  
21 ~~written promise to appear in court, as provided in Section 853.6~~  
22 ~~of the Penal Code, and shall not be subjected to booking.~~

23 SEC. 13. Section 11364.5 of the Health and Safety Code is  
24 amended to read:

25 11364.5. (a) Except as authorized by law, no person shall  
26 maintain or operate any place of business in which drug  
27 paraphernalia is kept, displayed or offered in any manner, sold,  
28 furnished, transferred or given away unless such drug paraphernalia  
29 is completely and wholly kept, displayed or offered within a  
30 separate room or enclosure to which persons under the age of 18  
31 years not accompanied by a parent or legal guardian are excluded.  
32 Each entrance to such a room or enclosure shall be signposted in  
33 reasonably visible and legible words to the effect that drug  
34 paraphernalia is kept, displayed or offered in such room or  
35 enclosure and that minors, unless accompanied by a parent or legal  
36 guardian, are excluded.

37 (b) Except as authorized by law, no owner, manager, proprietor  
38 or other person in charge of any room or enclosure, within any  
39 place of business, in which drug paraphernalia is kept, displayed  
40 or offered in any manner, sold, furnished, transferred or given



1 away shall permit or allow any person under the age of 18 years  
2 to enter, be in, remain in or visit such room or enclosure unless  
3 such minor person is accompanied by one of his or her parents or  
4 by his or her legal guardian.

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

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

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

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

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

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

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

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

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

- 1     ~~(8)~~  
2     (7) Blenders, bowls, containers, spoons, and mixing devices  
3 intended for use or designed for use in compounding controlled  
4 substances.  
5     ~~(9)~~  
6     (8) Capsules, balloons, envelopes, and other containers intended  
7 for use or designed for use in packaging small quantities of  
8 controlled substances.  
9     ~~(10)~~  
10    (9) Containers and other objects intended for use or designed  
11 for use in storing or concealing controlled substances.  
12    ~~(11)~~  
13    (10) Hypodermic syringes, needles, and other objects intended  
14 for use or designed for use in parenterally injecting controlled  
15 substances into the human body.  
16    ~~(12)~~  
17    (11) Objects intended for use or designed for use in ingesting,  
18 inhaling, or otherwise introducing ~~marijuana, cocaine, hashish, or~~  
19 ~~hashish or cocaine~~ into the human body, such as the following:  
20    (A) Metal, wooden, acrylic, glass, stone, plastic, or ceramic  
21 pipes with or without screens, permanent screens, hashish heads,  
22 or punctured metal bowls.  
23    (B) Water pipes.  
24    (C) Carburetion tubes and devices.  
25    (D) Smoking and carburetion masks.  
26    (E) Roach clips, meaning objects used to hold burning ~~material,~~  
27 ~~such as a marijuana cigarette~~ *material* that has become too small  
28 or too short to be held in the hand.  
29    (F) Miniature cocaine spoons, and cocaine vials.  
30    (G) Chamber pipes.  
31    (H) Carburetor pipes.  
32    (I) Electric pipes.  
33    (J) Air-driven pipes.  
34    (K) Chillums.  
35    (L) Bongs.  
36    (M) Ice pipes or chillers.  
37    (e) In determining whether an object is drug paraphernalia, a  
38 court or other authority may consider, in addition to all other  
39 logically relevant factors, the following:

- 1 (1) Statements by an owner or by anyone in control of the object  
2 concerning its use.
- 3 (2) Prior convictions, if any, of an owner, or of anyone in control  
4 of the object, under any state or federal law relating to any  
5 controlled substance.
- 6 (3) Direct or circumstantial evidence of the intent of an owner,  
7 or of anyone in control of the object, to deliver it to persons whom  
8 he or she knows, or should reasonably know, intend to use the  
9 object to facilitate a violation of this section. The innocence of an  
10 owner, or of anyone in control of the object, as to a direct violation  
11 of this section shall not prevent a finding that the object is intended  
12 for use, or designed for use, as drug paraphernalia.
- 13 (4) Instructions, oral or written, provided with the object  
14 concerning its use.
- 15 (5) Descriptive materials, accompanying the object which  
16 explain or depict its use.
- 17 (6) National and local advertising concerning its use.
- 18 (7) The manner in which the object is displayed for sale.
- 19 (8) Whether the owner, or anyone in control of the object, is a  
20 legitimate supplier of like or related items to the community, such  
21 as a licensed distributor or dealer of tobacco ~~products~~ or *marijuana*  
22 *products*.
- 23 (9) The existence and scope of legitimate uses for the object in  
24 the community.
- 25 (10) Expert testimony concerning its use.
- 26 (f) This section shall not apply to any of the following:
- 27 (1) Any pharmacist or other authorized person who sells or  
28 furnishes drug paraphernalia described in paragraph (11) of  
29 subdivision (d) upon the prescription of a physician, dentist,  
30 podiatrist or veterinarian.
- 31 (2) Any physician, dentist, podiatrist or veterinarian who  
32 furnishes or prescribes drug paraphernalia described in paragraph  
33 (11) of subdivision (d) to his or her patients.
- 34 (3) Any manufacturer, wholesaler or retailer licensed by the  
35 California State Board of Pharmacy to sell or transfer drug  
36 paraphernalia described in paragraph (11) of subdivision (d).
- 37 (g) Notwithstanding any other provision of law, including  
38 Section 11374, violation of this section shall not constitute a  
39 criminal offense, but operation of a business in violation of the  
40 provisions of this section shall be grounds for revocation or

1 nonrenewal of any license, permit, or other entitlement previously  
 2 issued by a city, county, or city and county for the privilege of  
 3 engaging in such business and shall be grounds for denial of any  
 4 future license, permit, or other entitlement authorizing the conduct  
 5 of such business or any other business, if the business includes the  
 6 sale of drug paraphernalia.

7 SEC. 14. Section 11370 of the Health and Safety Code is  
 8 amended to read:

9 11370. (a) Any person convicted of violating Section 11350,  
 10 11351, 11351.5, 11352, 11353, 11355, ~~11357, 11359, 11360,~~  
 11 11361, 11363, 11366, or 11368, or of committing any offense  
 12 referred to in those sections, shall not, in any case, be granted  
 13 probation by the trial court or have the execution of the sentence  
 14 imposed upon him or her suspended by the court, if he or she has  
 15 been previously convicted of any offense described in subdivision  
 16 (c).

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

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

35 (1) Any felony offense described in this division involving a  
 36 controlled substance specified in subdivision (b), (c), (e), or  
 37 paragraph (1) of subdivision (f) of Section 11054, specified in  
 38 paragraph ~~(13)~~, (14), (15), or (20) of subdivision (d) of Section  
 39 11054, or specified in subdivision (b) or (c) of Section 11055.

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

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

10 SEC. 15. Section 11470 of the Health and Safety Code is  
11 amended to read:

12 11470. The following are subject to forfeiture:

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

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

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

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

25 (e) The interest of any registered owner of a boat, airplane, or  
26 any vehicle other than an implement of husbandry, as defined in  
27 Section 36000 of the Vehicle Code, which has been used as an  
28 instrument to facilitate the manufacture of, or possession for sale  
29 or sale of 14.25 grams or more of heroin or cocaine base as  
30 specified in paragraph (1) of subdivision (f) of Section 11054, or  
31 a substance containing 14.25 grams or more of heroin or cocaine  
32 base as specified in paragraph (1) of subdivision (f) of Section  
33 11054, or 14.25 grams or more of a substance containing heroin  
34 or cocaine base as specified in paragraph (1) of subdivision (f) of  
35 Section 11054, or 28.5 grams or more of Schedule I controlled  
36 substances except ~~marijuana, peyote, or psilocybin~~; 10 pounds dry  
37 weight or more of ~~marijuana, peyote, or psilocybin~~; or 28.5 grams  
38 or more of cocaine, as specified in paragraph (6) of subdivision  
39 (b) of Section 11055, or methamphetamine; or a substance  
40 containing 28.5 grams or more of cocaine, as specified in paragraph

1 (6) of subdivision (b) of Section 11055, or methamphetamine; or  
2 57 grams or more of a substance containing cocaine, as specified  
3 in paragraph (6) of subdivision (b) of Section 11055, or  
4 methamphetamine; or 28.5 grams or more of Schedule II controlled  
5 substances. No interest in a vehicle which may be lawfully driven  
6 on the highway with a class C, class M1, or class M2 license, as  
7 prescribed in Section 12804 of the Vehicle Code, may be forfeited  
8 under this subdivision if there is a community property interest in  
9 the vehicle by a person other than the defendant and the vehicle  
10 is the sole class C, class M1, or class M2 vehicle available to the  
11 defendant's immediate family.

