Senate Bill 987 (McGuire)
Date: 06/13/16
Programs: Marijuana User Fee
Sponsor: Author
Part 17 (commencing with Section 37001) to Division 2 of the Revenue and Taxation Code
Effective January 1, 2017 but fee operative January 1, 2018

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Summary: Commencing January 1, 2018, imposes a 10% fee on medical marijuana purchased from a retailer of medical marijuana.

Summary of Amendments: The amendments since the previous analysis lower the fee rate from 15% to 10% and exempt from the fee a low-income purchaser.

Purpose: According to the author, the purpose is "to provide needed revenue to make communities stronger by focusing on the impacts of cultivation and use of marijuana, including funding local law enforcement and neighborhood improvement programs, state parks, drug and alcohol treatment and environmental rehabilitation."

Fiscal Impact Summary: Annual revenues range from $38.2 million to $152.8 million, depending on compliance rate.

Existing Law: **Federal Law.** Existing federal law prohibits the manufacture, possession, sale, or distribution of marijuana.[1] Congress enacted the Controlled Substances Act (CSA)[2] as part of the Comprehensive Drug Abuse Prevention and Control Act of 1970. The CSA establishes five "schedules" of certain drugs and other substances designated "controlled substances."[3] For a drug or other substance to be designated as a schedule I controlled substance, it must be found that the substance "has a high potential for abuse," has "no currently accepted medical use in treatment in the United States," and "lack accepted safety for use of the drug or other substance under medical supervision."[4] Federal law lists marijuana as a schedule I controlled substance, deemed to have no accepted medical use.[5]

California's Medical Marijuana Program. Under existing law, the California Uniform Controlled Substances Act[6] prohibits, except as authorized by law, the possession, cultivation, transportation, and sale of marijuana and derivatives of marijuana. Existing law authorizes, under The Compassionate Use Act of 1996 (Proposition 215 of 1996), a patient or the patient's primary caregiver to cultivate or possess marijuana for the patient's medical use when recommended by a physician, as specified.[7]

California's Sales and Use Tax Law.[8] Existing law imposes the sales tax on all retailers for the privilege of selling tangible personal property at retail in this state or the use tax on the storage, use or consumption in this state of tangible personal property purchased from a retailer, except where the law specifies an exclusion or exemption. Nothing in the sales and use tax law exempts or excludes the sale of illegal substances. Therefore, under the law, sales and use tax apply to retail sales of marijuana, including medical marijuana, to the same extent as any other retail sale of tangible personal property.

There is no specific exemption or exclusion for marijuana or medical marijuana. For patient treatment, RTC Section 6369 exempts from the sales and use tax retail sales of medicines, as defined, when the medicines sold or furnished are:

- prescribed by an authorized person and dispensed on a prescription filled by a pharmacist,

[1] 21 U.S.C. § 841 et seq.
[2] 21 U.S.C. § 801 et seq.
[3] 21 U.S.C. §§802(6), 812(a).
[4] 21 U.S.C. § 812 (b)(1).
[5] 21 U.S.C. § 812:Schedule I(c)(10).
[6] Division 10 (commencing with Section 11000) of the Health and Safety Code (HSC).
[7] HSC Section 11362.5.
[8] Part 1 of Division 2 of the Revenue and Taxation Code (RTC) (commencing with Section 6001).

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- furnished by a licensed physician to his or her own patient, or
- furnished by a health facility for treatment pursuant to a licensed physician's order, or sold to a licensed physician.

The sale of medical marijuana, however, is generally not made under conditions that would satisfy the elements of RTC Section 6369.

Proposed Law: This bill adds Part 17 (commencing with Section 37001) to Division 2 of the RTC to enact the Marijuana User Fee Act (Act). The Act imposes, on and after January 1, 2018, a fee on the consumption or other use in this state of medical marijuana purchased from any retailer for consumption or other use in this state at the rate of 10% of the sales price of the medical marijuana.

