

BILL NUMBER: AB 2254 INTRODUCED
BILL TEXT

INTRODUCED BY Assembly Member Ammiano

FEBRUARY 18, 2010

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 Sections 7597 and 68152 of the Government Code, to amend Sections 1596.795, 11014.5, 11054, 11357, 11364.5, 11370, 11470, 11488, 11532, 11703, 11705, 118880, 118885, 118890, 118895, 118900, 118905, 118915, 118925, and 118935 of, to add Division 10.3 (commencing with Section 11720) to, and to repeal Sections 11358, 11359, 11360, and 11485 of, the Health and Safety Code, to amend Section 6404.5 of the Labor Code, to amend Section 561 of the Public Utilities 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 Sections 4138 and 18901.3 of the Welfare and Institutions Code, relating to marijuana.

LEGISLATIVE COUNSEL'S DIGEST

AB 2254, as introduced, Ammiano. Marijuana Control, Regulation, and Education Act.

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. It would instead provide for regulation by the Department of Alcoholic Beverage Control of the possession, sale, 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. It would set up a wholesale and retail marijuana sales regulation program to be administered and enforced by the department, that imposes special fees to fund drug abuse prevention programs, as specified, to commence after regulations concerning the program have been issued by the department. It would ban local and state assistance in enforcing inconsistent federal and other laws relating to marijuana, and would provide specified infraction penalties for violations of these new marijuana laws and regulations, as specified. The bill would make existing prohibitions against the smoking of tobacco products in specified areas, including public offices and restaurants, applicable to the smoking of marijuana products. It would make other conforming changes.

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.

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

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. It is the intent of the Legislature in enacting this, the Marijuana Control, Regulation, and Education Act, to do all of the following:

(a) To regulate marijuana and its derivatives for persons 21 years of age or older.

(b) To remove all existing civil and criminal penalties for persons 21 years of age or older who cultivate, possess, transport, sell, or use marijuana, without impacting existing laws proscribing dangerous activities while under the influence of marijuana, or certain conduct that exposes younger persons to marijuana.

(c) To regulate marijuana in order to more effectively limit access to marijuana by minors.

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

(e) To reduce the violence associated with the criminal market for marijuana.

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

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

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

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

(j) To impose substantial fines for violations of the noncommercial regulations and laws concerning marijuana.

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

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

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

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

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

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

CHAPTER 19. COMMERCIAL MARIJUANA PRODUCTION AND SALE

26000. (a) This chapter is an exercise of the police powers of

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

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

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

26010. For purposes of this chapter, "marijuana" means all parts of the plant *Cannabis sativa* L., whether growing or not; the seeds thereof; the resin extracted from any part of the plant; concentrated cannabis; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or of its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant that is incapable of germination. For purposes of this chapter, "marijuana" does not include "medical marijuana" that is regulated under Article 2.5 (commencing with Section 11362.7) of Chapter 6 of Division 10 of the Health and Safety Code.

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

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

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

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

(b) Appropriate employment rules, including the rule that a person

under 21 years of age may not have access to marijuana during cultivation, storage, drying, or packing, or at any other time.

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) Recordkeeping consistent with the regulatory needs of the

department.

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

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

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

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

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

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

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

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

SEC. 4. Section 7597 of the Government Code is amended to read:

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

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

SEC. 5. Section 68152 of the Government Code is amended to read:

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

(a) Adoption: retain permanently.

(b) Change of name: retain permanently.

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

(1) Except as otherwise specified: 10 years.

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

(3) Domestic violence: same period as duration of the restraining or other orders and renewals, then retain the restraining or other

orders as a judgment; 60 days after expiration of the temporary protective or temporary restraining order.

(4) Eminent domain: retain permanently.

(5) Family law, except as otherwise specified: 30 years.

(6) Harassment: same period as duration of the injunction and renewals, then retain the injunction as a judgment; 60 days after expiration of the temporary restraining order.

(7) Mental health (Lanterman Developmental Disabilities Services Act and Lanterman-Petris-Short Act): 30 years.

(8) Paternity: retain permanently.

(9) Petition, except as otherwise specified: 10 years.

(10) Real property other than unlawful detainer: retain permanently if the action affects title or an interest in real property.

(11) Small claims: 10 years.

(12) Unlawful detainer: one year if judgment is for possession of the premises; 10 years if judgment is for money.

(d) Notwithstanding subdivision (c), any civil or small claims case in the trial court:

(1) Involuntarily dismissed by the court for delay in prosecution or failure to comply with state or local rules: one year.

(2) Voluntarily dismissed by a party without entry of judgment: one year.

Notation of the dismissal shall be made on the civil index of cases or on a separate dismissal index.

(e) Criminal.

(1) Capital felony (murder with special circumstances where the prosecution seeks the death penalty): retain permanently. If the charge is disposed of by acquittal or a sentence less than death, the case shall be reclassified.

(2) Felony, except as otherwise specified: 75 years.

(3) Felony, except capital felony, with court records from the initial complaint through the preliminary hearing or plea and for which the case file does not include final sentencing or other final disposition of the case because the case was bound over to the superior court: five years.

(4) Misdemeanor, except as otherwise specified: five years.

(5) Misdemeanor alleging a violation of the Vehicle Code, except as otherwise specified: three years.

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

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

(8) Misdemeanor alleging a marijuana violation under subdivision ~~(b), (c), (d),~~ (a) or ~~(e)~~

(b) of Section 11357 of the Health and Safety ~~Code, or subdivision (b) of Section 11360 of the Health and Safety~~ Code in accordance with the procedure set forth in Section 11361.5 of the Health and Safety Code: records shall be destroyed two years from the date of conviction or from the date of arrest if no conviction.

