

AMENDED IN SENATE SEPTEMBER 6, 2013

AMENDED IN SENATE AUGUST 13, 2013

AMENDED IN ASSEMBLY APRIL 29, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 604

Introduced by Assembly Member Ammiano
(Principal coauthors: Senators Steinberg and Leno)

February 20, 2013

~~An act to add Section 806 to the Evidence Code, and to add Sections 686.3 and 1127i to the Penal Code, relating to criminal investigations.~~
An act to amend Sections 2220.05, 2242, and 2264 of, and to add Chapter 18 (commencing with Section 26000) to Division 9 of, the Business and Professions Code, and to amend Section 11362.7 of, and to amend and repeal Section 11362.775 of, the Health and Safety Code, relating to medical cannabis, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 604, as amended, Ammiano. ~~Criminal investigations: eyewitness identification.~~ *Medical cannabis: state regulation and enforcement.*

Existing law, the Compassionate Use Act of 1996, an initiative measure enacted by the approval of Proposition 215 at the November 6, 1996, statewide general election, authorizes the use of marijuana for medical purposes. Existing law enacted by the Legislature, commonly referred to as the Medical Marijuana Program Act, requires the establishment of a program for the issuance of identification cards to qualified patients so that they may lawfully use marijuana for medical purposes, and requires the establishment of guidelines for the lawful cultivation of marijuana grown for medical use.

The Medical Practice Act provides for the regulation and licensing of physicians and surgeons by the Medical Board of California and requires the board to prioritize investigations and prosecutions of physicians and surgeons representing the greatest threat of harm, as specified. Existing law identifies the cases that are to be given priority, which include cases of repeated acts of excessively prescribing, furnishing, or administering controlled substances without a good faith prior examination of the patient. Existing law makes it unprofessional conduct for a physician and surgeon to prescribe, dispense, or furnish dangerous drugs without an appropriate prior examination and medical indication. Existing law also makes it unprofessional conduct to employ, aid, or abet an unlicensed person in the practice of medicine. Existing law generally makes any person who violates these provisions guilty of a misdemeanor.

This bill would enact the Medical Cannabis Regulation and Control Act and would create the Division of Medical Cannabis Regulation and Enforcement within the Department of Alcoholic Beverage Control, to be administered by a person exempt from civil service who is appointed by the Director of Alcoholic Beverage Control. The bill would grant the department the exclusive power to register persons for the cultivation, manufacture, testing, transportation, storage, distribution, and sale of medical cannabis within the state subject to specified exemptions for a city or county. The bill would provide that the director and persons employed by the department to administer and enforce its provisions are peace officers. The bill would prescribe requirements for the issuance, renewal, suspension, and revocation of mandatory commercial registrations and fees in relation to these activities. The bill would permit the department to assist statewide taxation authorities in the development of uniform policies for the taxation of mandatory commercial medical cannabis registrants and to assist in the development of regulation in connection with work safety in this industry. The bill would authorize the division to establish a grant program for the purpose of funding medical cannabis regulation and enforcement.

The bill would establish the Medical Cannabis Regulation Fund and would require deposit of fees into the fund. The bill would continuously appropriate moneys within the fund to the division for the purposes of administering the program. The bill would require the deposit of penalty money into the General Fund.

The bill would require the department, on or before January 1, 2015, to issue regulations as necessary for the implementation and enforcement of mandatory commercial medical cannabis registration, as specified, and would prescribe requirements for provisional registrations to be operative January 1, 2014. The bill would prohibit approval of a mandatory commercial registration for specified reasons, including if a licensed physician making patient recommendations for medical cannabis is an interested party in the proposed operation, and would prohibit a physician from recommending medical cannabis to a patient while he or she is a mandatory commercial registrant, or associated, as specified, with a mandatory commercial registrant. The bill would provide that certain patient and caregiver information is excluded from disclosure to the public. The bill would provide that the actions of a mandatory commercial registrant or provisional registrant, its employees, and its agents that are permitted pursuant to a valid mandatory commercial registration issued by the division and that are conducted in accordance with the requirements of the act are not unlawful, as specified. The bill would provide a similar immunity for a property owner who allows his or her property to be used by a mandatory commercial registrant or provisional registrant.