Fee Liability. The Act makes liable every purchaser consuming or otherwise using in this state medical marijuana purchased from a retailer. The retailer must collect the fee at the time of sale from the purchaser. The Act requires the fee to be a charge separate from, and not included in, any other fee, charge, or other amount paid. The Act requires the retailer to give a receipt to the purchaser in a manner and form prescribed by the BOE. The purchaser remains liable for the fee until the fee is paid to the state, although a purchaser's payment to a retailer relieves the purchaser for the fee amount specified on the receipt.

The Act exempts low-income purchasers from the fee if the purchaser has a medical marijuana identification card that indicates the cardholder is low income and prohibits a retailer from collecting the fee from such purchasers presenting the card. For purposes of qualifying, a person must have income that is less than 200% of federal poverty guidelines.

The fee required to be collected by the retailer engaged in business in this state, any fee collected from a purchaser not remitted to the BOE, and any unreturned amounts the retailer represents and collects as the fee owed by the purchaser that are not actually owed constitute debts owed by the retailer to this state.

Administration. The Act requires the BOE to administer and collect the fee pursuant to the Fee Collection Procedures Law (FCPL),[9] except that the provisions that require payments by electronic funds transfer do not apply.[10]

The FCPL generally provides for the BOE's administration of fee programs. Among other things, the FCPL provides for collection, reporting, return, refund, and appeals procedures, as well as the BOE's authority to adopt regulations related to the FCPL's administration and enforcement.

The Act authorizes the BOE to prescribe, adopt, and enforce regulations relating to administration and enforcement. In addition, the Act authorizes the BOE to prescribe, adopt, and enforce any emergency regulations as necessary to implement the Act.

Registration, Reporting, and Payment. The Act requires every retailer required to collect the fee to register for a permit on a BOE-prescribed form. That form shall include: (1) the name under which the applicant transacts or intends to transact business, (2) the location of the retailer's place or places of business, and (3) any other information that the BOE may require.

The BOE will grant and issue a separate permit for each business location within the state. The Act prohibits assigning the permit. A permit is valid only for the person to whom it is issued and at the designated location for business transactions. The Act requires the permit be conspicuously displayed at the location for which it is issued.

The fee is due and payable to the BOE quarterly on or before the last day of the month succeeding each quarterly period. The BOE may, however, require fee payments and the filing of returns for periods other than the period or periods specified in the tax and fee laws administered under the FCPL.[11]

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[9] Part 30 (commencing with Section 55001) of Division 2 of the RTC.
[10] Article 1.1 (commencing with Section 55050) of Chapter 3.
[11] RTC Section 55041.1.

In addition, a return for the preceding quarterly period must be filed with the BOE using electronic media. Returns must be authenticated in a form or pursuant to methods as may be prescribed by the BOE.

Both the electronic application and fee return would be authenticated in a form or pursuant to a method the BOE may prescribe.

Furthermore, the Act relieves a retailer's liability to collect the fee represented by accounts that have been found worthless and charged off in accordance with generally accepted accounting principles. If a retailer subsequently collects any bad debt amounts claimed, those amounts must be reported and paid to the BOE on the next return filed. The Act authorizes the BOE to promulgate regulations with respect to uncollected or worthless accounts.

Miscellaneous Provisions. The Act makes it unlawful for any retailer to advertise, hold out, or state to the public or purchaser, directly or indirectly, that the fee or any part thereof:

- Will be assumed or absorbed by the retailer; or
- Will not be added to the selling price of the medical marijuana sold, or
- Will be refunded, in whole or in part.

In addition, the Act requires the retailer to display the fee separately from the medical marijuana price on the sales check or other proof of sales. Specifically, the fee shall be included in:

- The list price;
- The marked price; or
- Any other advertised or quoted price provided or displayed.

Any person violating these miscellaneous provisions is guilty of a misdemeanor.