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

(10) Misdemeanor action resulting in a requirement that the

defendant register as a sex offender pursuant to Section 290 of the Penal Code: 75 years. This paragraph shall apply to records relating to a person convicted on or after September 20, 2006.

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

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

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

(g) Juvenile.

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

(2) Ward (Section 601 of the Welfare and Institutions Code): upon reaching age 21 or on written request shall be released to the juvenile five years after jurisdiction over the person has terminated under subdivision (a) of Section 826 of the Welfare and Institutions Code. Sealed records shall be destroyed upon court order five years after the records have been sealed under subdivision (d) of Section 781 of the Welfare and Institutions Code.

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

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

(5) Marijuana misdemeanor under subdivision ~~(e)~~

(b) of Section 11357 of the Health and Safety Code in accordance with procedures specified in subdivision (a) of Section 11361.5 of the Health and Safety Code: upon reaching age 18 the records shall be destroyed.

(h) Probate.

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

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

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

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

(j) Other records.

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

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

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

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

(5) Coroner's inquest report: same period as period for retention of the records in the underlying case category; if no case, then

permanent.

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

(7) Court reporter notes: 10 years after the notes have been taken in criminal and juvenile proceedings and five years after the notes have been taken in all other proceedings, except notes reporting proceedings in capital felony cases (murder with special circumstances where the prosecution seeks the death penalty and the sentence is death), including notes reporting the preliminary hearing, which shall be retained permanently, unless the Supreme Court on request of the court clerk authorizes the destruction.

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

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

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

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

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

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

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

(15) Naturalization index: retain permanently.

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

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

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

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

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

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

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

1596.795. (a) The smoking of tobacco *or marijuana* in a private residence that is licensed as a family day care home shall be prohibited during the hours of operation as a family day care home and in those areas of the family day care home where children are present. Nothing in this section shall prohibit a city or county from

enacting or enforcing an ordinance relating to *the smoking of tobacco or marijuana* in a family day care home if the ordinance is more stringent than this section.

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

SEC. 7. Section 11014.5 of the Health and Safety Code is amended to read:

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

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

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

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

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

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

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

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

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

(A) Carburetion tubes and devices.

(B) Smoking and carburetion masks.

(C) Roach clips, meaning objects used to hold burning ~~material, such as a marijuana cigarette,~~ *material*

that has become too small or too short to be held in the hand.

(D) Miniature cocaine spoons, and cocaine vials.

(E) Chamber pipes.

(F) Carburetor pipes.

(G) Electric pipes.

(H) Air-driven pipes.

(I) Chillums.

(J) Bongs.

(K) Ice pipes or chillers.

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

products, or materials with controlled substances.

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

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

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

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

(4) National and local advertising concerning its use.

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

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

(7) Expert testimony concerning its use.

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

SEC. 8. Section 11054 of the Health and Safety Code is amended to read:

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

(b) Opiates. Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers whenever the existence of

those isomers, esters, ethers, and salts is possible within the specific chemical designation:

(1) Acetylmethadol.

(2) Allylprodine.

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

(4) Alphameprodine.

(5) Alphamethadol.

(6) Benzethidine.

(7) Betacetylmethadol.

(8) Betameprodine.

(9) Betamethadol.

(10) Betaprodine.

(11) Clonitazene.

(12) Dextromoramide.

(13) Diampromide.

(14) Diethylthiambutene.

(15) Difenoxin.

(16) Dimenoxadol.

(17) Dimepheptanol.

(18) Dimethylthiambutene.

(19) Dioxaphetyl butyrate.

(20) Dipipanone.

(21) Ethylmethylthiambutene.

(22) Etonitazene.

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

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

(1) 4-bromo-2,5-dimethoxy-amphetamine--Some trade or other names: 4-bromo-2,5-dimethoxy-alpha-methylphenethylamine; 4-bromo-2,5-DMA.

(2) 2,5-dimethoxyamphetamine--Some trade or other names: 2,5-dimethoxy-alpha-methylphenethylamine; 2,5-DMA.

(3) 4-methoxyamphetamine--Some trade or other names: 4-methoxy-alpha-methylphenethylamine, paramethoxyamphetamine, PMA.

(4) 5-methoxy-3,4-methylenedioxy-amphetamine.

(5) 4-methyl-2,5-dimethoxy-amphetamine--Some trade or other names: 4-methyl-2,5-dimethoxy-alpha-methylphenethylamine; "DOM"; and "STP."

(6) 3,4-methylenedioxy amphetamine.

(7) 3,4,5-trimethoxy amphetamine.

(8) Bufotenine--Some trade or other names: 3-(beta-dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5-indolol; N,N-dimethylserotonin, 5-hydroxy-N,N-dimethyltryptamine; mappine.

(9) Diethyltryptamine--Some trade or other names: N,N-Diethyltryptamine; DET.

(10) Dimethyltryptamine--Some trade or other names: DMT.

(11) Ibogaine--Some trade or other names: 7-Ethyl-6,6beta,7,8,9,10,12,13-octahydro-2-methoxy-6,9-methano-5H-pyrido [1',2':1,2]azepino [5,4-b] indole; Tabernantheiboga.

(12) Lysergic acid diethylamide.

~~(13) Marijuana.~~

(14) Mescaline.

(15) Peyote--Meaning all parts of the plant presently classified botanically as *Lophophora williamsii* Lemaire, whether growing or not, the seeds thereof, any extract from any part of the plant, and every compound, manufacture, salts, derivative, mixture, or preparation of the plant, its seeds or extracts (interprets 21 U.S.C. Sec. 812(c), Schedule 1(c)(12)).