The bill would require the department to work in conjunction with law enforcement entities throughout the state to implement and enforce the rules and regulations regarding medical cannabis and to take appropriate action against businesses and individuals that fail to comply with the law. The bill would prohibit, on and after January 1, 2015, a person other than a mandatory commercial registrant from selling cannabis or cannabis products or performing other actions related to cannabis, except as specified. The bill would provide that its provisions do not affect local zoning ordinances or laws of general application. The bill would make certain violations of its provisions a crime, thereby imposing a state-mandated local program. The bill would create a Medical Cannabis Appeals Board to which a person aggrieved by any final decision of the department could appeal. The bill would authorize the department to delegate authority to administrative law judges. The bill would prescribe a procedure for these appeals and for the review of an order of the appeals board by the courts. The bill would establish requirements for the transportation of medical cannabis. The bill would specify that its provisions are severable.

The bill would specify that recommending marijuana to patients without a good faith examination and medical reason is unprofessional

conduct and is a type of case that should be given priority for investigation and prosecution by the Medical Board of California, as described above. The bill would also specify that employment by, or an agreement with, a mandatory medical cannabis registrant to provide recommendations for medical marijuana constitutes unprofessional conduct. By broadening the definition of a crime, the bill would impose a state-mandated local program. The bill would repeal, 90 days after the department posts a specified notice on its Internet Web site, the provisions described above prohibiting prosecution of qualified patients, persons with valid identification cards, and designated primary caregivers who associate in California, collectively or cooperatively, to cultivate marijuana for medical purposes.

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.

~~Existing law allows opinion testimony from expert witnesses to be admitted at trial upon specified showings:~~

~~This bill would allow expert testimony regarding the reliability of an eyewitness identification to be admitted at trial if the proponent of the evidence establishes relevancy and proper qualifications of the witness.~~

~~Existing law generally regulates the collection and admissibility of evidence for purposes of criminal prosecutions:~~

~~This bill would authorize any law enforcement agency to adopt regulations for conducting photo and live lineups with eyewitnesses; and provides that specified procedures should be considered when adopting the regulations, including sequentially presenting photos used in an identification procedure and separating all witnesses when viewing an identification procedure.~~

~~Existing law provides that in any criminal case which is being tried before the court with a jury, all requests for instructions on points of law must be made to the court before commencement of argument.~~

~~This bill would require the court in a criminal trial or proceeding in which a witness testifies to an identification made before trial, as specified, and where the local law enforcement agency in that jurisdiction has adopted recommended live and photo eyewitness identification procedures, to give specified instructions to the jury, including an instruction that they may consider evidence that law~~

enforcement officers did or did not follow specified procedures during identification procedures when determining the reliability of the eyewitness identification. The bill would authorize the court to provide the same instructions in a jurisdiction that has not adopted the recommended live and photo eyewitness identification procedures.

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

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

1 *SECTION 1. This act shall be known, and may be cited, as the*
2 *Medical Cannabis Regulation and Control Act.*

3 *SEC. 2. (a) The Legislature finds and declares all of the*
4 *following:*

5 *(1) In 1996, the people of the State of California enacted the*
6 *Compassionate Use Act of 1996, codified in Section 11362.5 of*
7 *the Health and Safety Code. The people of the State of California*
8 *declared that their purpose in enacting the measure was, among*
9 *other things, “to ensure that seriously ill Californians have the*
10 *right to obtain and use marijuana for medical purposes where that*
11 *medical use is deemed appropriate and has been recommended*
12 *by a physician who has determined that the person’s health would*
13 *benefit from the use of marijuana in the treatment of cancer,*
14 *anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis,*
15 *migraine, or any other illness for which marijuana provides relief.”*

16 *(2) The Compassionate Use Act of 1996 called on state*
17 *government to implement a plan for the safe and affordable*
18 *distribution of marijuana to all patients in medical need of*
19 *marijuana.*

20 *(3) In 2003, the Legislature enacted the Medical Marijuana*
21 *Program Act (MMPA), codified in Article 2.5 (commencing with*
22 *Section 11362.7) of Chapter 6 of Division 10 of the Health and*
23 *Safety Code. Under the guidance of the MMPA, approximately 60*
24 *California cities and counties have created medical marijuana*
25 *access ordinances that can act as a guide for the state. However,*
26 *many other cities and counties are calling for more guidance and*
27 *regulation from the state and have passed bans or moratoria on*
28 *medical marijuana cultivation and distribution while awaiting this*
29 *guidance.*

1 (4) Greater certainty and uniformity are urgently needed
2 regarding the rights and obligations of medical marijuana
3 facilities, and for the imposition and enforcement of regulations
4 to prevent unlawful cultivation and the diversion of marijuana to
5 nonmedical use.