Suspension and Revocation. The Act authorizes the BOE, upon hearing, to revoke or suspend a retailer's permit whenever any retailer fails to comply with any provision of the Act or any rules or regulations adopted pursuant to the Act. The BOE shall give the retailer at least 10 days' notice in writing specifying the time and place of the hearing. The retailer must show cause why the permit should not be revoked.

The Act requires the BOE to serve a written suspension or revocation notice to the retailer personally or by mail, as described. The BOE is prohibited from issuing a new permit after revocation unless satisfied that the former permit holder will comply with the Act and the regulations adopted under the Act.

Permit Refusal. The Act authorizes the BOE to refuse to issue a permit to any person who has an outstanding final liability with the BOE for any amount due under the Act. The BOE may also refuse to issue a permit to any person who is not a natural person or individual and any person controlling the applicant has an outstanding final liability with the BOE for any amount due under the Act. "Controlling" has the same meaning as defined in Business and Professions Code (BPC) Section 22971.

The Act deems a liability not outstanding if the person has entered into an installment payment agreement and fully complies with that agreement's terms. If the permit applicant enters into an installment payment agreement and fails to comply with the terms, the BOE may seek revocation of the person's permit.

The Act requires the BOE to give a written denial notice to a person denied a permit. The denial notice may be served personally, by mail, or by other appropriate means.

The Act allows a person that is denied a permit to request reconsideration of the BOE's denial. The person must submit a written reconsideration request within 30 days of the date of the denial notice. A timely submission affords the person a hearing. If a person fails to file a reconsideration request within the 30-day period, the denial becomes final at the end of the 30-day period.

Also, the Act requires the BOE to consider offers in compromise when determining whether to issue a permit.

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Deposit of Revenues. The Act establishes the Marijuana User Fee Fund (Fund) in the State Treasury. The BOE must deposit all revenues, less refunds, into the Fund. Except as provided, the Controller must annually allocate moneys in the Fund as follows:

- 30% to the General Fund.
- 30% to the Bureau for grant program administration to distribute grants to local agencies that oversee or are affected by the regulation of cultivating, processing, manufacturing, distributing, and selling of medical marijuana that undertake enforcement activities pertaining to the cultivation of marijuana in violation of state law or local ordinance, or that are involved in a fire suppression, emergency medical, or other "all-risk" response to a marijuana cultivation, processing, manufacturing, or distribution incident, upon appropriation by the Legislature.
- 20% to the Department of Parks and Recreation for the stewardship, operation, maintenance, and preservation of state park units, including units operated on behalf of the state by local or regional agencies or by nonprofit organizations, upon appropriation by the Legislature.
- 20% to counties, as defined, for drug and alcohol treatment programs, distributed based on the ratio of each county's population to the total population of all counties, as set forth in the most recent E-1 Cities, Counties, and the State Population Estimates published by the Department of Finance, upon appropriation by the Legislature.

The bill advances funds for the BOE's implementation and administration of the Act to the Fund as a General Fund or special fund loan, and repaid by the initial revenues, less refunds, collected. The Director of Finance may provide an initial operating loan from the General Fund to the Fund that does not exceed five million dollars ($5,000,000).

Definitions. The Act includes the following definitions:

- "Medical marijuana" means medical cannabis as defined in BPC Section 19300.5, which provides:

  "Medical cannabis," "medical cannabis product," or "cannabis product" means a product containing cannabis, including, but not limited to, concentrates and extractions, intended to be sold for use by medical cannabis patients in California pursuant to the Compassionate Use Act of 1996 (Proposition 215), found at Section 11362.5 of the Health and Safety Code. For the purposes of this chapter, "medical cannabis" does not include "industrial hemp" as defined by Section 81000 of the Food and Agricultural Code or Section 11018.5 of the Health and Safety Code.
- "Person" means person as defined in RTC Section 55002, which provides:

  "Person" means an individual, trust firm, joint stock company, business concern, corporation, including, but not limited to, a government corporation, partnership, limited liability company, and association. "Person" also includes any city, county, city and county, district, commission, the state or any department, agency, or political subdivision thereof, any interstate body, and the United States and its agencies and instrumentalities to the extent permitted by law.
- "Primary caregiver"[12] means a person who is exempt from the licensure requirements of the Medical Marijuana Regulation and Safety Act (MMRSA)[13] pursuant to BPC Section 19319(b).
- "Purchaser" means a person that purchases medical marijuana for consumption or other use in this state.
- "Qualified patient" means a person who is entitled to the protections of the Compassionate Use Act of 1996.
- "Retail sale" or "sale at retail" means a sale for any purpose other than resale in the regular course of business in the form of medical marijuana.