(16) N-ethyl-3-piperidyl benzilate.

(17) N-methyl-3-piperidyl benzilate.

(18) Psilocybin.

(19) Psilocyn.

(20) ~~Tetrahydrocannabinols.~~ Synthetic tetrahydrocannabinols not derived from cannabis plants. Synthetic equivalents of the substances contained in the plant, or in the resinous extractives of Cannabis, sp. ~~and/or~~ or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following: delta 1 cis or trans tetrahydrocannabinol, and their optical isomers; delta 6 cis or trans tetrahydrocannabinol, and their optical isomers; delta 3,4 cis or trans tetrahydrocannabinol, and its optical isomers.

(Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered).

(21) Ethylamine analog of phencyclidine--Some trade or other

names: N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl) ethylamine, N-(1-phenylcyclohexyl) ethylamine, cyclohexamine, PCE.

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

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

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

(1) Mecloqualone.

(2) Methaqualone.

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

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

(1) Cocaine base.

(2) Fenethylamine, including its salts.

(3) N-Ethylamphetamine, including its salts.

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

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

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

~~specified in this subdivision. In any case in which a person is arrested for a violation of this subdivision and does not demand to be taken before a magistrate, such person shall be released by the arresting officer upon presentation of satisfactory evidence of identity and giving his written promise to appear in court, as provided in Section 853.6 of the Penal Code, and shall not be subjected to booking.~~

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

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

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

~~— (e)~~

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

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

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

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

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

SEC. 11. Section 11359 of the Health and Safety Code is repealed.

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

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

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

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

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

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

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

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

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

(1) Kits intended for use or designed for use in planting, propagating, cultivating, growing or harvesting of any species of

plant which is a controlled substance or from which a controlled substance can be derived.

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

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

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

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

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

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

~~(8)~~

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

~~(9)~~

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

~~(10)~~

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

~~(11)~~

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

~~(12)~~

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

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

(B) Water pipes.

(C) Carburetion tubes and devices.

(D) Smoking and carburetion masks.

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

(F) Miniature cocaine spoons, and cocaine vials.

(G) Chamber pipes.

(H) Carburetor pipes.

(I) Electric pipes.

(J) Air-driven pipes.

(K) Chillums.

(L) Bongs.

(M) Ice pipes or chillers.

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

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

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

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

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

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

(6) National and local advertising concerning its use.

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

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

(9) The existence and scope of legitimate uses for the object in the community.

(10) Expert testimony concerning its use.

(f) This section shall not apply to any of the following:

(1) Any pharmacist or other authorized person who sells or furnishes drug paraphernalia described in paragraph (11) of subdivision (d) upon the prescription of a physician, dentist, podiatrist or veterinarian.

(2) Any physician, dentist, podiatrist or veterinarian who furnishes or prescribes drug paraphernalia described in paragraph (11) of subdivision (d) to his or her patients.

(3) Any manufacturer, wholesaler or retailer licensed by the California State Board of Pharmacy to sell or transfer drug paraphernalia described in paragraph (11) of subdivision (d).

(g) Notwithstanding any other provision of law, including Section 11374, violation of this section shall not constitute a criminal offense, but operation of a business in violation of the provisions of this section shall be grounds for revocation or nonrenewal of any license, permit, or other entitlement previously issued by a city, county, or city and county for the privilege of engaging in such business and shall be grounds for denial of any future license, permit, or other entitlement authorizing the conduct of such business or any other business, if the business includes the sale of drug paraphernalia.

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

11370. (a) Any person convicted of violating Section 11350, 11351, 11351.5, 11352, 11353, 11355, ~~11357, 11359, 11360,~~

11361, 11363, 11366, or 11368, or of committing any offense referred to in those sections, shall not, in any case, be granted probation by the trial court or have the execution of the sentence imposed upon him or her suspended by the court, if he or she has been

previously convicted of any offense described in subdivision (c).

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

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

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

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

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

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

11470. The following are subject to forfeiture:

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

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

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

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

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

as specified in paragraph (1) of subdivision (f) of Section 11054, or 28.5 grams or more of Schedule I controlled substances except ~~marijuana, peyote,~~ *peyote* or psilocybin; 10 pounds dry weight or more of ~~marijuana, peyote,~~ *peyote* or psilocybin; or 28.5 grams or more of cocaine, as specified in paragraph (6) of subdivision (b) of Section 11055, or methamphetamine; or a substance containing 28.5 grams or more of cocaine, as specified in paragraph (6) of subdivision (b) of Section 11055, or methamphetamine; or 57 grams or more of a substance containing cocaine, as specified in paragraph (6) of subdivision (b) of Section 11055, or methamphetamine; or 28.5 grams or more of Schedule II controlled substances. No interest in a vehicle which may be lawfully driven on the highway with a class C, class M1, or class M2 license, as prescribed in Section 12804 of the Vehicle Code, may be forfeited under this subdivision if there is a community property interest in the vehicle by a person other than the defendant and the vehicle is the sole class C, class M1, or class M2 vehicle available to the defendant's immediate family.

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

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

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

paragraph (4) of subdivision (i) of Section 11488.4.

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

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

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

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

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

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

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

forfeiture hearing specified in Section 11488.5.

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

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

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

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

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

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

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

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

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

(7) Is under the influence of a controlled substance or possesses narcotic or drug paraphernalia. For the purposes of this paragraph, "narcotic or drug paraphernalia" means any device, contrivance, instrument, or apparatus designed or marketed for the use of smoking, injecting, ingesting, or consuming ~~marijuana, hashish, PCP,~~

PCP or any controlled substance, including, but not limited to, roach clips, cigarette papers, and rollers designed or marketed for use in smoking a controlled substance.