6 (5) Despite the passage of the Compassionate Use Act of 1996
7 and the MMPA, because of the lack of an effective statewide system
8 for regulating and controlling medical marijuana, local law
9 enforcement officials have been confronted with uncertainty about
10 the legality of some medical marijuana cultivation and distribution
11 activities. The current system of collectives and cooperatives makes
12 law enforcement difficult and endangers patient safety because of
13 an inability to monitor the supply of medical marijuana in the state
14 and the lack of quality control, testing, and labeling requirements.
15 As a result, many cities and counties have passed local ordinances
16 that in some cases ban the cultivation or distribution of medical
17 marijuana.

18 (6) For the protection of all Californians, the state must act to
19 regulate and control medical marijuana and not preempt local
20 government ordinances. Cities and counties should be allowed to
21 impose reasonable local taxes and enact reasonable zoning
22 regulations and other restrictions applicable to the cultivation and
23 distribution of medical marijuana based on local needs. In order
24 to provide patients with access to safe medical marijuana products,
25 while at the same time preventing diversion of marijuana to
26 nonmedical uses and protecting the public, it is necessary to amend
27 the MMPA and to establish a comprehensive structure for
28 regulating the cultivation, production, and distribution of medical
29 marijuana products.

30 (7) A state entity shall be created to regulate and control the
31 mandatory registration of all entities involved in the commercial
32 cultivation, processing, manufacturing, testing, transportation,
33 distribution, and sale of medical marijuana in this state. Patients
34 and their primary caregivers shall continue to be allowed to
35 cultivate medical marijuana for the personal medical purposes of
36 the individual patient, but only medical marijuana produced in
37 compliance with this act may be sold or commercially distributed.

38 (8) This act is not intended to prevent cities and counties from
39 imposing reasonable local taxes and enacting reasonable zoning
40 regulations and other restrictions applicable to the commercial

1 *cultivation and distribution of medical marijuana based on local*
2 *needs.*

3 *(9) It is the intent of the Legislature that the state entity created*
4 *to regulate and control medical marijuana solicit input from cities*
5 *and counties that have local ordinances or regulations allowing*
6 *for the registering, permitting, or licensing of medical marijuana*
7 *businesses, dispensaries, or other entities involved in providing*
8 *medical marijuana to patients in the process of promulgating*
9 *standards and regulations pursuant to this act.*

10 *(10) The provisions of this act are enacted pursuant to the*
11 *powers reserved to the State of California and its people under*
12 *the Tenth Amendment to the United States Constitution.*

13 *(11) Nothing in this act is intended to require any individual or*
14 *entity to engage in any conduct that violates federal law or to*
15 *exempt anyone from any requirement of federal law or to pose any*
16 *obstacle to federal enforcement of federal law.*

17 *(b) It is therefore the intent of the Legislature, in enacting this*
18 *act, to accomplish all of the following:*

19 *(1) To establish a statewide system for regulating and*
20 *controlling commercial medical cannabis activities by creating a*
21 *state entity to enact and enforce regulations governing the*
22 *cultivation, processing, manufacturing, testing, transportation,*
23 *distribution, and sale of commercial medical cannabis.*

24 *(2) To allow cities and counties to enact reasonable zoning*
25 *regulations or other restrictions applicable to the cultivation,*
26 *processing, manufacturing, testing, and distribution of commercial*
27 *medical cannabis based on local needs.*

28 *(3) To establish the Division of Medical Cannabis Regulation*
29 *and Enforcement to be located within the Department of Alcoholic*
30 *Beverage Control to provide a governmental agency that will*
31 *ensure the strict, honest, impartial, and uniform administration*
32 *and enforcement of the medical cannabis laws throughout the*
33 *state.*

34 *(4) To fulfill the promise of the Compassionate Use Act of 1996*
35 *to “implement a plan for the safe and affordable distribution of*
36 *marijuana to all patients in medical need of marijuana.”*

37 *(5) To establish a statewide registration process for commercial*
38 *medical cannabis activities to identify for law enforcement which*
39 *entities are exempt from state criminal penalties.*

1 (6) *To reduce the cost of commercial medical cannabis*
2 *enforcement by controlling commercial medical cannabis*
3 *production and distribution through comprehensive statewide*
4 *regulation and providing law enforcement guidelines to more*
5 *easily determine whether or not a person is acting in conformance*
6 *with the state's medical cannabis laws.*

7 SEC. 3. *Section 2220.05 of the Business and Professions Code*
8 *is amended to read:*

9 2220.05. (a) In order to ensure that its resources are maximized
10 for the protection of the public, the Medical Board of California
11 shall prioritize its investigative and prosecutorial resources to
12 ensure that physicians and surgeons representing the greatest threat
13 of harm are identified and disciplined expeditiously. Cases
14 involving any of the following allegations shall be handled on a
15 priority basis, as follows, with the highest priority being given to
16 cases in the first paragraph:

17 (1) Gross negligence, incompetence, or repeated negligent acts
18 that involve death or serious bodily injury to one or more patients,
19 such that the physician and surgeon represents a danger to the
20 public.