[12] HSC Section 11362.7 of the Medical Marijuana Program defines "primary caregiver."
[13] Chapter 3.5 (commencing with Section 19300) of Division 8 of the Business and Professions Code.

- "Retailer" includes every person that makes any retail sale or sales of medical marijuana. It also includes a person holding a dispensary license issued pursuant to the MMRSA.[14] Every person making more than two retail sales of medical marijuana during any 12-month period shall be considered a retailer within the provisions of the Act.
- "Retailer engaged in business in this state" means any retailer that has substantial nexus with this state for purposes of the commerce clause of the United States Constitution and any retailer upon whom federal law permits this state to impose a fee collection duty.
- "Sale" or "purchase" means and includes any transfer of title or possession, exchange, or barter, conditional or otherwise, in any manner or by any means whatsoever, of medical marijuana for a consideration. "Transfer of possession" includes only transactions found by the BOE to be in lieu of a transfer of title, exchange, or barter. "Sale" or "purchase" does not include the transfer of title or possession, exchange, or barter of medical marijuana for a consideration between a qualified patient and his or her primary caregiver.
- "Sales price" means the total amount for which medical marijuana is sold, valued in money, whether paid in money or otherwise, without any deduction on account of the cost of any expenses.
- "Use" includes the exercise of any right or power over medical marijuana incident to the ownership of that medical marijuana, except that it does not include the sale of that medical marijuana in the regular course of business.

Legislative Analyst Report. The bill requires the Legislative Analyst to review and evaluate the marijuana user fee and provide a report to the Senate Committees on Governance and Finance, Appropriations, and Budget and Fiscal Review, and to the Assembly Committees on Revenue and Taxation, Appropriations, and Budget. The report shall include recommendations regarding the fee rate, revenue allocation, and any other adjustments to the fee, and the following:

- Annual revenues.
- Annual costs of implementing this part.
- Annual allocation amounts by the Controller.
- Fee compliance rates.
- BOE recommendations to improve effective and efficient administration and enforcement of the Act.

Local Tax and Fee Authority. Nothing in the Act shall be interpreted to preclude a city, county, or city and county from enacting or continuing to enforce a local ordinance that imposes any fees, taxes, or other charges on the consumption or other use of medical marijuana, as may be otherwise authorized by law.

Legislative Findings and Declarations. This bill finds and declares that "edible cannabis products" are not considered a food product for purposes of the California Constitution.[15] The bill defines "edible cannabis products" to have the same meaning as that term's definition in the MMRSA.[16]

California Medical Marijuana Program. This bill amends the Medical Marijuana Program to require a person who seeks an identification card to document income and to require a county health department or designee to determine whether the applicant has low income, and if so, include an indication on the identification card that the cardholder has low income. An applicant has low income if the applicant's income is less than 200 percent of the federal poverty guidelines.

Operative Date. The bill becomes effective January 1, 2017, but the fee provisions are operative January 1, 2018. However, the Act will only become operative if voters do not approve the *Control, Regulate and Tax Adult Use of Marijuana Act*[17] at the November 8, 2016 statewide general election.

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[14] Chapter 3.5 (commencing with Section 19300) of Division 8 of the Business and Professions Code.
[15] Section 34 of Article XIII of the California Constitution.
[16] BPC Section 19300.5.
[17] Secretary of State Initiative Number 1762.