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

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

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

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

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

11703. As used in this division:

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

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

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

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

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

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

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

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

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

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

illegal controlled substance.

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

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

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

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

(1) A parent, legal guardian, child, spouse, or sibling of the individual controlled substance user.

(2) An individual who was exposed to an illegal controlled substance in utero.

(3) An employer of the individual user of an illegal controlled substance.

(4) A medical facility, insurer, employer, or other nongovernmental entity that funds a drug treatment program or employee assistance program for the individual user of an illegal controlled substance or that otherwise expended money on behalf of the individual user of an illegal controlled substance. No public agency other than a public agency medical facility shall have a cause of action under this division.

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

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

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

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

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

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

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

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

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

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

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

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

(3) Exemplary damages.

(4) Reasonable attorney fees.

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

SEC. 21. Division 10.3 (commencing with Section 11720) is added to the Health and Safety Code, to read:

DIVISION 10.3. MARIJUANA

11720. For purposes of this division, "marijuana" means all parts of the plant *Cannabis sativa* L., whether growing or not; the seeds thereof; the resin extracted from any part of the plant; concentrated cannabis; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant that is incapable of germination. For purposes of this division, "marijuana" does not include "medical marijuana" that is regulated under Article 2.5 (commencing with Section 11362.7) of Chapter 6 of Division 10.

11721. It is lawful and not a violation of California law for a person 21 years of age or older to possess or transport marijuana.

11722. (a) It is lawful and not a violation of California law to sell marijuana to a person 21 years of age or older as provided in Chapter 19 (commencing with Section 26000) of Division 9 of the Business and Professions Code. Any sale of marijuana by a person not licensed as provided therein after the date determined by Section 25406 of the Business and Professions Code is a violation of this division.

(b) Until the date specified by subdivision (a), it is lawful and not a violation of California law to sell marijuana to a person 21

years of age or older.

11723. (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 one's home, or in any private residence, or upon the grounds of that home or residence not visible from any public place or neighboring property, with the consent of a resident 21 years of age or older.

(b) It is an infraction to smoke marijuana in a public place.

11724. (a) It is lawful and not a violation of California law, except as provided in subdivision (f) of Section 647 of the Penal Code, or in Section 11729, for a person 21 years of age or older to be under the influence of marijuana.

11725. It is unlawful for a person not licensed pursuant to Chapter 19 (commencing with Section 26000) of Division 9 of the Business and Professions Code to cultivate marijuana, except in compliance with the following requirements:

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

(b) Marijuana may be cultivated only in a location in the home or yard in which the marijuana is not visible from any public place. For purposes of this paragraph, "public place" does not include air space, or any place from which a viewer would violate the cultivator's legitimate expectation of privacy.

(c) Each person 21 years of age or older may have in cultivation no more than six mature plants at any given time.

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

(e) Aside from the sale of seedlings by a licensed nursery, marijuana cultivated pursuant to this section may not be sold.

11726. (a) Unlawful cultivation of marijuana is an infraction, punishable by a fine of up to one hundred dollars (\$100).

(b) Providing or selling marijuana to, or purchasing or cultivating marijuana for a person under 21 years of age is an infraction, punishable by a fine of up to one hundred dollars (\$100). However, this division is not intended to preclude prosecution under Section 272 of the Penal Code, or any similar provision, where appropriate.

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

(d) Possession or use of marijuana by a person under 21 years of age is an infraction, punishable by a fine of up to one hundred dollars (\$100).

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

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

11728. State or local funds may not be expended on, and state or local law enforcement or other personnel may not assist in, the enforcement of any federal or other laws that are inconsistent with

this division, or provide for greater sanctions for conduct prohibited by this division.

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

11730. This division may not be construed to affect the rights of employers concerning employees who use marijuana.

SEC. 22. Section 118880 of the Health and Safety Code is amended to read:

118880. The Legislature finds and declares that tobacco *and marijuana* smoke ~~is a hazard~~ *are hazards* to the health of the general public.

SEC. 23. Section 118885 of the Health and Safety Code is amended to read:

118885. Within indoor rooms, indoor chambers, or indoor places of public assembly in publicly owned buildings in which public business is conducted requiring or providing direct participation or observation by the general public there shall be a contiguous area of not less than 50 percent of the total area of the room, chamber, or place designated and posted by signs of sufficient number and posted in locations as to be readily seen by persons within the area, where the smoking of tobacco ~~is~~ *or marijuana products* are prohibited while a public meeting is in progress. A public body, commission, agency, or other entity conducting a public meeting may waive the requirements of this section with respect to its own ~~members,~~ *members who smoke tobacco products*, provided that the rights of nonsmoking members are not adversely affected.

SEC. 24. Section 118890 of the Health and Safety Code is amended to read:

118890. Every health facility, as defined in Section 1250, and clinic, as defined in Section 1200, shall comply with the following:

(a) Shall make every reasonable effort to assign patients to rooms according to the patient's individual *preference for the smoking or nonsmoking of tobacco or* ~~smoking preference~~ *marijuana products* .

(b) Shall designate and post by signs of sufficient number and posted in locations as to be readily seen by persons within the area, a contiguous area of not less than 20 percent of every cafeteria or other dining area whose occupied capacity is 50 or more persons as a ~~nonsmoking section~~ *section that prohibits the smoking of tobacco or marijuana products* .

