



SB-829 Cannabis: donations. (2017-2018)

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CALIFORNIA LEGISLATURE— 2017–2018 REGULAR SESSION

SENATE BILL

NO. 829

Introduced by Senator Wiener
(Principal coauthor: Assembly Member Wood)
(Coauthors: Senators Skinner, Stone, and Wilk)
(Coauthors: Assembly Members Bonta and Cooley)

January 03, 2018

An act to amend Sections 26001 and 26153 of, and to add Section 26071 to, the Business and Professions Code, and to amend Sections 34010, 34011, and 34012 of, to add Section 34012.1 to, and to add and repeal Section 6414 of, the Revenue and Taxation Code, relating to cannabis, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 829, Wiener. Cannabis: donations.

(1) The Control, Regulate and Tax Adult Use of Marijuana Act (AUMA), an initiative measure approved as Proposition 64 at the November 8, 2016, statewide general election, authorizes a person who obtains a state license under AUMA to engage in commercial adult-use cannabis activity pursuant to that license and applicable local ordinances. The Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), among other things, consolidates the licensure and regulation of commercial medicinal and adult-use cannabis activities.

Existing administrative law prohibits a retailer licensee from providing free cannabis goods to any person or allowing individuals who are not employed by the retailer to provide free cannabis goods to any person on the licensed premises. Existing administrative law provides an exception to this prohibition for specified medicinal retailer and microbusiness licensees to provide access to medicinal cannabis patients who have difficulty accessing medicinal cannabis goods, as specified.

This bill would similarly authorize those specified licensees to provide free cannabis or cannabis products to a medical cannabis patient if specified requirements are met, including that the cannabis or cannabis products otherwise meet specified requirements of MAUCRSA. The bill would authorize those specified licensees to contract with an individual or organization to coordinate the provision of free medicinal cannabis and medicinal cannabis products on the retailer's premises.

(2) Existing sales and use tax laws impose use taxes on the storage, use, or other consumption in this state of tangible personal property purchased from a retailer for storage, use, or other consumption in this state, presumes tangible personal property purchased outside the state that is stored, used, or consumed in this state is purchased for use in this state, and excludes from use taxes, specified tangible personal property purchased and used for specified purposes.

This bill, on or after January 1, 2019, and until January 1, 2024, would exempt from the use tax the storage, use, or other consumption in this state of medicinal cannabis or medicinal cannabis products that are donated, for no consideration, under specified circumstances. The bill would require the exemption to apply only if the donee certifies in writing, as specified, that the medicinal cannabis or medicinal cannabis product will be used as specified. The bill would make a licensee that uses the donated medicinal cannabis or medicinal cannabis product in some other manner, or for some other purpose, liable for the payment of use tax and would make the measure of tax the licensee's purchase price for similar product.

The Bradley-Burns Uniform Local Sales and Use Tax Law authorizes counties and cities to impose local sales and use taxes in conformity with the Sales and Use Tax Law, and existing laws authorize districts, as specified, to impose transactions and use taxes in accordance with the Transactions and Use Tax Law, which generally conforms to the Sales and Use Tax Law. Amendments to the Sales and Use Tax Law are automatically incorporated into the local tax laws.

Existing law requires the state to reimburse counties and cities for revenue losses caused by the enactment of sales and use tax exemptions.

This bill would provide that, notwithstanding Section 2230 of the Revenue and Taxation Code, no appropriation is made and the state shall not reimburse any local agencies for sales and use tax revenues lost by them pursuant to this bill.

(3) AUMA imposes an excise tax on the purchase of cannabis and cannabis products, as defined, at the rate of 15% of the average market price of any retail sale by a cannabis retailer.

The bill would require that these provisions not be construed to impose an excise tax upon medicinal cannabis, or medicinal cannabis products, donated for no consideration to a medicinal cannabis patient, as specified.

(4) AUMA imposes a cultivation tax on all harvested cannabis that enters the commercial market upon all cultivators. Existing law defines entering the commercial market to mean cannabis or cannabis products, except for immature cannabis plants and seeds, that complete and comply with specified quality assurance review and testing.

This bill would prohibit the cultivation tax from being imposed on medicinal cannabis designated for donation. The bill would make a licensee that certifies in writing that medicinal cannabis or a medicinal cannabis product will be donated to a medicinal cannabis patient and sells or uses the medicinal cannabis or medicinal cannabis product in some manner, or for some purpose other than donation, liable for the cultivation tax. The bill would specify that the certification in writing relieves the cultivator that donates the medicinal cannabis from liability for the cultivation tax and the distributor from liability for collecting the cultivation only if the certification is taken in good faith. The bill would prohibit a distributor or a manufacturer from collecting or remitting the cultivation tax for medicinal cannabis or medicinal cannabis products designated for donation. The bill would require a cultivator to keep records of any medicinal cannabis or medicinal cannabis products designated for donation. The bill would require that the cannabis tax provisions not be construed to impose a cultivation tax upon medicinal cannabis or medicinal cannabis products designated for donation.

(5) This bill would provide that the provisions of the act are severable.

(6) This bill would incorporate additional changes to Section 26001 of the Business and Professions Code proposed by AB 2980 to be operative only if this bill and AB 2980 are enacted and this bill is enacted last.