Background: Medical Marijuana Sellers – Sales Tax. In 1996, California voters passed Proposition 215, also known as the Compassionate Use Act of 1996, which allows patients and their primary caregivers to cultivate or possess marijuana for personal medical treatment with the recommendation of a physician, as specified.

In 2003, Senate Bill 420 (Ch. 875, Stats. 2003, Vasconcellos) established statewide guidelines for Proposition 215 enforcement. In particular, SB 420 allows nonprofit distribution in certain cases for patient cultivation cooperatives, small-scale caregiver gardens, and dispensing collectives. However, despite the fact that numerous medical marijuana dispensaries currently do business in California, the sale of medical cannabis is illegal under federal law.

On August 29, 2013, the U.S. Department of Justice issued guidance to federal prosecutors regarding cannabis enforcement under the CSA (referred to as the Cole Memo).[18] The Cole Memo reiterated the Department's commitment to enforcing the CSA consistent with Congress' determination that cannabis is a dangerous drug that serves as a significant source of revenue to large-scale criminal enterprises, gangs, and cartels. In furtherance of those objectives, the Cole Memo instructed the Department attorneys and law enforcement to focus on the following eight priorities in enforcing the CSA against cannabis-related conduct:

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

Under the Cole Memo, marijuana-related conduct that implicates one or more of these enforcement priorities should be the primary question when considering CSA prosecution. Although the guidance was issued in response to recent marijuana legalization initiatives in certain states, it applies to all Department marijuana enforcement nationwide.

Operative December 16, 2014, Public Law 113-235[19] prohibits the United States Department of Justice from using funds to prevent specified states, including California, from implementing laws that authorize the use, distribution, possession, or cultivation of medical marijuana.

Because the sale of medical marijuana[20] is taxable, the BOE issues seller's permits to those medical marijuana sellers and will issue seller's permits to any other sellers making unlawful sales.

In 2007, the BOE mailed a special notice to California sellers of medical marijuana to clarify the application of tax to medical marijuana sales and the requirement that they must hold a seller's permit.

Medical Marijuana Regulation and Safety Act. In 2015, the Legislature enacted the MMRSA, a package of legislation that establishes a comprehensive licensing and regulatory framework for medical marijuana, including cultivation, manufacturing, transportation, distribution, sale, and product. The

[18] http://medicalmarijuana.procon.org/sourcefiles/cole-DOJ-memo-aug-2013.pdf
[19] H.R. 83 / Public Law 113-235, Consolidated and Further Continuing Appropriations Act, 2015, (Dec. 16, 2014; 128 Stat. 2130; 701 pages).
[20] All retail sales, including illegal sales, are subject to tax unless otherwise exempt.

MMRSA consists of three bills: SB 643 (Ch. 719, McGuire), AB 243 (Ch. 688, Wood), and AB 266 (Ch. 689, Bonta).

Among its provisions, the MMRSA establishes the Bureau of Medical Marijuana Regulation (Bureau) within the Department of Consumer Affairs to oversee and enforce the state's medical marijuana regulations, in collaboration with the California Department of Public Health and the CDFA. Additionally, it establishes categories of licenses for various medical marijuana activities, such as cultivation, manufacturing, distribution, transportation, and sale.

AB 266 also added RTC Section 31020 to require the BOE, in consultation with the CDFA, to adopt a system to report commercial cannabis and cannabis product movement throughout the distribution chain (track and trace). The adopted system must employ secure packaging and provide information to the BOE. Section 31020 also requires the system to capture, at a minimum, all of the following:

- The amount of tax due by the designated entity;
- The name, address, and license number of the designated entity that remitted the tax;
- The name, address, and license number of the succeeding entity receiving the product;
- The transaction date; and
- Any other information the BOE deems necessary for marijuana and marijuana taxation and regulation.