(c) This section shall not prevent any health facility or clinic from banning *the smoking of tobacco or marijuana products* in any area that it may designate and post by sign or in all areas of the facility or clinic.

SEC. 25. Section 118895 of the Health and Safety Code is amended to read:

118895. Within every publicly owned building open to the general public for the primary purpose of exhibiting any motion picture, stage drama, music recital, or any other performance, with the exception of any indoor sporting event, signs shall be posted in sufficient number and in locations as to be readily seen by persons within the area, that shall designate that the smoking of tobacco *and marijuana* is prohibited in any area other than that

commonly known as the lobby. This prohibition shall not apply except during those times when the building is actually open to the public.

SEC. 26. Section 118900 of the Health and Safety Code is amended to read:

118900. Within every restaurant in a publicly owned building serving food or alcoholic beverages in rooms whose occupied capacity is 50 or more persons there shall be designated and posted by signs of sufficient number and posted in locations as to be readily seen by persons within the area, a contiguous area of not less than 20 percent of the serving area where the smoking of tobacco or *marijuana products* is prohibited.

(a) This section shall not apply to banquet rooms in use for private functions.

(b) This section shall not apply to premises under lease as a restaurant for the time as the lessee of record on January 1, 1977, has a lease as the operator of the restaurant.

(c)

As used in this section, "restaurant" means any place designated as a restaurant by Section 28522.

SEC. 27. Section 118905 of the Health and Safety Code is amended to read:

118905. Any person may apply for a writ of mandate to compel compliance by any public entity that has not complied with the requirements of this article and Article 3 (commencing with Section 118920) for the designating or posting of nonsmoking areas or areas where the smoking of tobacco or *marijuana products* is prohibited. If judgment is given for the applicant, he or she may recover all reasonable costs of the suit, including reasonable attorney fees, reasonableness to be determined by the court.

SEC. 28. Section 118915 of the Health and Safety Code is amended to read:

118915. (a) Except as provided in subdivision (b), no person shall smoke any tobacco or *marijuana* product in any retail food production and marketing establishment, as defined in Section 28802, during the hours the establishment is open to the public.

(b) The provisions of subdivision (a) shall not apply to that portion of an establishment subject to Section 118900 nor to an area of an establishment set aside for employee smoking of *tobacco products* and not open to the public.

SEC. 29. Section 118925 of the Health and Safety Code is amended to read:

118925. It is unlawful for any person to smoke ~~tobacco~~ *tobacco, marijuana, or any other plant product* in any vehicle of a passenger stage corporation, the National Railroad Passenger Corporation (Amtrak) except to the extent permitted by federal law, in any aircraft except to the extent permitted by federal law, on a public transportation system, as defined by Section 99211 of the Public Utilities Code, or in any vehicle of an entity receiving any transit assistance from the state.

SEC. 30. Section 118935 of the Health and Safety Code is amended to read:

118935. (a) Every person and public agency providing transportation services for compensation, including, but not limited to, the National Railroad Passenger Corporation (Amtrak) to the extent permitted by federal law, passenger stage corporations, and local agencies that own or operate airports, shall designate and

post, by signs of sufficient number and posted in locations that may be readily seen by persons within the area, a contiguous area of not less than 75 percent of any area made available by the person or public agency as a waiting room for these passengers where the smoking of tobacco *or marijuana* is prohibited. Not more than 25 percent of any given area may be set aside for ~~smokers~~ *smokers of tobacco products* .

(b) Every person or public agency subject to subdivision (a) shall also post, by sign of sufficient number and posted in locations as to be readily seen by persons within the area of any building where tickets, tokens, or other evidences that a fare has been paid for transportation services that are provided by the person or public agency, a notice that the smoking of tobacco *or marijuana products* by persons waiting in line to purchase the tickets, tokens, or other evidences that a fare has been paid is prohibited.

(c) It is unlawful for any person to smoke *tobacco or marijuana products* in an area posted pursuant to this section.

SEC. 31. Section 6404.5 of the Labor Code is amended to read:

6404.5. (a) The Legislature finds and declares that regulation of smoking *of tobacco and marijuana products* in the workplace is a matter of statewide interest and concern. It is the intent of the Legislature in enacting this section to prohibit the smoking of tobacco *and marijuana* products in all (100 percent of) enclosed places of employment in this state, as covered by this section, thereby eliminating the need of local governments to enact workplace smoking restrictions within their respective jurisdictions. It is further the intent of the Legislature to create a uniform statewide standard to restrict and prohibit the smoking of tobacco *and marijuana* products in enclosed places of employment, as specified in this section, in order to reduce employee exposure to environmental tobacco *or marijuana* smoke to a level that will prevent anything other than insignificantly harmful effects to exposed employees, and also to eliminate the confusion and hardship that can result from enactment or enforcement of disparate local workplace smoking restrictions. Notwithstanding any other provision of this section, it is the intent of the Legislature that any area not defined as a "place of employment" pursuant to subdivision (d) or in which the smoking of tobacco products is not regulated pursuant to subdivision (e) shall be subject to local regulation of smoking of tobacco products.

(b) No employer shall knowingly or intentionally permit, and no person shall engage in, the smoking of tobacco *or marijuana products* in an enclosed space at a place of employment. "Enclosed space" includes lobbies, lounges, waiting areas, elevators, stairwells, and restrooms that are a structural part of the building and not specifically defined in subdivision (d).

