

An act to amend Section 11358 of the Health and Safety Code, relating to controlled substances.

> Introduced by Assembly Member Chris Smith



Chris Smith

AB 1725 – Illegal cultivation of cannabis

Existing law, the California Uniform Controlled Substances Act (the act), as amended by the Control, Regulate and Tax Adult Use of Marijuana Act (AUMA), enacted by the voters at the November 8, 2016, statewide general election, makes it a crime to plant, cultivate, harvest, dry, or process more than 6 living cannabis plants without a commercial cannabis license. The act makes those actions a misdemeanor for a person over 18 years of age but less than 21 years of age and a misdemeanor for a person over 18 years of age, unless specified conditions exist, including various prior offenses, in which case the actions may be punished as a felony.

AUMA authorizes the Legislature to amend its provisions with a $\frac{2}{3}$ vote of both houses to further its purposes and intent.

This bill would amend AUMA to make it a felony, punishable by 16 months or 2 or 3 years in county jail, for a person over 18 years of age to plant, cultivate, harvest, dry, or process more than 6 living cannabis plants. By increasing the penalty for a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement. This bill would provide that no reimbursement is required by this act for a specified reason.

SECTION 1.

Section 11358 of the Health and Safety Code is amended to read:
11358

Each person who plants, cultivates, harvests, dries, or processes cannabis plants, or any part thereof, except as otherwise provided by law, shall be punished as follows:

(a) Each person under the age of 18 who plants, cultivates, harvests, dries, or processes any cannabis plants shall be punished in the same manner provided in paragraph (1) of subdivision (b) of Section 11357.

(b) Each person at least 18 years of age but less than 21 years of age who plants, cultivates, harvests, dries, or processes not more than six living cannabis plants shall be guilty of an infraction and a fine of not more than one hundred dollars (\$100); a felony, punishable pursuant to subdivision (h) of Section 1170 of the Penal Code.

(c) Each person 18 years of age or over who plants, cultivates, harvests, dries, or processes more than six living cannabis plants shall be punished by imprisonment in a county jail for a period of not more than six months or by a fine of not more than five hundred dollars (\$500), or by both that fine and imprisonment.

(d) Notwithstanding subdivision (c), a person 18 years of age or over who plants, cultivates, harvests, dries, or processes more than six living cannabis plants, or any part thereof, except as otherwise provided by law, may be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code if any of the following conditions exist:

(1) The person has one or more prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 of the Penal Code or for an offense requiring registration pursuant to subdivision (e) of Section 290 of the Penal Code.

(2) The person has two or more prior convictions under subdivision (c).

(3) The offense resulted in any of the following:

(A) Violation of Section 1052 of the Water Code relating to illegal diversion of water.

(B) Violation of Section 13260, 13264, 13272, or 13387 of the Water Code relating to discharge of water.

~~(C) Violation of Section 5650 or 5652 of the Fish and Game Code relating to waters of the state.~~

~~(D) Violation of Section 1602 of the Fish and Game Code relating to rivers, streams, and lakes.~~

~~(E) Violation of Section 374.8 of the Penal Code relating to hazardous substances or Section 25189.5, 25189.6, or 25189.7 of the Health and Safety Code relating to hazardous waste.~~

~~(F) Violation of Section 2080 of the Fish and Game Code relating to endangered and threatened species or Section 3513 of the Fish and Game Code relating to the Migratory Bird Treaty Act, or Section 2000 of the Fish and Game Code relating to the unlawful taking of fish and wildlife.~~

~~(G) Intentionally or with gross negligence causing substantial environmental harm to public lands or other public resources.~~

SEC. 2.

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

Status: Goes to Committee February 27, 2022