(7) The Control, Regulate and Tax Adult Use of Marijuana Act, an initiative measure, authorizes the Legislature to amend the act to further the purposes and intent of the act with a $\frac{2}{3}$ vote of the membership of both houses of the Legislature, except as provided.

This bill would declare that its provisions further specified purposes and intent of the Control, Regulate and Tax Adult Use of Marijuana Act.

(8) This bill would declare that it is to take effect immediately as an urgency statute.

Vote: 2/3 Appropriation: no Fiscal Committee: yes Local Program: no

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

SECTION 1. The Legislature finds and declares all of the following:

(a) This act intends to regulate the distribution of donated medicinal cannabis and cannabis products by retailers and compassionate care programs, which were driven to the black market after the legalization of adult-use cannabis.

(b) Compassionate care programs donate medicinal cannabis and cannabis products to patients with a valid physician's recommendation who need these products to treat their debilitating symptoms and heal.

(c) It is vital for the health and safety of vulnerable and low-income medicinal cannabis patients to keep them off the black market by allowing these compassionate care donations.

SEC. 2. Section 26001 of the Business and Professions Code is amended to read:

26001. For purposes of this division, the following definitions shall apply:

(a) "A-license" means a state license issued under this division for cannabis or cannabis products that are intended for adults who are 21 years of age and older and who do not possess a physician's recommendation.

(b) "A-licensee" means any person holding a license under this division for cannabis or cannabis products that are intended for adults who are 21 years of age and older and who do not possess a physician's recommendation.

(c) "Applicant" means an owner applying for a state license pursuant to this division.

(d) "Batch" means a specific quantity of homogeneous cannabis or cannabis product that is one of the following types:

(1) Harvest batch. "Harvest batch" means a specifically identified quantity of dried flower or trim, leaves, and other cannabis plant matter that is uniform in strain, harvested at the same time, and, if applicable, cultivated using the same pesticides and other agricultural chemicals, and harvested at the same time.

(2) Manufactured cannabis batch. "Manufactured cannabis batch" means either of the following:

(A) An amount of cannabis concentrate or extract that is produced in one production cycle using the same extraction methods and standard operating procedures.

(B) An amount of a type of manufactured cannabis produced in one production cycle using the same formulation and standard operating procedures.

(e) "Bureau" means the Bureau of Cannabis Control within the Department of Consumer Affairs, formerly named the Bureau of Marijuana Control, the Bureau of Medical Cannabis Regulation, and the Bureau of Medical Marijuana Regulation.

(f) "Cannabis" means all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. "Cannabis" also means the separated resin, whether crude or purified, obtained from cannabis. "Cannabis" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. For the purpose of this division, "cannabis" does not mean "industrial hemp" as defined by Section 11018.5 of the Health and Safety Code.

(g) "Cannabis accessories" has the same meaning as in Section 11018.2 of the Health and Safety Code.

- (h) "Cannabis concentrate" means cannabis that has undergone a process to concentrate one or more active cannabinoids, thereby increasing the product's potency. Resin from granular trichomes from a cannabis plant is a concentrate for purposes of this division. A cannabis concentrate is not considered food, as defined by Section 109935 of the Health and Safety Code, or a drug, as defined by Section 109925 of the Health and Safety Code.
- (i) "Cannabis products" has the same meaning as in Section 11018.1 of the Health and Safety Code.
- (j) "Child resistant" means designed or constructed to be significantly difficult for children under five years of age to open, and not difficult for normal adults to use properly.
- (k) "Commercial cannabis activity" includes the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery, or sale of cannabis and cannabis products as provided for in this division.
- (l) "Cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.
- (m) "Cultivation site" means a location where cannabis is planted, grown, harvested, dried, cured, graded, or trimmed, or a location where any combination of those activities occurs.
- (n) "Customer" means a natural person 21 years of age or older or a natural person 18 years of age or older who possesses a physician's recommendation, or a primary caregiver.
- (o) "Day care center" has the same meaning as in Section 1596.76 of the Health and Safety Code.
- (p) "Delivery" means the commercial transfer of cannabis or cannabis products to a customer. "Delivery" also includes the use by a retailer of any technology platform.
- (q) "Director" means the Director of Consumer Affairs.
- (r) "Distribution" means the procurement, sale, and transport of cannabis and cannabis products between licensees.
- (s) "Dried flower" means all dead cannabis that has been harvested, dried, cured, or otherwise processed, excluding leaves and stems.
- (t) "Edible cannabis product" means cannabis product that is intended to be used, in whole or in part, for human consumption, including, but not limited to, chewing gum, but excluding products set forth in Division 15 (commencing with Section 32501) of the Food and Agricultural Code. An edible cannabis product is not considered food, as defined by Section 109935 of the Health and Safety Code, or a drug, as defined by Section 109925 of the Health and Safety Code.
- (u) "Fund" means the Cannabis Control Fund established pursuant to Section 26210.
- (v) "Kind" means applicable type or designation regarding a particular cannabis variant or cannabis product type, including, but not limited to, strain name or other grower trademark, or growing area designation.
- (w) "Labeling" means any label or other written, printed, or graphic matter upon a cannabis product, upon its container or wrapper, or that accompanies any cannabis product.
- (x) "Labor peace agreement" means an agreement between a licensee and any bona fide labor organization that, at a minimum, protects the state's proprietary interests by prohibiting labor organizations and members from engaging in picketing, work stoppages, boycotts, and any other economic interference with the applicant's business. This agreement means that the applicant has agreed not to disrupt efforts by the bona fide labor organization to communicate with, and attempt to organize and represent, the applicant's employees. The agreement shall provide a bona fide labor organization access at reasonable times to areas in which the applicant's employees work, for the purpose of meeting with employees to discuss their right to representation, employment rights under state law, and terms and conditions of employment. This type of agreement shall not mandate a particular method of election or certification of the bona fide labor organization.
- (y) "License" means a state license issued under this division, and includes both an A-license and an M-license, as well as a testing laboratory license.
- (z) "Licensee" means any person holding a license under this division, regardless of whether the license held is an A-license or an M-license, and includes the holder of a testing laboratory license.
- (aa) "Licensing authority" means the state agency responsible for the issuance, renewal, or reinstatement of the license, or the state agency authorized to take disciplinary action against the licensee.
- (ab) "Live plants" means living cannabis flowers and plants, including seeds, immature plants, and vegetative stage plants.