(c) For purposes of this section, an employer who permits any nonemployee access to his or her place of employment on a regular basis has not acted knowingly or intentionally in violation of this section if he or she has taken the following reasonable steps to prevent smoking *of tobacco or marijuana products* by a nonemployee:

(1) Posted clear and prominent signs, as follows:

(A) Where smoking is prohibited throughout the building or structure, a sign stating "No ~~smoking~~ *smoking of tobacco or marijuana products*" shall be posted at each entrance to the building or structure.

(B) Where smoking of tobacco products is permitted in designated areas of the building or structure, a sign stating "Smoking of tobacco products is prohibited except in designated areas" shall be posted at each entrance to the building or structure.

(2) Has requested, when appropriate, that a nonemployee who is smoking tobacco or marijuana products refrain from smoking in the enclosed workplace.

For purposes of this subdivision, "reasonable steps" does not include (A) the physical ejection of a nonemployee from the place of employment or (B) any requirement for making a request to a nonemployee to refrain from smoking, under circumstances involving a risk of physical harm to the employer or any employee.

(d) For purposes of this section, "place of employment" does not include any of the following:

(1) Sixty-five percent of the guestroom accommodations in a hotel, motel, or similar transient lodging establishment.

(2) Areas of the lobby in a hotel, motel, or other similar transient lodging establishment designated for smoking of tobacco products by the establishment. An establishment may permit smoking of tobacco products in a designated lobby area that does not exceed 25 percent of the total floor area of the lobby or, if the total area of the lobby is 2,000 square feet or less, that does not exceed 50 percent of the total floor area of the lobby. For purposes of this paragraph, "lobby" means the common public area of an establishment in which registration and other similar or related transactions, or both, are conducted and in which the establishment's guests and members of the public typically congregate.

(3) Meeting and banquet rooms in a hotel, motel, other transient lodging establishment similar to a hotel or motel, restaurant, or public convention center, except while food or beverage functions are taking place, including setup, service, and cleanup activities, or when the room is being used for exhibit purposes. At times when smoking of tobacco products is not permitted in a meeting or banquet room pursuant to this paragraph, the establishment may permit smoking of tobacco products in corridors and prefunction areas adjacent to and serving the meeting or banquet room if no employee is stationed in that corridor or area on other than a passing basis.

(4) Retail or wholesale tobacco shops and private smokers' lounges. For purposes of this paragraph:

(A) "Private smokers' lounge" means any enclosed area in or attached to a retail or wholesale tobacco shop that is dedicated to the use of tobacco products, including, but not limited to, cigars and pipes.

(B) "Retail or wholesale tobacco shop" means any business establishment the main purpose of which is the sale of tobacco products, including, but not limited to, cigars, pipe tobacco, and smoking accessories.

(5) Cabs of motortrucks, as defined in Section 410 of the Vehicle Code, or truck tractors, as defined in Section 655 of the Vehicle Code, if ~~no nonsmoking employees~~ employees smoking tobacco products are present.

(6) Warehouse facilities. For purposes of this paragraph, "warehouse facility" means a warehouse facility with more than 100,000 square feet of total floorspace, and 20 or fewer full-time

employees working at the facility, but does not include any area within a facility that is utilized as office space.

(7) Gaming clubs, in which smoking *of tobacco products* is permitted by subdivision (f). For purposes of this paragraph, "gaming club" means any gaming club, as defined in Section 19802 of the Business and Professions Code, or bingo facility, as defined in Section 326.5 of the Penal Code, that restricts access to minors under 18 years of age.

(8) Bars and taverns, in which smoking *of tobacco products* is permitted by subdivision (f). For purposes of this paragraph, "bar" or "tavern" means a facility primarily devoted to the serving of alcoholic beverages for consumption by guests on the premises, in which the serving of food is incidental. "Bar or tavern" includes those facilities located within a hotel, motel, or other similar transient occupancy establishment. However, when located within a building in conjunction with another use, including a restaurant, "bar" or "tavern" includes only those areas used primarily for the sale and service of alcoholic beverages. "Bar" or "tavern" does not include the dining areas of a restaurant, regardless of whether alcoholic beverages are served therein.

(9) Theatrical production sites, if smoking *of tobacco or marijuana products* is an integral part of the story in the theatrical production.

(10) Medical research or treatment sites, if smoking *of tobacco or marijuana products* is integral to the research and treatment being conducted.

(11) Private residences, except for private residences licensed as family day care homes, during the hours of operation as family day care homes and in those areas where children are present.

(12) Patient smoking areas in long-term health care facilities, as defined in Section 1418 of the Health and Safety Code.

(13) Breakrooms designated by employers for ~~smoking,~~ *smoking of tobacco products*, provided that all of the following conditions are met:

(A) Air from the smoking room shall be exhausted directly to the outside by an exhaust fan. Air from the smoking room shall not be recirculated to other parts of the building.

(B) The employer shall comply with any ventilation standard or other standard utilizing appropriate technology, including, but not limited to, mechanical, electronic, and biotechnical systems, adopted by the Occupational Safety and Health Standards Board or the federal Environmental Protection Agency. If both adopt inconsistent standards, the ventilation standards of the Occupational Safety and Health Standards Board shall be no less stringent than the standards adopted by the federal Environmental Protection Agency.

(C) The smoking room shall be located in a nonwork area where no one, as part of his or her work responsibilities, is required to enter. For purposes of this subparagraph, "work responsibilities" does not include any custodial or maintenance work carried out in the breakroom when it is unoccupied.

(D) There are sufficient nonsmoking breakrooms to accommodate nonsmokers.

(14) Employers with a total of five or fewer employees, either full time or part time, may permit smoking *of tobacco products* where all of the following conditions are met:

(A) The smoking area is not accessible to minors.