12 (f) All moneys, negotiable instruments, securities, or other  
13 things of value furnished or intended to be furnished by any person  
14 in exchange for a controlled substance, all proceeds traceable to  
15 such an exchange, and all moneys, negotiable instruments, or  
16 securities used or intended to be used to facilitate any violation of  
17 Section 11351, 11351.5, 11352, 11355, ~~11359, 11360~~, 11378,  
18 11378.5, 11379, 11379.5, 11379.6, 11380, 11382, or 11383 of this  
19 code, or Section 182 of the Penal Code, or a felony violation of  
20 Section 11366.8 of this code, insofar as the offense involves  
21 manufacture, sale, possession for sale, offer for sale, or offer to  
22 manufacture, or conspiracy to commit at least one of those offenses,  
23 if the exchange, violation, or other conduct which is the basis for  
24 the forfeiture occurred within five years of the seizure of the  
25 property, or the filing of a petition under this chapter, or the  
26 issuance of an order of forfeiture of the property, whichever comes  
27 first.

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

34 (h) Subject to the requirements of Section 11488.5 and except  
35 as further limited by this subdivision to protect innocent parties  
36 who claim a property interest acquired from a defendant, all right,  
37 title, and interest in any personal property described in this section  
38 shall vest in the state upon commission of the act giving rise to  
39 forfeiture under this chapter, if the state or local governmental  
40 entity proves a violation of Section 11351, 11351.5, 11352, 11355,

1 ~~11359, 11360, 11378, 11378.5, 11379, 11379.5, 11379.6, 11380,~~  
 2 ~~11382, or 11383 of this code, or Section 182 of the Penal Code,~~  
 3 ~~or a felony violation of Section 11366.8 of this code, insofar as~~  
 4 ~~the offense involves the manufacture, sale, possession for sale,~~  
 5 ~~offer for sale, offer to manufacture, or conspiracy to commit at~~  
 6 ~~least one of those offenses, in accordance with the burden of proof~~  
 7 ~~set forth in paragraph (1) of subdivision (i) of Section 11488.4 or,~~  
 8 ~~in the case of cash or negotiable instruments in excess of~~  
 9 ~~twenty-five thousand dollars (\$25,000), paragraph (4) of~~  
 10 ~~subdivision (i) of Section 11488.4.~~

11 The operation of the special vesting rule established by this  
 12 subdivision shall be limited to circumstances where its application  
 13 will not defeat the claim of any person, including a bona fide  
 14 purchaser or encumbrancer who, pursuant to Section 11488.5,  
 15 11488.6, or 11489, claims an interest in the property seized,  
 16 notwithstanding that the interest in the property being claimed was  
 17 acquired from a defendant whose property interest would otherwise  
 18 have been subject to divestment pursuant to this subdivision.

19 SEC. 16. Section 11485 of the Health and Safety Code is  
 20 repealed.

21 ~~11485. Any peace officer of this state who, incident to a search~~  
 22 ~~under a search warrant issued for a violation of Section 11358 with~~  
 23 ~~respect to which no prosecution of a defendant results, seizes~~  
 24 ~~personal property suspected of being used in the planting,~~  
 25 ~~cultivation, harvesting, drying, processing, or transporting of~~  
 26 ~~marijuana, shall, if the seized personal property is not being held~~  
 27 ~~for evidence or destroyed as contraband, and if the owner of the~~  
 28 ~~property is unknown or has not claimed the property, provide~~  
 29 ~~notice regarding the seizure and manner of reclamation of the~~  
 30 ~~property to any owner or tenant of real property on which the~~  
 31 ~~property was seized. In addition, this notice shall be posted at the~~  
 32 ~~location of seizure and shall be published at least once in a~~  
 33 ~~newspaper of general circulation in the county in which the~~  
 34 ~~property was seized. If, after 90 days following the first publication~~  
 35 ~~of the notice, no owner appears and proves his or her ownership,~~  
 36 ~~the seized personal property shall be deemed to be abandoned and~~  
 37 ~~may be disposed of by sale to the public at public auction as set~~  
 38 ~~forth in Article 1 (commencing with Section 2080) of Chapter 4~~  
 39 ~~of Title 6 of Part 4 of Division 3 of the Civil Code, or may be~~  
 40 ~~disposed of by transfer to a government agency or community~~