(ac) "Local jurisdiction" means a city, county, or city and county.

(ad) "Lot" means a batch or a specifically identified portion of a batch.

(ae) "M-license" means a state license issued under this division for commercial cannabis activity involving medicinal cannabis.

(af) "M-licensee" means any person holding a license under this division for commercial cannabis activity involving medicinal cannabis.

(ag) "Manufacture" means to compound, blend, extract, infuse, or otherwise make or prepare a cannabis product.

(ah) "Manufacturer" means a licensee that conducts the production, preparation, propagation, or compounding of cannabis or cannabis products either directly or indirectly or by extraction methods, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis at a fixed location that packages or repackages cannabis or cannabis products or labels or relabels its container.

(ai) "Medicinal cannabis" or "medicinal cannabis product" means cannabis or a cannabis product, respectively, intended to be sold or donated for use pursuant to the Compassionate Use Act of 1996 (Proposition 215), found in Section 11362.5 of the Health and Safety Code, by a medicinal cannabis patient in California who possesses a physician's recommendation, or intended to be donated to, and used by, a compassion care patient.

(aj) "Nursery" means a licensee that produces only clones, immature plants, seeds, and other agricultural products used specifically for the propagation and cultivation of cannabis.

(ak) "Operation" means any act for which licensure is required under the provisions of this division, or any commercial transfer of cannabis or cannabis products.

(al) "Owner" means any of the following:

(1) A person with an aggregate ownership interest of 20 percent or more in the person applying for a license or a licensee, unless the interest is solely a security, lien, or encumbrance.

(2) The chief executive officer of a nonprofit or other entity.

(3) A member of the board of directors of a nonprofit.

(4) An individual who will be participating in the direction, control, or management of the person applying for a license.

(am) "Package" means any container or receptacle used for holding cannabis or cannabis products.

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

(ao) "Physician's recommendation" means a recommendation by a physician and surgeon that a patient use cannabis provided in accordance with the Compassionate Use Act of 1996 (Proposition 215), found in Section 11362.5 of the Health and Safety Code.

(ap) "Premises" means the designated structure or structures and land specified in the application that is owned, leased, or otherwise held under the control of the applicant or licensee where the commercial cannabis activity will be or is conducted. The premises shall be a contiguous area and shall only be occupied by one licensee.

(aq) "Primary caregiver" has the same meaning as in Section 11362.7 of the Health and Safety Code.

(ar) "Purchaser" means the customer who is engaged in a transaction with a licensee for purposes of obtaining cannabis or cannabis products.

(as) "Sell," "sale," and "to sell" include any transaction whereby, for any consideration, title to cannabis or cannabis products is transferred from one person to another, and includes the delivery of cannabis or cannabis products pursuant to an order placed for the purchase of the same and soliciting or receiving an order for the same, but does not include the return of cannabis or cannabis products by a licensee to the licensee from whom the cannabis or cannabis product was purchased.

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

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

(2) Licensed by the bureau.

(au) "Unique identifier" means an alphanumeric code or designation used for reference to a specific plant on a licensed premises and any cannabis or cannabis product derived or manufactured from that plant.

(av) "Youth center" has the same meaning as in Section 11353.1 of the Health and Safety Code.

SEC. 2.5. Section 26001 of the Business and Professions Code is amended to read:

26001. For purposes of this division, the following definitions shall apply:

(a) "A-license" means a state license issued under this division for cannabis or cannabis products that are intended for adults who are 21 years of age and older and who do not possess a physician's recommendation.

(b) "A-licensee" means any person holding a license under this division for cannabis or cannabis products that are intended for adults who are 21 years of age and older and who do not possess a physician's recommendation.

(c) "Applicant" means an owner applying for a state license pursuant to this division.

(d) "Batch" means a specific quantity of homogeneous cannabis or cannabis product that is one of the following types:

(1) Harvest batch. "Harvest batch" means a specifically identified quantity of dried flower or trim, leaves, and other cannabis plant matter that is uniform in strain, harvested at the same time, and, if applicable, cultivated using the same pesticides and other agricultural chemicals, and harvested at the same time.