(B) All employees who enter the smoking area consent to permit

smoking. No one, as part of his or her work responsibilities, shall be required to work in an area where smoking is permitted. An employer who is determined by the division to have used coercion to obtain consent or who has required an employee to work in the smoking area shall be subject to the penalty provisions of Section 6427.

(C) Air from the smoking area shall be exhausted directly to the outside by an exhaust fan. Air from the smoking area shall not be recirculated to other parts of the building.

(D) The employer shall comply with any ventilation standard or other standard utilizing appropriate technology, including, but not limited to, mechanical, electronic, and biotechnical systems, adopted by the Occupational Safety and Health Standards Board or the federal Environmental Protection Agency. If both adopt inconsistent standards, the ventilation standards of the Occupational Safety and Health Standards Board shall be no less stringent than the standards adopted by the federal Environmental Protection Agency.

This paragraph shall not be construed to (i) supersede or render inapplicable any condition or limitation on smoking areas made applicable to specific types of business establishments by any other paragraph of this subdivision or (ii) apply in lieu of any otherwise applicable paragraph of this subdivision that has become inoperative.

(e) Paragraphs (13) and (14) of subdivision (d) shall not be construed to require employers to provide reasonable accommodation to ~~smokers,~~ *smokers of tobacco products*, or to provide breakrooms for smokers or ~~nonsmokers~~ *nonsmokers of tobacco products*.

(f) (1) Except as otherwise provided in this subdivision, smoking *of tobacco products* may be permitted in gaming clubs, as defined in paragraph (7) of subdivision (d), and in bars and taverns, as defined in paragraph (8) of subdivision (d), until the earlier of the following:

(A) January 1, 1998.

(B) The date of adoption of a regulation (i) by the Occupational Safety and Health Standards Board reducing the permissible employee exposure level to environmental tobacco smoke to a level that will prevent anything other than insignificantly harmful effects to exposed employees or (ii) by the federal Environmental Protection Agency establishing a standard for reduction of permissible exposure to environmental tobacco smoke to an exposure level that will prevent anything other than insignificantly harmful effects to exposed persons.

(2) If a regulation specified in subparagraph (B) of paragraph (1) is adopted on or before January 1, 1998, smoking *of tobacco products* may thereafter be permitted in gaming clubs and in bars and taverns, subject to full compliance with, or conformity to, the standard in the regulation within two years following the date of adoption of the regulation. An employer failing to achieve compliance with, or conformity to, the regulation within this two-year period shall prohibit smoking *of tobacco products* in the gaming club, bar, or tavern until compliance or conformity is achieved. If the Occupational Safety and Health Standards Board and the federal Environmental Protection Agency both adopt regulations specified in subparagraph (B) of paragraph (1) that are inconsistent, the regulations of the Occupational Safety and Health Standards Board shall be no less stringent than the regulations of the federal Environmental Protection Agency.

(3) If a regulation specified in subparagraph (B) of paragraph (1) is not adopted on or before January 1, 1998, the exemptions specified in paragraphs (7) and (8) of subdivision (d) shall become inoperative on and after January 1, 1998, until a regulation is adopted. Upon adoption of such a regulation on or after January 1, 1998, smoking of tobacco products may thereafter be permitted in gaming clubs and in bars and taverns, subject to full compliance with, or conformity to, the standard in the regulation within two years following the date of adoption of the regulation. An employer failing to achieve compliance with, or conformity to, the regulation within this two-year period shall prohibit smoking of tobacco products in the gaming club, bar, or tavern until compliance or conformity is achieved. If the Occupational Safety and Health Standards Board and the federal Environmental Protection Agency both adopt regulations specified in subparagraph (B) of paragraph (1) that are inconsistent, the regulations of the Occupational Safety and Health Standards Board shall be no less stringent than the regulations of the federal Environmental Protection Agency.

(4) From January 1, 1997, to December 31, 1997, inclusive, smoking of tobacco products may be permitted in gaming clubs, as defined in paragraph (7) of subdivision (d), and in bars and taverns, as defined in paragraph (8) of subdivision (d), subject to both of the following conditions:

(A) If practicable, the gaming club or bar or tavern shall establish a designated nonsmoking area.

(B) If feasible, no employee shall be required, in the performance of ordinary work responsibilities, to enter any area in which smoking of tobacco products is permitted.

(g) The smoking prohibition of tobacco or marijuana products set forth in this section shall constitute a uniform statewide standard for regulating the smoking of tobacco or marijuana products in enclosed places of employment and shall supersede and render unnecessary the local enactment or enforcement of local ordinances regulating the smoking of tobacco or marijuana products in enclosed places of employment. Insofar as the smoking prohibition set forth in this section is applicable to all (100-percent) places of employment within this state and, therefore, provides the maximum degree of coverage, the practical effect of this section is to eliminate the need of local governments to enact enclosed workplace smoking restrictions within their respective jurisdictions.

(h) Nothing in this section shall prohibit an employer from prohibiting smoking in an enclosed place of employment for any reason.

(i) The enactment of local regulation of smoking of tobacco products in enclosed places of employment by local governments shall be suspended only for as long as, and to the extent that, the (100-percent) smoking prohibition provided for in this section remains in effect. In the event this section is repealed or modified by subsequent legislative or judicial action so that the (100-percent) smoking prohibition is no longer applicable to all enclosed places of employment in California, local governments shall have the full right and authority to enforce previously enacted, and to enact and enforce new, restrictions on the smoking of tobacco products in enclosed places of employment within their jurisdictions, including a complete prohibition of smoking. Notwithstanding any

other provision of this section, any area not defined as a "place of employment" or in which smoking is not regulated pursuant to subdivision (d) or (e), shall be subject to local regulation of smoking of tobacco products.