21 (2) Drug or alcohol abuse by a physician and surgeon involving
22 death or serious bodily injury to a patient.

23 (3) Repeated acts of clearly excessive prescribing, furnishing,
24 or administering of controlled substances, or repeated acts of
25 prescribing, dispensing, or furnishing of controlled ~~substances~~
26 *substances, or recommending marijuana to patients for medical*
27 *purposes*, without a good faith prior examination of the patient
28 and medical reason therefor. However, in no event shall a physician
29 and surgeon prescribing, furnishing, or administering controlled
30 substances for intractable pain consistent with lawful prescribing,
31 including, but not limited to, Sections 725, 2241.5, and 2241.6 of
32 this code and Sections 11159.2 and 124961 of the Health and
33 Safety Code, be prosecuted for excessive prescribing and prompt
34 review of the applicability of these provisions shall be made in
35 any complaint that may implicate these provisions.

36 (4) Sexual misconduct with one or more patients during a course
37 of treatment or an examination.

38 (5) Practicing medicine while under the influence of drugs or
39 alcohol.

1 (b) The board may by regulation prioritize cases involving an
2 allegation of conduct that is not described in subdivision (a). Those
3 cases prioritized by regulation shall not be assigned a priority equal
4 to or higher than the priorities established in subdivision (a).

5 (c) The Medical Board of California shall indicate in its annual
6 report mandated by Section 2312 the number of temporary
7 restraining orders, interim suspension orders, and disciplinary
8 actions that are taken in each priority category specified in
9 subdivisions (a) and (b).

10 *SEC. 4. Section 2242 of the Business and Professions Code is*
11 *amended to read:*

12 2242. (a) Prescribing, dispensing, or furnishing dangerous
13 drugs as defined in Section ~~4022~~ 4022, *or recommending*
14 *marijuana to a patient for medical purposes*, without an appropriate
15 prior examination and a medical indication, *including an in-person*
16 *examination when recommending marijuana*, constitutes
17 unprofessional conduct.

18 (b) No licensee shall be found to have committed unprofessional
19 conduct within the meaning of this section if, at the time the drugs
20 were prescribed, dispensed, or furnished, any of the following
21 applies:

22 (1) The licensee was a designated physician and surgeon or
23 podiatrist serving in the absence of the patient's physician and
24 surgeon or podiatrist, as the case may be, and if the drugs were
25 prescribed, dispensed, or furnished only as necessary to maintain
26 the patient until the return of his or her practitioner, but in any case
27 no longer than 72 hours.

28 (2) The licensee transmitted the order for the drugs to a
29 registered nurse or to a licensed vocational nurse in an inpatient
30 facility, and if both of the following conditions exist:

31 (A) The practitioner had consulted with the registered nurse or
32 licensed vocational nurse who had reviewed the patient's records.

33 (B) The practitioner was designated as the practitioner to serve
34 in the absence of the patient's physician and surgeon or podiatrist,
35 as the case may be.

36 (3) The licensee was a designated practitioner serving in the
37 absence of the patient's physician and surgeon or podiatrist, as the
38 case may be, and was in possession of or had utilized the patient's
39 records and ordered the renewal of a medically indicated

1 prescription for an amount not exceeding the original prescription
2 in strength or amount or for more than one refill.

3 (4) The licensee was acting in accordance with Section 120582
4 of the Health and Safety Code.