(2) Manufactured cannabis batch. "Manufactured cannabis batch" means either of the following:

(A) An amount of cannabis concentrate or extract that is produced in one production cycle using the same extraction methods and standard operating procedures.

(B) An amount of a type of manufactured cannabis produced in one production cycle using the same formulation and standard operating procedures.

(e) "Bureau" means the Bureau of Cannabis Control within the Department of Consumer Affairs, formerly named the Bureau of Marijuana Control, the Bureau of Medical Cannabis Regulation, and the Bureau of Medical Marijuana Regulation.

(f) "Cannabis" means all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. "Cannabis" also means the separated resin, whether crude or purified, obtained from cannabis. "Cannabis" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. For the purpose of this division, "cannabis" does not mean "industrial hemp" as defined by Section 11018.5 of the Health and Safety Code.

(g) "Cannabis accessories" has the same meaning as in Section 11018.2 of the Health and Safety Code.

(h) "Cannabis concentrate" means cannabis that has undergone a process to concentrate one or more active cannabinoids, thereby increasing the product's potency. Resin from granular trichomes from a cannabis plant is a concentrate for purposes of this division. A cannabis concentrate is not considered food, as defined by Section 109935 of the Health and Safety Code, or a drug, as defined by Section 109925 of the Health and Safety Code.

(i) "Cannabis products" has the same meaning as in Section 11018.1 of the Health and Safety Code.

(j) "Child resistant" means designed or constructed to be significantly difficult for children under five years of age to open, and not difficult for normal adults to use properly.

(k) "Commercial cannabis activity" includes the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery, or sale of cannabis and cannabis products as provided for in this division.

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

(m) "Cultivation site" means a location where cannabis is planted, grown, harvested, dried, cured, graded, or trimmed, or a location where any combination of those activities occurs.

(n) "Customer" means a natural person 21 years of age or older or a natural person 18 years of age or older who possesses a physician's recommendation, or a primary caregiver.

(o) "Day care center" has the same meaning as in Section 1596.76 of the Health and Safety Code.

(p) "Delivery" means the commercial transfer of cannabis or cannabis products to a customer. "Delivery" also includes the use by a retailer of any technology platform.

(q) "Director" means the Director of Consumer Affairs.

(r) "Distribution" means the procurement, sale, and transport of cannabis and cannabis products between licensees.

(s) "Dried flower" means all dead cannabis that has been harvested, dried, cured, or otherwise processed, excluding leaves and stems.

(t) "Edible cannabis product" means cannabis product that is intended to be used, in whole or in part, for human consumption, including, but not limited to, chewing gum, but excluding products set forth in Division 15 (commencing with Section 32501) of the Food and Agricultural Code. An edible cannabis product is not considered food, as defined by Section 109935 of the Health and Safety Code, or a drug, as defined by Section 109925 of the Health and Safety Code.

(u) "Fund" means the Cannabis Control Fund established pursuant to Section 26210.

(v) "Kind" means applicable type or designation regarding a particular cannabis variant or cannabis product type, including, but not limited to, strain name or other grower trademark, or growing area designation.

(w) "Labeling" means any label or other written, printed, or graphic matter upon a cannabis product, upon its container or wrapper, or that accompanies any cannabis product.

(x) "Labor peace agreement" means an agreement between a licensee and any bona fide labor organization that, at a minimum, protects the state's proprietary interests by prohibiting labor organizations and members from engaging in picketing, work stoppages, boycotts, and any other economic interference with the applicant's business. This agreement means that the applicant has agreed not to disrupt efforts by the bona fide labor organization to communicate with, and attempt to organize and represent, the applicant's employees. The agreement shall provide a bona fide labor organization access at reasonable times to areas in which the applicant's employees work, for the purpose of meeting with employees to discuss their right to representation, employment rights under state law, and terms and conditions of employment. This type of agreement shall not mandate a particular method of election or certification of the bona fide labor organization.

(y) "License" means a state license issued under this division, and includes both an A-license and an M-license, as well as a testing laboratory license.

(z) "Licensee" means any person holding a license under this division, regardless of whether the license held is an A-license or an M-license, and includes the holder of a testing laboratory license.

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

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

(ac) "Local jurisdiction" means a city, county, or city and county.

(ad) "Lot" means a batch or a specifically identified portion of a batch.

(ae) "M-license" means a state license issued under this division for commercial cannabis activity involving medicinal cannabis.

(af) "M-licensee" means any person holding a license under this division for commercial cannabis activity involving medicinal cannabis.

(ag) "Manufacture" means to compound, blend, extract, infuse, or otherwise make or prepare a cannabis product.

(ah) "Manufacturer" means a licensee that conducts the production, preparation, propagation, or compounding of cannabis or cannabis products either directly or indirectly or by extraction methods, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis at a fixed location that packages or repackages cannabis or cannabis products or labels or relabels its container.

(ai) "Medicinal cannabis" or "medicinal cannabis product" means cannabis or a cannabis product, respectively, intended to be sold or donated for use pursuant to the Compassionate Use Act of 1996 (Proposition 215), found in Section 11362.5 of the Health and Safety Code, by a medicinal cannabis patient in California who possesses a physician's recommendation, or intended to be donated to, and used by, a compassion care patient.