1 ~~service organization. Any profit from the sale or transfer of the~~  
2 ~~property shall be expended for investigative services with respect~~  
3 ~~to crimes involving marijuana.~~

4 SEC. 17. Section 11488 of the Health and Safety Code is  
5 amended to read:

6 11488. (a) Any peace officer of this state, subsequent to  
7 making or attempting to make an arrest for a violation of Section  
8 11351, 11351.5, 11352, 11355, ~~11359, 11360~~, 11378, 11378.5,  
9 11379, 11379.5, 11379.6, or 11382 of this code, or Section 182 of  
10 the Penal Code insofar as the offense involves manufacture, sale,  
11 purchase for the purpose of sale, possession for sale or offer to  
12 manufacture or sell, or conspiracy to commit one of those offenses,  
13 may seize any item subject to forfeiture under subdivisions (a) to  
14 (f), inclusive, of Section 11470. The peace officer shall also notify  
15 the Franchise Tax Board of a seizure where there is reasonable  
16 cause to believe that the value of the seized property exceeds five  
17 thousand dollars (\$5,000).

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

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

29 SEC. 18. Section 11532 of the Health and Safety Code is  
30 amended to read:

31 11532. (a) It is unlawful for any person to loiter in any public  
32 place in a manner and under circumstances manifesting the purpose  
33 and with the intent to commit an offense specified in Chapter 6  
34 (commencing with Section 11350) and Chapter 6.5 (commencing  
35 with Section 11400).

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

- 39 (1) Acts as a "look-out."



1 (2) Transfers small objects or packages for currency in a furtive  
2 fashion.

3 (3) Tries to conceal himself or herself or any object that  
4 reasonably could be involved in an unlawful drug-related activity.

5 (4) Uses signals or language indicative of summoning  
6 purchasers of illegal drugs.

7 (5) Repeatedly beckons to, stops, attempts to stop, or engages  
8 in conversations with passersby, whether on foot or in a motor  
9 vehicle, indicative of summoning purchasers of illegal drugs.

10 (6) Repeatedly passes to or receives from passersby, whether  
11 on foot or in a motor vehicle, money or small objects.

12 (7) Is under the influence of a controlled substance or possesses  
13 narcotic or drug paraphernalia. For the purposes of this paragraph,  
14 “narcotic or drug paraphernalia” means any device, contrivance,  
15 instrument, or apparatus designed or marketed for the use of  
16 smoking, injecting, ingesting, or consuming ~~marijuana, hashish,~~  
17 PCP; or any controlled substance, including, but not limited to,  
18 roach clips, cigarette papers, and rollers designed or marketed for  
19 use in smoking a controlled substance.

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

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

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

34 (c) The list of circumstances set forth in subdivision (b) is not  
35 exclusive. The circumstances set forth in subdivision (b) should  
36 be considered particularly salient if they occur in an area that is  
37 known for unlawful drug use and trafficking, or if they occur on  
38 or in premises that have been reported to law enforcement as a  
39 place suspected of unlawful drug activity. Any other relevant  
40 circumstances may be considered in determining whether a person

1 has the requisite intent. Moreover, no one circumstance or  
 2 combination of circumstances is in itself determinative of intent.  
 3 Intent must be determined based on an evaluation of the particular  
 4 circumstances of each case.

5 SEC. 19. Section 11703 of the Health and Safety Code is  
 6 amended to read:

7 11703. As used in this division:

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

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

16 (c) “Level 1 offense” means the possession for sale of less than  
 17 four ounces or the sale or furnishing of less than one ounce of a  
 18 specified illegal controlled substance, ~~or the cultivation of at least~~  
 19 ~~25 plants but less than 50 plants, the furnishing of more than 28.5~~  
 20 ~~grams, or the possession for sale or sale of up to four pounds, of~~  
 21 ~~marijuana substance.~~

22 (d) “Level 2 offense” means the possession for sale of four  
 23 ounces or more but less than eight ounces of, or the sale or  
 24 furnishing of one ounce or more but less than two ounces of, a  
 25 specified illegal controlled substance, ~~or the cultivation of at least~~  
 26 ~~50 but less than 75 plants, the possession for sale of four pounds~~  
 27 ~~or more but less than eight pounds, or the sale or furnishing of~~  
 28 ~~more than one pound but less than five pounds, of marijuana~~  
 29 ~~substance.~~

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

37 (f) “Level 4 offense” means the possession for sale of 16 ounces  
 38 or more of, or the sale or furnishing of four ounces or more of, a  
 39 specified illegal controlled substance, ~~or the cultivation of 100~~

1 ~~plants or more of, the possession for sale of 16 pounds of, or the~~  
2 ~~sale or furnishing of more than 10 pounds of, marijuana substance.~~

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

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

15 (i) “Period of illegal use” means, in relation to the individual  
16 user of an illegal controlled substance, the time of the individual’s  
17 first illegal use of an illegal controlled substance to the accrual of  
18 the cause of action.