5 *SEC. 5. Section 2264 of the Business and Professions Code is*
6 *amended to read:*

7 2264. The employing, directly or indirectly, the aiding, or the
8 abetting of any unlicensed person or any suspended, revoked, or
9 unlicensed practitioner to engage in the practice of ~~medicine~~
10 *medicine, including employment by, or other agreement with, a*
11 *mandatory commercial registrant acting pursuant to the Medical*
12 *Cannabis Regulation and Control Act or a dispensary to provide*
13 *recommendations for medical marijuana, or any other mode of*
14 *treating the sick or afflicted which requires a license to practice*
15 *constitutes unprofessional conduct.*

16 *SEC. 6. Chapter 18 (commencing with Section 26000) is added*
17 *to Division 9 of the Business and Professions Code, to read:*

18
19 *CHAPTER 18. MEDICAL CANNABIS REGULATION*

20
21 *Article 1. General Provisions*

22
23 26000. (a) *It is the intent of the Legislature in enacting this*
24 *chapter to provide for the comprehensive regulation of the*
25 *commercial cultivation, manufacturing, testing, transportation,*
26 *distribution, and sale of medical cannabis and the enforcement of*
27 *laws relating to commercial medical cannabis activities.*

28 (b) *This chapter is an exercise of the police powers of the state*
29 *for the protection of the safety, welfare, health, peace, and morals*
30 *of the people of the state.*

31 26001. *Subject to the authority of a city or county pursuant to*
32 *Section 26010, the state shall have the exclusive right and power*
33 *to regulate and register persons for the cultivation, manufacture,*
34 *testing, transportation, storage, distribution, sale, purchase, and*
35 *possession of medical cannabis within the state. In the exercise of*
36 *these rights and powers, the Legislature shall not constitute the*
37 *state or any of its agencies as a cultivator, manufacturer,*
38 *transporter, tester, or seller of medical cannabis.*

39 26002. *For the purpose of this chapter:*

1 (a) “Cannabis” means all parts of the plant *Cannabis sativa*
2 *L.*, whether growing or not; the seeds thereof; the resin extracted
3 from any part of the plant; and every compound, manufacture,
4 salt, derivative, mixture, or preparation of the plant, its seeds or
5 resin. It does not include the mature stalks of the plant, fiber
6 produced from the stalks, oil or cake made from the seeds of the
7 plant, any other compound, manufacture, salt, derivative, mixture,
8 or preparation of the mature stalks (except the resin extracted
9 therefrom), fiber, oil, or cake, or the sterilized seed of the plant
10 which is incapable of germination. “Cannabis” also means the
11 separated resin, whether crude or purified, obtained from
12 marijuana.

13 (b) “Department” means the Department of Alcoholic Beverage
14 Control.

15 (c) “Dispensary” means a mandatory commercial registrant
16 that dispenses cannabis or medical cannabis products through a
17 retail storefront.

18 (d) “Division” means the Division of Medical Cannabis
19 Regulation and Enforcement.

20 (e) “Fund” means the Medical Cannabis Regulation Fund
21 established pursuant to Section 26028.

22 (f) “Identification program” means the universal identification
23 certificate program for mandatory commercial registrants.

24 (g) “Mandatory commercial registrant” or “registrant” means
25 any individual, partnership, joint venture, association, limited
26 liability company, corporation, estate, trust, receiver, syndicate,
27 or any other group or combination thereof acting as a unit to
28 commercially cultivate, process, possess, store, manufacture, test,
29 transport, distribute, or sell medical cannabis in compliance with
30 this chapter, other than a patient or a patient’s primary caregiver,
31 as defined by the Compassionate Use Act of 1996, growing,
32 possessing, storing, manufacturing, transporting, or providing
33 medical cannabis exclusively for the personal medical purposes
34 of individual patients as defined in subdivision (b) of Section
35 26050.

36 (h) “Medical cannabis product” means any cannabis product,
37 including concentrates and extractions, that is cultivated,
38 processed, packaged, and distributed in full compliance with the
39 requirements of this chapter and with any regulations adopted by
40 the department pursuant to its rulemaking authority. “Medical

1 *cannabis product” includes medically infused products that contain*
2 *medical cannabis and are intended for oral or topical consumption*
3 *by a qualified patient.*

4 (i) *“Person” includes any individual, firm, copartnership, joint*
5 *adventure, association, corporation, estate, trust, business trust,*
6 *receiver, syndicate, or any other group or combination acting as*
7 *a unit and includes the plural as well as the singular number.*

8 (j) *“Testing and labeling” means mandatory labeling and a*
9 *quality assurance plan in place that addresses all of the following:*

10 (1) *Potency.*

11 (2) *Chemical residue.*

12 (3) *Microbiological contaminants.*

13 (4) *Random sample testing of medical cannabis and medical*
14 *cannabis products.*

15 (5) *Handling, care, and storage.*

16 (6) *Date and location of production and manufacturing.*

17 26010. *This chapter does not prevent a city or county from*
18 *doing any of the following:*