(aj) "Nursery" means a licensee that produces only clones, immature plants, seeds, and other agricultural products used specifically for the propagation and cultivation of cannabis.

(ak) "Operation" means any act for which licensure is required under the provisions of this division, or any commercial transfer of cannabis or cannabis products.

(al) "Owner" means any of the following:

(1) A person with an aggregate ownership interest of 20 percent or more in the person applying for a license or a licensee, unless the interest is solely a security, lien, or encumbrance.

(2) The chief executive officer of a nonprofit or other entity.

(3) A member of the board of directors of a nonprofit.

(4) An individual who will be participating in the direction, control, or management of the person applying for a license.

(am) "Package" means any container or receptacle used for holding cannabis or cannabis products.

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

(ao) "Physician's recommendation" means a recommendation by a physician and surgeon that a patient use cannabis provided in accordance with the Compassionate Use Act of 1996 (Proposition 215), found at Section 11362.5 of the Health and Safety Code.

(ap) "Premises" means the contiguous area wherein the license privileges are, or will be, exercised, as diagramed in the application for licensure and for which a separate license is required. Nothing in this subdivision shall be construed to prohibit two or more licensed premises from sharing common use areas, such as a bathroom, breakroom, locker room, hallway, or loading dock, wherein no license privileges will be exercised so long as all licensees comply with the requirements of this division.

(aq) "Primary caregiver" has the same meaning as in Section 11362.7 of the Health and Safety Code.

(ar) "Purchaser" means the customer who is engaged in a transaction with a licensee for purposes of obtaining cannabis or cannabis products.

(as) "Sell," "sale," and "to sell" include any transaction whereby, for any consideration, title to cannabis or cannabis products is transferred from one person to another, and includes the delivery of cannabis or cannabis products pursuant to an order placed for the purchase of the same and soliciting or receiving an order for the same, but does not include the return of cannabis or cannabis products by a licensee to the licensee from whom the cannabis or cannabis product was purchased.

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

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

(2) Licensed by the bureau.

(au) "Unique identifier" means an alphanumeric code or designation used for reference to a specific plant on a licensed premises and any cannabis or cannabis product derived or manufactured from that plant.

(av) "Youth center" has the same meaning as in Section 11353.1 of the Health and Safety Code.

SEC. 3. Section 26071 is added to the Business and Professions Code, to read:

26071. (a) To provide access to medicinal cannabis patients who have difficulty accessing cannabis or cannabis products, a licensee who holds a Type 10-Retailer M-license, a Type 9-Retailer Non-storefront M-license, or a Type 12-Microbusiness M-license that allows for retail sales may provide free cannabis or cannabis products if all of the following criteria are met:

(1) Free cannabis or cannabis products are provided only to a medicinal cannabis patient. For purposes of this section, "medicinal cannabis patient" includes a qualified patient as defined under Section 11362.7 of the Health and Safety Code or a person in possession of a valid identification card issued under Section 11362.71 of the Health and Safety Code.

(2) Except as provided for under Section 34012.1 of the Revenue and Taxation Code, the cannabis or cannabis products comply with all applicable requirements for cultivation, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery, or donation under this division.

(3) Before being provided to the patient or primary caregiver, the cannabis or cannabis products have been properly recorded in the track and trace system as belonging to the retailer.

(4) The cannabis or cannabis products shall be applied toward the daily purchase limit for a medicinal cannabis customer pursuant to Section 5409 of Title 16 of the California Code of Regulations.

(5) The event shall be properly recorded in the retailer's inventory records and the track and trace system. The retailer shall include in its inventory records for each medical cannabis patient the number of an identification card issued pursuant to Article 2.5 (commencing with Section 11362.7) of Chapter 6 of Division 10 of the Health and Safety Code or a copy of the physician's recommendation for no less than four years.

(b) In addition to the provision of free cannabis or cannabis products in subdivision (a), a licensee may donate cannabis or cannabis products and the use of equipment in compliance with any compassionate use, equality, or other similar program administered by a local jurisdiction.

(c) A licensee who holds an M-Retailer license, an M-Retailer Non-storefront license, or an M-Microbusiness license that is authorized for retail sales may contract with an individual or organization to coordinate the provision of free medicinal cannabis or medicinal cannabis products on the retailer's premises.

SEC. 4. Section 26153 of the Business and Professions Code is amended to read:

26153. A licensee shall not give away any amount of cannabis or cannabis products, or any cannabis accessories, as part of a business promotion or other commercial activity. For purposes of this section, the donation of cannabis or cannabis products by a licensee to a patient or the primary caregiver of a patient, pursuant to Section 26071, shall not be considered a business promotion or other commercial activity.

SEC. 5. Section 6414 is added to the Revenue and Taxation Code, to read:

6414. (a) On and after January 1, 2019, the storage, use, or other consumption in this state of medicinal cannabis or medicinal cannabis product shall be exempt from the use tax in either of the following circumstances:

(1) The medicinal cannabis or medicinal cannabis product is donated by a cannabis retailer licensed under Division 10 (commencing with Section 26000) of the Business and Professions Code to a medicinal cannabis patient.