Commentary:

1. **The June 13, 2016 amendments** lower the fee rate from 15% to 10% and exclude from the fee a purchase of medical marijuana by low-income purchaser. The **May 31, 2016 amendments** replaced references to "Marijuana Value Tax" with "Marijuana User Fee" throughout the bill and advanced funds for BOE implementation and administration costs as a General Fund or special fund loan. The **March 15, 2016 amendments** (1) defined "primary caregiver" and "qualified patient" and exclude from the definition of "sale" or "purchase" the transfer of title or possession, exchange, or barter of medical marijuana for a consideration between a qualified patient and primary caregiver; (2) revised the revenue allocation; (3) required the Legislative Analyst to review and evaluate the tax and prepare a report for specified legislative committees; (4) stated that this new part does not preclude a city, county, or city and county from enacting or continuing to enforce a local tax ordinance on the consumption or use of medical marijuana, and (5) only allowed the tax to become operative if *Control, Regulate and Tax Adult Use of Marijuana Act* is not approved by voters at the November 8, 2016, statewide general election.

2. **Marijuana User Fee not subject to sales tax.** Under existing Sales and Use Tax Law, RTC Section 6012(a)(2) provides that taxable gross receipts include all amounts received with respect to the sale, with no deduction for the cost of the materials used, labor or service cost, or any other expense of the retailer passed on to the customer.

   This bill imposes the Marijuana User Fee on the purchasers of medical marijuana, not on the retailers who sell the item. When retailers separately state the Marijuana User Fee on the receipts they issue to purchasers, the retailers are not passing on expenses to the purchaser but are instead collecting the fee from the purchaser as required by statute. Therefore, the Marijuana User Fee is not included in gross receipts.

3. **This bill could complicate marijuana retailers' records and reporting.** Medical marijuana retailers already must collect and remit sales and use tax on the retail sale of medical marijuana in California. Medical marijuana retailers most likely sell other tangible personal property subject to sales and use tax. Adding an additional assessment that would be collected from purchasers would require retailers to keep track of marijuana product sales separately from other sales of tangible personal property.

4. **Bill could set precedent.** Imposing varying taxes or fees on specific commodities complicates tax and fee administration and could set a precedent for establishing multiple taxes or fees on other classes of tangible personal property. This results in increasing BOE administrative costs and an increased record-keeping burden on taxpayers.

5. **Point of fee imposition.** Typically, BOE staff recommends that excise taxes and fees be imposed as high in the distribution chain as possible since there are fewer taxpayers and therefore less potential for evasion. This concern is magnified with respect to the cannabis industry, as historically it has been unregulated with low rates of tax compliance. The industry is currently substantially non-compliant. Increasing taxes or fees due at the retail level will likely increase diversion; however, that may be reduced due to the track-and-trace requirements set forth in the MMRSA. Auditing will be more difficult at the retail level than at the distribution level.

   The highest point in the cannabis distribution chain would be the grower. However, BOE staff understands that due to the high number of growers, imposing a fee at that level would be inefficient. Therefore, the distributor level, similar to the taxation of cigarettes, may be a more appropriate point of fee imposition, as auditing is less difficult with fewer feepayers.

6. **Cash Payments.** Collecting cash payments from cannabis retailers currently is challenging both from a compliance and public safety standpoint. Under existing law, retailers must report sales taxes ranging from 7.50 percent to 10.00 percent. Collecting cash payments from these retailers on sales taxes alone has created administrative and safety issues for BOE staff and retailers. By imposing marijuana user fee at the retail level, retailers will be responsible for remitting up to three times their current payments. This significant increase in the level of cash payments from cannabis retailers will lead to enhanced public safety concerns.

7. **Low-income purchasers.** The bill relieves a purchaser from the fee and prohibits a retailer from collecting the fee from a purchaser who presents an identification card that indicates that the purchaser has low income. The bill does not provide how the retailer must document a low-income transaction. Consequently, the BOE likely will adopt regulations that outline requirements for a retailer to document a sale to a purchaser that has low income.