19 (j) “Place of illegal activity” means, in relation to the individual  
20 user of an illegal controlled substance, each county in which the  
21 individual illegally possesses or uses an illegal controlled substance  
22 during the period of the individual’s use of an illegal controlled  
23 substance.

24 (k) “Place of participation” means, in relation to a defendant in  
25 an action brought under this division, each county in which the  
26 person participates in the marketing of illegal controlled substances  
27 during the period of the person’s participation in the marketing of  
28 illegal controlled substances.

29 (l) “Specified illegal controlled substance” means cocaine,  
30 phencyclidine, heroin, or methamphetamine and any other illegal  
31 controlled substance the manufacture, cultivation, importation into  
32 this state, transportation, possession for sale, sale, furnishing,  
33 administering, or giving away of which is a violation of Section  
34 11351, 11351.5, 11352, ~~11358, 11359, 11360~~, 11378.5, 11379.5,  
35 or 11383.

36 SEC. 20. Section 11705 of the Health and Safety Code is  
37 amended to read:

38 11705. (a) Any one or more of the following persons may  
39 bring an action for damages caused by an individual’s use of an  
40 illegal controlled substance:

- 1 (1) A parent, legal guardian, child, spouse, or sibling of the
- 2 individual controlled substance user.
- 3 (2) An individual who was exposed to an illegal controlled
- 4 substance in utero.
- 5 (3) An employer of the individual user of an illegal controlled
- 6 substance.
- 7 (4) A medical facility, insurer, employer, or other
- 8 nongovernmental entity that funds a drug treatment program or
- 9 employee assistance program for the individual user of an illegal
- 10 controlled substance or that otherwise expended money on behalf
- 11 of the individual user of an illegal controlled substance. No public
- 12 agency other than a public agency medical facility shall have a
- 13 cause of action under this division.
- 14 (5) A person injured as a result of the willful, reckless, or
- 15 negligent actions of an individual user of an illegal controlled
- 16 substance.
- 17 (b) A person entitled to bring an action under this section may
- 18 seek damages from one or more of the following:
- 19 (1) A person who sold, administered, or furnished an illegal
- 20 controlled substance to the individual user of the illegal controlled
- 21 substance.
- 22 (2) A person who knowingly participated in the marketing of
- 23 illegal controlled substances, if all of the following apply:
- 24 (A) The place of illegal activity by the individual user of an
- 25 illegal controlled substance is within the city, city and county, or
- 26 unincorporated area of the county in which the defendant’s place
- 27 of participation is situated.
- 28 (B) The defendant’s participation in the marketing of illegal
- 29 controlled substances was connected with the same type of
- 30 specified illegal controlled substance used by the individual user
- 31 of an illegal controlled substance, and the defendant has been
- 32 convicted of an offense for that type of specified illegal controlled
- 33 substance.
- 34 (C) The defendant participated in the marketing of illegal
- 35 controlled substances at any time during the period the individual
- 36 user of an illegal controlled substance illegally used the controlled
- 37 substance.
- 38 (D) The underlying offense for the conviction of the specified
- 39 illegal controlled substance occurred in the same county as the
- 40 individual user’s place of use.

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

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

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

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

23 (3) Exemplary damages.

24 (4) Reasonable attorney fees.

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

27 SEC. 21. Part 14.6 (commencing with Section 34001) is added  
 28 to Division 2 of the Revenue and Taxation Code, to read:

29  
 30 PART 14.6. MARIJUANA FEES

31  
 32 CHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS

33  
 34 34001. It is the intent of the people in enacting this part to  
 35 discourage drug use and to raise revenue for drug education and  
 36 drug awareness programs by enacting a supplemental fee on  
 37 marijuana.

38 34002. This part shall be known and may be cited as the  
 39 Marijuana Supplemental Fee Law.