(2) The medicinal cannabis or medicinal cannabis product is donated by a person licensed under Division 10 (commencing with Section 26000) of the Business and Professions Code to a cannabis retailer for subsequent donation to a medicinal cannabis patient, or to any other licensee for ultimate donation by a cannabis retailer to a medicinal cannabis patient.

(b) (1) The exemption specified in subdivision (a) shall apply only if the donee certifies in writing to the licensee that donates the medicinal cannabis or medicinal cannabis product, in such a form as the department may prescribe, that the medicinal cannabis and medicinal cannabis product will be used in a manner and for a purpose specified in subdivision (a). The certification in writing shall relieve the licensee that donates the medicinal cannabis or medicinal cannabis product of liability for use tax only if it is taken in good faith.

(2) If a licensee uses the donated medicinal cannabis or medicinal cannabis product in some manner or for some purpose other than those specified in subdivision (a), the licensee shall be liable for the payment of use tax and the measure of tax to the licensee shall be deemed that licensee's purchase price for similar product.

(c) "Medicinal cannabis" and "medicinal cannabis product" shall have the same meaning as those terms are defined in Section 26001 of the Business and Professions Code.

(d) "Cannabis retailer" shall have the same meaning as that term is defined in Section 34010.

(e) "Medicinal cannabis patient" shall mean a qualified patient, as defined in Section 11362.7 of the Health and Safety Code, who possesses a physician's recommendation that complies with Article 25 (commencing with Section 2525) of Chapter 5 of Division 2 of the Business and Professions Code, or a qualified patient or primary caregiver for a qualified patient issued a valid identification card pursuant to Section 11362.71 of the Health and Safety Code.

(f) This section shall remain in effect only until January 1, 2024, and as of that date is repealed.

SEC. 6. Section 34010 of the Revenue and Taxation Code is amended to read:

34010. For purposes of this part:

(a) "Arm's length transaction" shall mean a sale entered into in good faith and for valuable consideration that reflects the fair market value in the open market between two informed and willing parties, neither under any compulsion to participate in the transaction.

(b) "Average market price" shall mean:

(1) In an arm's length transaction, the average market price means the average retail price determined by the wholesale cost of the cannabis or cannabis products sold or transferred to a cannabis retailer, plus a mark-up, as determined by the department on a biannual basis in six-month intervals.

(2) In a nonarm's length transaction, the average market price means the cannabis retailer's gross receipts from the retail sale of the cannabis or cannabis products.

(c) "Department" shall mean the California Department of Tax and Fee Administration or its successor agency.

(d) "Bureau" shall mean the Bureau of Cannabis Control within the Department of Consumer Affairs.

(e) "Tax Fund" means the California Cannabis Tax Fund created by Section 34018.

(f) "Cannabis" shall have the same meaning as set forth in Section 11018 of the Health and Safety Code and shall also mean medicinal cannabis.

(g) "Cannabis products" shall have the same meaning as set forth in Section 11018.1 of the Health and Safety Code and shall also mean medicinal concentrates and medicinal cannabis products.

(h) "Cannabis flowers" shall mean the dried flowers of the cannabis plant as defined by the board.

(i) "Cannabis leaves" shall mean all parts of the cannabis plant other than cannabis flowers that are sold or consumed.

(j) "Cannabis retailer" shall mean a person required to be licensed as a retailer, microbusiness, or nonprofit pursuant to Division 10 (commencing with Section 26000) of the Business and Professions Code.

(k) "Cultivator" shall mean all persons required to be licensed to cultivate cannabis pursuant to Division 10 (commencing with Section 26000) of the Business and Professions Code.

(l) "Distributor" shall mean a person required to be licensed as a distributor pursuant to Division 10 (commencing with Section 26000) of the Business and Professions Code.

(m) "Enters the commercial market" shall mean cannabis or cannabis products, except for immature cannabis plants and seeds, that complete and comply with a quality assurance review and testing, as described in Section 26110 of the Business and Professions Code.

(n) "Gross receipts" shall have the same meaning as set forth in Section 6012.

(o) "Microbusiness" shall have the same meaning as set forth in paragraph (3) of subdivision (a) of Section 26070 of the Business and Professions Code.

(p) "Nonprofit" shall have the same meaning as set forth in Section 26070.5 of the Business and Professions Code.

(q) "Person" shall have the same meaning as set forth in Section 6005.

(r) "Retail sale" shall have the same meaning as set forth in Section 6007.

(s) "Sale" and "purchase" shall mean any change of title or possession, exchange, or barter, conditional or otherwise, in any manner or by any means whatsoever, for consideration.

(t) "Transfer" shall mean to grant, convey, hand over, assign, sell, exchange, or barter, in any manner or by any means, with or without consideration.

(u) "Unprocessed cannabis" shall include cannabis flowers, cannabis leaves, or other categories of harvested cannabis, categories for unprocessed or frozen cannabis or immature plants, or cannabis that is shipped directly to manufacturers.

(v) "Manufacturer" shall mean a person required to be licensed as a manufacturer pursuant to Division 10 (commencing with Section 26000) of the Business and Professions Code.

(w) "Medicinal cannabis patient" shall mean a qualified patient, as defined in Section 11362.7 of the Health and Safety Code, who possesses a physician's recommendation that complies with Article 25 (commencing with Section 2525) of Chapter 5 of Division 2 of the Business and Professions Code, or a qualified patient or primary caregiver for a qualified patient issued a valid identification card pursuant to Section 11362.71 of the Health and Safety Code.