(j) Any violation of the prohibition set forth in subdivision (b) is an infraction, punishable by a fine not to exceed one hundred dollars (\$100) for a first violation, two hundred dollars (\$200) for a second violation within one year, and five hundred dollars (\$500) for a third and for each subsequent violation within one year. This subdivision shall be enforced by local law enforcement agencies, including, but not limited to, local health departments, as determined by the local governing body.

(k) Notwithstanding Section 6309, the division shall not be required to respond to any complaint regarding the smoking of tobacco *or marijuana* products in an enclosed space at a place of employment, unless the employer has been found guilty pursuant to subdivision (j) of a third violation of subdivision (b) within the previous year.

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

SEC. 32. Section 561 of the Public Utilities Code is amended to read:

561. (a) Every railroad corporation, passenger stage corporation, passenger air carrier, and street railroad corporation providing departures originating in this state shall prohibit the smoking of any tobacco *or marijuana* product in the passenger seating area of every passenger car, passenger stage, aircraft, or other vehicle.

(b) Every such corporation and carrier shall display in the passenger seating area of every passenger car, passenger stage, aircraft, or other vehicle, notices sufficient in number, posted in such locations as to be readily seen by boarding passengers, advising passengers of the no smoking requirements pursuant to subdivision (a). Words on such notices which state "No Smoking" or an equivalent phrase shall be at least three-quarters of one inch high, and any other explanatory words on the notices shall be at least one-quarter of an inch high.

(c) No person shall smoke any tobacco *or marijuana* product in a space known by him or her to be designated for nonsmoking passengers. A violation of this subdivision is not a crime.

(d) As used in this section, "passenger air carrier" shall have the same meaning as provided in Sections 2741 and 2743.

SEC. 33. Part 14.6 (commencing with Section 34001) is added to Division 2 of the Revenue and Taxation Code, to read:

PART 14.6. MARIJUANA FEES

CHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS

34001. It is the intent of the people in enacting this part to

discourage drug use and to raise revenue for drug education and drug awareness programs by enacting a supplemental fee on marijuana.

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

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

34004. For purposes of this part:

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

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

CHAPTER 2. IMPOSITION OF FEE

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

CHAPTER 3. COLLECTION AND ADMINISTRATION

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

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

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 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 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.

SEC. 34. 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,~~ *receptacle* containing any alcoholic ~~beverage~~ or marijuana product 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 avoirdupois ounce of marijuana, other than concentrated cannabis as defined by Section 11006.5 of the Health and Safety Code, is guilty of a misdemeanor and shall be punished by a fine of not more than one hundred dollars (\$100). Notwithstanding any other provision of law, if the person has been previously convicted three or more times of an offense described in this subdivision during~~

~~the two year period immediately preceding the date of commission of the violation to be charged, the previous convictions shall also be charged in the accusatory pleading and, if found to be true by the jury upon a jury trial or by the court upon a court trial or if admitted by the person, Sections 1000.1 and 1000.2 of the Penal Code are applicable to the person, and the court shall divert and refer the person for education, treatment, or rehabilitation, without a court hearing or determination or the concurrence of the district attorney, to an appropriate community program which will accept the person. If the person is so diverted and referred, the person is not subject to the fine specified in this subdivision. In any case in which a person is arrested for a violation of this subdivision and does not demand to be taken before a magistrate, the person shall be released by the arresting officer upon presentation of satisfactory evidence of identity and giving his or her written promise to appear in court, as provided in Section 40500, and shall not be subjected to booking.~~

SEC. 35. Section 40000.15 of the Vehicle Code is amended to read:

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

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

Sections 23103 and 23104, relating to reckless driving.

Section 23109, relating to speed contests or exhibitions.

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

Section 23152, relating to driving under the influence.

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

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

Section 23253, relating to directions on toll highways or

vehicular crossings.

Section 23332, relating to trespassing.

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

Section 24011.3, relating to vehicle bumper strength notices.

Section 27150.1, relating to sale of exhaust systems.

Section 27362, relating to child passenger seat restraints.

Section 28050, relating to true mileage driven.

Section 28050.5, relating to nonfunctional odometers.

Section 28051, relating to resetting odometers.

Section 28051.5, relating to devices to reset odometers.

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

SEC. 36. Section 4138 of the Welfare and Institutions Code is amended to read:

4138. (a) Upon receiving a request from the director of a state hospital listed in Section 4100, the Director of Mental Health may prohibit the possession or use of tobacco *or marijuana* products on the grounds of the requesting facility. The Director of Mental Health shall provide an implementation plan that shall include a phase-in period for any of the state hospitals listed in Section 4100 that prohibits the possession or use of tobacco *or marijuana* products by patients or any other persons on hospital grounds, except on the premises of residential staff housing where patients are not present.

(b) This prohibition shall include an exemption for departmentally approved religious ceremonies.

(c) As part of the implementation plan, the department shall provide any requesting patient with a smoking cessation plan that may include, at minimum, an individual medical treatment plan, counseling, prescription drugs, or nicotine replacement, as determined to be medically necessary and appropriate.

(d) Nothing in this section shall be construed to restrict the outside activity time currently available to hospital patients.

(e) If an implementation plan is adopted pursuant to subdivision (a), the store or canteen at any facility subject to the prohibition shall not sell tobacco *or marijuana* products.

SEC. 37. Section 18901.3 of the Welfare and Institutions Code is amended to read:

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

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

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

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

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

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

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

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

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

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

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

SEC. 38. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

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