   Moreover, it appears the retailer may still be responsible for remitting the fee to the BOE on a sale to a purchaser that has low income. The bill imposes a fee "on the consumption or other use in this state of medical marijuana purchased from any retailer for the consumption or other use in this state." Although a purchaser who has low income would not be liable for the fee, it appears that the transaction itself is still subject to the fee. Since the bill prohibits the retailer from collecting the fee "from a purchaser who, at the time of the sale, presents the retailer with an identification card…indicating that the purchaser has low income," it appears the fee would have to be paid by the retailer. If this is not the intent, the author may wish to consider an amendment that exempts from the fee a purchase by a purchaser that has low income rather than making such persons not liable for the fee.

8. **Primary caregiver exemption.** This bill defines a "primary caregiver" as a person exempt from licensure under the MMRSA. The MMRSA exempts a primary caregiver who has no more than five specified qualified patients for whom he or she is the primary caregiver within the meaning of the Medical Marijuana Program.[21] The bill prohibits a primary caregiver from receiving payment for their activities, except for compensation for actual expenses, including reasonable compensation incurred for qualified patient services or for payment for out-of-pocket expenses in providing services.

   This bill makes clear that a "sale" or "purchase" does not include the transfer of title or possession, exchange, or barter of medical marijuana for a consideration between a qualified patient and his or her primary caregiver, as that is already limited to compensation for actual expenses.

[21] BPC Section 19319(b).

9. **Ballot initiatives.** There are currently 15 marijuana-related initiatives cleared for circulation. Only the *Control, Regulate and Tax Adult Use of Marijuana Act* has reached the 25% signature threshold requiring the proponents to immediately certify that the threshold has been met under penalty of perjury to the Secretary of State. The circulation deadline for that initiative is July 5, 2016. Similar to this bill, the *Control, Regulate and Tax Adult Use of Marijuana Act* imposes upon purchasers a 15% excise tax on the gross receipts of any retail sale of marijuana or marijuana products.

Costs: BOE administrative costs related to this bill are substantial. These costs include: feepayer identification, notification, and registration; regulation development; manual and publication revisions; fee return design; computer programming; return, payment, and refund claim processing; audit and collection tasks; staff training; and public inquiry responses. A cost estimate is pending. Costs based on the introduced version of the bill were estimated to be $3.1 million for Fiscal Year (FY) 2016-17; $5.4 million for FY 2017-18; $5.1 million for FY 2018-19; and $4.8 million for 2019-20 and ongoing.

Revenue Impact:

Background, Methodology, and Assumptions. Sales and use tax returns do not require medical marijuana to be specifically identified. From various external and internal sources, BOE staff identified 1,623 accounts likely reporting medical marijuana sales in 2014. This figure may not include all active dispensaries; these are only the ones BOE staff identified as likely to be selling medical marijuana.

Given the infancy of this market, identifying reliable data is challenging; however, staff developed detailed assumptions, sources, and calculations that are shown in the Medical Marijuana Spending and Supply Sources table (page 9). Major assumptions are:

- $220 per ounce is a typical price of medical marijuana (Line 3).
- $1.3 billion is a reasonable estimate of the value of medical marijuana sales in 2014 (Line 6).
- Extrapolating federal data on total U.S. recreational and medical marijuana prevalence rates, staff assumes the value of California medical marijuana sales will increase in the range of five to six percent per year from 2015 through 2019 (Line 7).[22]

Revenue Summary. Tax revenues associated with this bill are broken out based on various compliance rates:

Excise Taxes	**Revenues ($Millions)**			
Compliance Assumption	100%	75%	50%	25%
Estimated Medical Cannabis Sales (in billions)	$1.674	$1.674	$1.674	$1.674
Total Tax (in billions)	$0.1674	$0.1256	$0.0837	$0.0419
Less: Purchasers with Low Income	$0.1528	$0.1146	$0.0764	$0.0382

Using the major assumptions above, staff estimates dispensaries to report sales of $1.674 billion of medical cannabis in fiscal year 2018-19. At a fee rate of 10%, revenues will range from $41.9 million to $167.4 million, depending on compliance rate. In addition, the bill indicates that a low income exemption is 200 percent below the Federal Government poverty line. The US Census shows that the average US household has 3.2 people, and the poverty income level is $19,078. At 200% below the poverty line, that amount would be $9,500. At this level, approximately 8.7 percent would qualify, equating to an additional reduction of $14.6 million. The revenues with both a 10 percent tax rate and low income exemption will range from $38.2 million to $152.8 million, depend on compliance rate.