(x) "Designated for donation" shall mean medicinal cannabis donated by a cultivator for subsequent donation by a cannabis retailer pursuant to Section 26071 of the Business and Professions Code.

SEC. 7. Section 34011 of the Revenue and Taxation Code is amended to read:

34011. (a) (1) Effective January 1, 2018, a cannabis excise tax shall be imposed upon purchasers of cannabis or cannabis products sold in this state at the rate of 15 percent of the average market price of any retail sale by a cannabis retailer. A purchaser's liability for the cannabis excise tax is not extinguished until the cannabis excise tax has been paid to this state except that an invoice, receipt, or other document from a cannabis retailer given to the purchaser pursuant to this subdivision is sufficient to relieve the purchaser from further liability for the tax to which the invoice, receipt, or other document refers.

(2) Each cannabis retailer shall provide a purchaser with an invoice, receipt, or other document that includes a statement that reads: "The cannabis excise taxes are included in the total amount of this invoice."

(3) The department may prescribe other means to display the cannabis excise tax on an invoice, receipt, or other document from a cannabis retailer given to the purchaser.

(b) (1) A distributor in an arm's length transaction shall collect the cannabis excise tax from the cannabis retailer on or before 90 days after the sale or transfer of cannabis or cannabis product to the cannabis retailer. A distributor in a nonarm's length transaction shall collect the cannabis excise tax from the cannabis retailer on or before 90 days after the sale or transfer of cannabis or cannabis product to the cannabis retailer, or at the time of retail sale by the cannabis retailer, whichever is earlier. A distributor shall report and remit the cannabis excise tax to the department pursuant to Section 34015. A cannabis retailer shall be responsible for collecting the cannabis excise tax from the purchaser and remitting the cannabis excise tax to the distributor in accordance with rules and procedures established under law and any regulations adopted by the department.

(2) A distributor shall provide an invoice, receipt, or other similar document to the cannabis retailer that identifies the licensee receiving the product, the distributor from which the product originates, including the associated unique identifier, the amount of cannabis excise tax, and any other information deemed necessary by the department. The department may authorize other forms of documentation under this paragraph.

(c) The excise tax imposed by this section shall be in addition to the sales and use tax imposed by the state and local governments.

(d) Gross receipts from the sale of cannabis or cannabis products for purposes of assessing the sales and use tax under Part 1 (commencing with Section 6001) shall include the tax levied pursuant to this section.

(e) Cannabis or cannabis products shall not be sold to a purchaser unless the excise tax required by law has been paid by the purchaser at the time of sale.

(f) The sales and use taxes imposed by Part 1 (commencing with Section 6001) shall not apply to retail sales of medicinal cannabis, medicinal cannabis concentrate, edible medicinal cannabis products, or topical cannabis as those terms are defined in Division 10 (commencing with Section 26000) of the Business and Professions Code when a qualified patient or primary caregiver for a qualified patient provides his or her card issued under Section 11362.71 of the Health and Safety Code and a valid government-issued identification card.

(g) Nothing in this section shall be construed to impose an excise tax upon medicinal cannabis, or medicinal cannabis product, donated for no consideration to a medicinal cannabis patient pursuant to Section 26071 of the Business and Professions Code.

SEC. 8. Section 34012 of the Revenue and Taxation Code is amended to read:

34012. (a) Effective January 1, 2018, there is hereby imposed a cultivation tax on all harvested cannabis that enters the commercial market upon all cultivators. The tax shall be due after the cannabis is harvested and enters the commercial market.

(1) The tax for cannabis flowers shall be nine dollars and twenty-five cents (\$9.25) per dry-weight ounce.

(2) The tax for cannabis leaves shall be set at two dollars and seventy-five cents (\$2.75) per dry-weight ounce.

(b) The department may adjust the tax rate for cannabis leaves annually to reflect fluctuations in the relative price of cannabis flowers to cannabis leaves.

(c) The department may from time to time establish other categories of harvested cannabis, categories for unprocessed or frozen cannabis or immature plants, or cannabis that is shipped directly to manufacturers. These categories shall be taxed at their relative value compared with cannabis flowers.

(d) The department may prescribe by regulation a method and manner for payment of the cultivation tax that utilizes tax stamps or state-issued product bags that indicate that all required tax has been paid on the product to which the tax stamp is affixed or in which the cannabis is packaged.

(e) The tax stamps and product bags shall be of the designs, specifications, and denominations as may be prescribed by the department and may be purchased by any licensee under Division 10 (commencing with Section 26000) of the Business and Professions Code.

(f) Subsequent to the establishment of a tax stamp program, the department may by regulation provide that cannabis shall not be removed from a licensed cultivation facility or transported on a public highway unless in a state-issued product bag bearing a tax stamp in the proper denomination.

(g) The tax stamps and product bags shall be capable of being read by a scanning or similar device and must be traceable utilizing the track and trace system pursuant to Section 26068 of the Business and Professions Code.