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

4 34004. For purposes of this part:

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

12 (b) "Retailer" means any retailer licensed pursuant to Section  
13 23394.1 of the Business and Professions Code that sells marijuana  
14 at retail.

15  
16 CHAPTER 2. IMPOSITION OF FEE  
17

18 34011. Until a different fee is determined pursuant to Section  
19 34032 there is hereby imposed a fee of fifty dollars (\$50) per ounce  
20 (avoirdupois) for the sale of marijuana sold at retail in this state  
21 on or after the date determined by Section 25406 of the Business  
22 and Professions Code.

23  
24 CHAPTER 3. COLLECTION AND ADMINISTRATION  
25

26 34021. To the extent feasible or practicable, the provisions of  
27 Chapter 5 (commencing with Section 6451), Chapter 6  
28 (commencing with Section 6701), Chapter 7 (commencing with  
29 Section 6901), and Chapter 8 (commencing with Section 7051) of  
30 Part 1 shall govern returns and payments, determinations,  
31 collections of fees, overpayments and refunds, and administration  
32 under this part.

33 34022. The board shall enforce this part and may prescribe,  
34 adopt, and enforce rules and regulations relating to the  
35 administration and enforcement of this part. The board may  
36 prescribe the extent to which any ruling or regulation shall be  
37 applied without retroactive effect.

CHAPTER 4.

DISPOSITION OF PROCEEDS AND ADJUSTMENT OF THE FEE

34031. Any amount required to be paid to the state under this part shall be paid to the board in the form of a remittance payable to the State Board of Equalization. The board shall transmit the payments to the Treasurer to be deposited in the Drug Abuse Prevention Supplemental Funding Account, which is hereby created in the General Fund. Upon appropriation by the Legislature, the moneys in the fund shall be expended exclusively for drug education, awareness, and rehabilitation programs under the jurisdiction of the State Department of Alcohol and Drug Programs, or any successor to that agency.

34032. The fee imposed pursuant to Chapter 2 (commencing with Section 34011) shall be annually reviewed by the State Department of Alcohol and Drug Programs, or any successor to that agency, to determine whether a fee less than that specified in Chapter 2 (commencing with Section 34011) will provide sufficient resources to support its drug education, awareness, and rehabilitation programs. Based on this annual review, the State Department of Alcohol and Drug Programs shall adjust that fee to an amount not to exceed fifty dollars (\$50) per ounce (avoirdupois) of marijuana that is necessary to fund its drug education, awareness, and rehabilitation programs, and that amount shall be collected in place of the fee specified in Chapter 2 (commencing with Section 34011).

SEC. 22. Section 23222 of the Vehicle Code is amended to read:

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

(b) Except as authorized by law, every person who possesses, while driving a motor vehicle upon a highway or on lands, as described in subdivision (b) of Section 23220, ~~not more than one~~ *16* avoirdupois ~~ounce ounces~~ of marijuana, ~~other than concentrated cannabis as defined by Section 11006.5 of the Health and Safety Code,~~ or who ingests any amount of marijuana while driving a

1 *motor vehicle upon a highway or on lands, as described in*  
2 *subdivision (b) of Section 23220, or who possesses any amount of*  
3 *marijuana while driving in a motor vehicle upon a highway or on*  
4 *lands that is not contained in a locked compartment or other locked*  
5 *container is guilty of a misdemeanor or an infraction and shall be*  
6 *punished by a fine of not more than one hundred dollars (\$100).*  
7 *This subdivision shall not preclude prosecution pursuant to any*  
8 *other provision of law that applies to the impaired operation of a*  
9 *motor vehicle or other dangerous conduct. Notwithstanding any*  
10 *other provision of law, if the person has been previously convicted*  
11 *three or more times of an offense described in this subdivision*  
12 *during the two-year period immediately preceding the date of*  
13 *commission of the violation to be charged, the previous convictions*  
14 *shall also be charged in the accusatory pleading and, if found to*  
15 *be true by the jury upon a jury trial or by the court upon a court*  
16 *trial or if admitted by the person, Sections 1000.1 and 1000.2 of*  
17 *the Penal Code are applicable to the person, and the court shall*  
18 *divert and refer the person for education, treatment, or*  
19 *rehabilitation, without a court hearing or determination or the*  
20 *concurrence of the district attorney, to an appropriate community*  
21 *program which will accept the person. If the person is so diverted*  
22 *and referred, the person is not subject to the fine specified in this*  
23 *subdivision. In any case in which a person is arrested for a violation*  
24 *of this subdivision and does not demand to be taken before a*  
25 *magistrate, the person shall be released by the arresting officer*  
26 *upon presentation of satisfactory evidence of identity and giving*  
27 *his or her written promise to appear in court, as provided in Section*  
28 *40500, and shall not be subjected to booking.*