With an operative date of January 1, 2018, this revenue would be reduced by half to $38.2 million to $76.4 million in fiscal year 2018-19, depending on compliance rate. Revenues in the following fiscal years are expected to range from $38.2 million to $152.8 million, depending on compliance rate.

[22] Percentages vary for each year. They are based on statistical relationships using U.S. data from 2002 through 2014 from the following publication: *Behavioral health trends in the United States: Results from the 2014 National Survey on Drug Use and Health*, Center for Behavioral Health Statistics and Quality, HHS Publication No. SMA 15-4927, NSDUH Series H-50. Retrieved from http://www.samhsa.gov/data/

Qualifying Remarks. Extrapolating Colorado's data based on a 2014 Congressional Research Service report implies that a 60% compliance rate would be a reasonable expectation.[23] If compliance were 60%, total excise tax revenues would be $91.7 million. In addition, using data collected by the BOE, MuniServices, and Hdl Companies shows that in 2014, dispensaries who were registered with the BOE reported $570 million in taxable income. If that data is used with the potential medical marijuana sales in California of $1.3 billion, then the compliance rate would be 44%. If compliance were 44%, total excise tax revenues would be $67.2 million.

These estimates are highly uncertain and vary greatly depending on assumptions. Furthermore, staff continues to research the medical marijuana industry in California, and these estimates are subject to change to the extent that more accurate data is obtained.

This revenue estimate does not account for any changes in economic activity that may or may not result from enactment of the proposed law.

1	Total U.S. Marijuana Spending in 2014 ($ Millions)	$47,489	*What America's Users Spend on Illegal Drugs: 2000-2010,* Office of National Drug Control Policy, 2014; projected to 2014 using trend analysis by BOE staff
2	Total U.S. Marijuana Spending in 2014 (Million Ounces)	216	*What America's Users Spend on Illegal Drugs: 2000-2010;* projected to 2014 using trend analysis by BOE staff
3	Implied Average Price per Ounce	$220	Line 1 / Line 2
4	Assumed California Percentage	13.9%	*The Effect of Medical Marijuana Laws on Marijuana, Alcohol, and Hard Drug Use,* National Bureau of Economic Research, Working Paper 20085, 2014; applied by BOE staff to CA population percentage of U.S.
5	Total CA Marijuana Spending in 2014 ($ Millions)	$6,610	Line 1 x Line 4
6	**Medical Marijuana Spending in 2014 ($ Millions)**	$1,323	*The State of Legal Marijuana Markets,* 3rd edition, 2015, Arcview Market Research
7	**Estimated Medical Marijuana Spending in FY 2018-19 ($ Millions)**	$1,674	Board staff estimates based on federal data 1/
8	Compliance Rate on Sales	100%	Board staff estimates based on internal data
9	Estimated reported sales in FY 2018-19 ($ Millions)	$1,674	Line 7 x Line 8
10	**Fiscal Year 2018-19 Revenues ($ Millions, Half-Year)**	**$125.5**	Line 9 x 0.15 x 0.50

1/ Percentages vary for each year. They are based on statistical relationships using U.S. data from 2002 through 2014 from the following publication: *Behavioral health trends in the United States: Results from the 2014 National Survey on Drug Use and Health,* Center for Behavioral Health Statistics and Quality, HHS Publication No. SMA 15-4927, NSDUH Series H-50. Retrieved from http://www.samhsa.gov/data/

[23] *Federal Proposals to Tax Marijuana: An Economic Analysis*, Congressional Research Service, 2014.