(h) Cultivators shall be responsible for payment of the tax pursuant to regulations adopted by the department. A cultivator's liability for the tax is not extinguished until the tax has been paid to this state except that an invoice, receipt, or other document from a distributor or manufacturer given to the cultivator pursuant to paragraph (3) is sufficient to relieve the cultivator from further liability for the tax to which the invoice, receipt, or other document refers. Cannabis shall not be sold unless the tax has been paid as provided in this part.

(1) A distributor shall collect the cultivation tax from a cultivator on all harvested cannabis that enters the commercial market. This paragraph shall not apply where a cultivator is not required to send, and does not send, the harvested cannabis to a distributor.

(2) (A) A manufacturer shall collect the cultivation tax from a cultivator on the first sale or transfer of unprocessed cannabis by a cultivator to a manufacturer. The manufacturer shall remit the cultivation tax collected on the cannabis product sold or transferred to a distributor for quality assurance, inspection, and testing, as described in Section 26110 of the Business and Professions Code. This paragraph shall not apply where a distributor collects the cultivation tax from a cultivator pursuant to paragraph (1).

(B) Notwithstanding subparagraph (A), the department may prescribe a substitute method and manner for collection and remittance of the cultivation tax under this paragraph, including a method and manner for collection of the cultivation tax by a distributor.

(3) A distributor or manufacturer shall provide to the cultivator, and a distributor that collects the cultivation tax from a manufacturer pursuant to paragraph (2) shall provide to the manufacturer, an invoice, receipt, or other similar document that identifies the licensee receiving the product, the cultivator from which the product originates, including the associated unique identifier, the amount of cultivation tax, and any other information deemed necessary by the department. The department may authorize other forms of documentation under this paragraph.

(4) The department may adopt regulations prescribing procedures for the refund of cultivation tax collected on cannabis or cannabis product that fails quality assurance, inspection, and testing as described in Section 26110 of the Business and Professions Code.

(i) All cannabis removed from a cultivator's premises, except for plant waste or medicinal cannabis or medicinal cannabis products designated for donation, shall be presumed to be sold and thereby taxable under this section.

(j) The tax imposed by this section shall be imposed on all cannabis cultivated in the state pursuant to rules and regulations promulgated by the department, but shall not apply to cannabis cultivated for personal use under Section 11362.1 of the Health and Safety Code or cultivated by a qualified patient or primary caregiver in accordance with the Compassionate Use Act of 1996 (Proposition 215), found in Section 11362.5 of the Health and Safety Code.

(k) Beginning January 1, 2020, the rates set forth in subdivisions (a), (b), and (c) shall be adjusted by the department annually thereafter for inflation.

(l) The Department of Food and Agriculture is not responsible for enforcing any provisions of the cultivation tax.

SEC. 9. Section 34012.1 is added to the Revenue and Taxation Code, to read:

34012.1. (a) Notwithstanding Section 34012, the cultivation tax shall not be imposed on medicinal cannabis designated for donation.

(b) A person licensed under Division 10 (commencing with Section 26000) of the Business and Professions Code that certifies in writing that medicinal cannabis or a medicinal cannabis product will be donated to a medicinal cannabis patient and sells or uses

the medicinal cannabis or medicinal cannabis product in some manner or for some purpose other than donation, shall be liable for the taxes under this part as if the person were a cultivator of the medicinal cannabis. The certification in writing shall relieve the cultivator that donates the medicinal cannabis from liability for the taxes imposed and shall relieve the distributor from liability for the taxes required to be collected under this part, only if the certification is taken in good faith.

(c) A distributor or manufacturer shall not collect or remit the cultivation tax for medicinal cannabis or medicinal cannabis products designated for donation.

(d) A cultivator shall keep records of any medicinal cannabis or medicinal cannabis products designated for donation.

(e) Nothing in this part shall be construed to impose a cultivation tax upon medicinal cannabis or medicinal cannabis products designated for donation.

(f) For purposes of this section, "medicinal cannabis" and "medicinal cannabis product" shall mean cannabis and cannabis product, as defined in Section 26001 of the Business and Professions Code, intended for use pursuant to the Compassionate Use Act of 1996 (Proposition 215), found in Section 11362.5 of the Health and Safety Code, by a medicinal cannabis patient.

SEC. 10. 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. 11. Section 2.5 of this bill incorporates amendments to Section 26001 of the Business and Professions Code proposed by both this bill and Assembly Bill 2980. That section of this bill shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2019, (2) each bill amends Section 26001 of the Business and Professions Code, and (3) this bill is enacted after Assembly Bill 2980, in which case Section 2 of this bill shall not become operative.

SEC. 12. Notwithstanding Section 2230 of the Revenue and Taxation Code, no appropriation is made by this act and the state shall not reimburse any local agency for any sales and use tax revenues lost by it under this act.

SEC. 13. The Legislature finds and declares that this act is consistent with, and furthers the purposes and intent of, the Control, Regulate and Tax Adult Use of Marijuana Act, as stated in Section 3 of that act, by allowing indigent medicinal cannabis patients to continue to receive donated cannabis for medicinal personal use.

SEC. 14. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect. The facts constituting the necessity are:

To ensure that some of the most vulnerable patients can safely and legally obtain the medicinal cannabis and cannabis products they need to treat their debilitating symptoms and life-threatening conditions, donations need to immediately be made more accessible to all patients with a physician's recommendation and be made tax exempt.