29 SEC. 23. Section 40000.15 of the Vehicle Code is amended to  
30 read:

31 40000.15. A violation of any of the following provisions shall  
32 constitute a misdemeanor, and not an infraction:

33 Subdivision (g), (j), (k), (l), or (m) of Section 22658, relating to  
34 unlawfully towed or stored vehicles.

35 Sections 23103 and 23104, relating to reckless driving.

36 Section 23109, relating to speed contests or exhibitions.

37 Subdivision (a) of Section 23110, relating to throwing at vehicles.

38 Section 23152, relating to driving under the influence.

39 ~~Subdivision (b) of Section 23222, relating to possession of~~  
40 ~~marijuana.~~



1 Subdivision (a) or (b) of Section 23224, relating to persons under  
2 21 years of age knowingly driving, or being a passenger in, a motor  
3 vehicle carrying any alcoholic beverage.

4 Section 23253, relating to directions on toll highways or  
5 vehicular crossings.

6 Section 23332, relating to trespassing.

7 Section 24002.5, relating to unlawful operation of a farm vehicle.

8 Section 24011.3, relating to vehicle bumper strength notices.

9 Section 27150.1, relating to sale of exhaust systems.

10 Section 27362, relating to child passenger seat restraints.

11 Section 28050, relating to true mileage driven.

12 Section 28050.5, relating to nonfunctional odometers.

13 Section 28051, relating to resetting odometers.

14 Section 28051.5, relating to devices to reset odometers.

15 Subdivision (d) of Section 28150, relating to possessing four or  
16 more jamming devices.

17 SEC. 24. Section 18901.3 of the Welfare and Institutions Code  
18 is amended to read:

19 18901.3. (a) Subject to the limitations of subdivision (b),  
20 pursuant to Section 115(d)(1)(A) of Public Law 104-193 (21 U.S.C.  
21 Sec. 862a(d)(1)(A)), California opts out of the provisions of Section  
22 115(a)(2) of Public Law 104-193 (21 U.S.C. Sec. 862a(a)(2)). A  
23 convicted drug felon shall be eligible to receive food stamps under  
24 this section.

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

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

37 (d) As a condition of eligibility to receive food stamps pursuant  
38 to subdivision (a), an applicant convicted of a felony drug offense  
39 that is not excluded under subdivision (b) or (c) shall be required

1 to provide proof of one of the following subsequent to the most  
2 recent drug-related conviction:

3 (1) Completion of a government-recognized drug treatment  
4 program.

5 (2) Participation in a government-recognized drug treatment  
6 program.

7 (3) Enrollment in a government-recognized drug treatment  
8 program.

9 (4) Placement on a waiting list for a government-recognized  
10 drug treatment program.

11 (5) Other evidence that the illegal use of controlled substances  
12 has ceased, as established by State Department of Social Services  
13 regulations.

14 (e) Notwithstanding the Administrative Procedure Act (Chapter  
15 3.5 (commencing with Section 11340) of Part 1 of Division 3 of  
16 Title 2 of the Government Code), the department may implement  
17 this section through an all-county letter or similar instructions from  
18 the director no later than January 1, 2005.

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

31 SEC. 25. The provisions of this act are severable. If any  
32 provision of this act or its application is held invalid, that invalidity  
33 shall not affect other provisions or applications that can be given  
34 effect without the invalid provision or application.

35 SEC. 26. No reimbursement is required by this act pursuant  
36 to Section 6 of Article XIII B of the California Constitution because  
37 the only costs that may be incurred by a local agency or school  
38 district will be incurred because this act creates a new crime or  
39 infraction, eliminates a crime or infraction, or changes the penalty  
40 for a crime or infraction, within the meaning of Section 17556 of

1 the Government Code, or changes the definition of a crime within  
2 the meaning of Section 6 of Article XIII B of the California  
3 Constitution.

4 SEC. 27. This act shall become operative only if Proposition  
5 19 is adopted at the November 2, 2010, statewide general election.

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