19 (a) *Adopting local ordinances that ban or regulate the location,*
20 *operation, or establishment of a cannabis dispensary.*

21 (b) *The civil or criminal enforcement of the ordinances*
22 *described in subdivision (a).*

23 (c) *Establishing a reasonable fee for the operation of a*
24 *mandatory commercial registrant within its jurisdiction.*

25 (d) *Enacting other laws consistent with this chapter.*

26
27 *Article 2. Administration*
28

29 26020. (a) *There is hereby created in the Department of*
30 *Alcoholic Beverage Control the Division of Medical Cannabis*
31 *Regulation and Enforcement. The division shall be administered*
32 *by a person exempt from the civil service who is appointed by the*
33 *director.*

34 (b) *The department shall have the exclusive power, consistent*
35 *with the provisions of this chapter, to register persons for the*
36 *cultivation, manufacture, testing, transportation, storage,*
37 *distribution, and sale of medical cannabis within the state and to*
38 *collect registration fees in connection with these actions.*

1 26022. *The department shall have all power necessary for*
2 *administration of this chapter, including, but not limited to, the*
3 *following:*

4 (a) *Establishing statewide standards for the commercial*
5 *cultivation, manufacturing, testing, transportation, storage,*
6 *distribution, and sale of medical cannabis and medical cannabis*
7 *products and procedures for the issuance, renewal, suspension,*
8 *and revocation of registrations of mandatory commercial*
9 *registrants.*

10 (b) *Establishing a scale of application, registration, and renewal*
11 *fees, to be imposed by the state, for mandatory commercial*
12 *registrants for the cultivation, manufacturing, testing,*
13 *transportation, distribution, and sale of medical cannabis and*
14 *medical cannabis products. The department may charge separate*
15 *fees for each mandatory commercial registration application for*
16 *cultivation, manufacturing, transportation, distribution, and sale.*
17 *The total fees imposed pursuant to this chapter shall be reasonable*
18 *and based on the actual costs of administering and enforcing this*
19 *chapter.*

20 (c) *The department shall make and prescribe those reasonable*
21 *rules as may be necessary or proper to carry out the purposes and*
22 *intent of this chapter and to enable it to exercise the powers and*
23 *perform the duties conferred upon it by this chapter and in*
24 *accordance with Chapter 3.5 (commencing with Section 11340)*
25 *of Part 1 of Division 3 of Title 2 of the Government Code. For the*
26 *performance of its duties, the department has the powers as set*
27 *forth in Article 2 (commencing with Section 11180) of Chapter 2*
28 *of Part 1 of Division 3 of Title 2 of the Government Code.*

29 (d) *Approving or denying mandatory commercial registration*
30 *applications for cultivation, manufacturing, testing and labeling,*
31 *transportation, distribution, and sale of medical cannabis pursuant*
32 *to this chapter.*

33 (e) *The department shall have the power, in its discretion, to*
34 *deny, suspend, revoke, or fine any registration issued pursuant to*
35 *this chapter if the department determines, for good cause, that the*
36 *granting or continuance of the registration would be contrary to*
37 *public welfare or morals or that a person holding or seeking a*
38 *registration has violated any law prohibiting conduct involving*
39 *moral turpitude.*

1 (f) *Imposing any penalty authorized by this chapter or any rule*
2 *or regulation adopted pursuant to this chapter.*

3 (g) *Taking any reasonable action with respect to a mandatory*
4 *commercial registration application in accordance with procedures*
5 *established pursuant to this chapter.*

6 (h) *Upon the denial of any application for a registration, the*
7 *department shall notify the applicant in writing. After service of*
8 *the notice and within the time prescribed by the department, the*
9 *applicant may present his or her written petition for a registration*
10 *to the department. Upon receipt by the department of a petition*
11 *for a registration in proper form, the petition shall be set for*
12 *hearing.*

13 (i) (1) *For any hearing held pursuant to this chapter, the*
14 *department may delegate the power to hear and decide to an*
15 *administrative law judge appointed by the director. Any hearing*
16 *before an administrative law judge shall be pursuant to the*
17 *procedures, rules, and limitations prescribed in Chapter 5*
18 *(commencing with Section 11500) of Part 1 of Division 3 of Title*
19 *2 of the Government Code.*

20 (2) *Prior to suspending, revoking, or fining any registration,*
21 *the department shall file an accusation as provided for in Section*
22 *11503 of the Government Code, and the registrant may request a*
23 *hearing.*

24 (j) *Developing any forms, identification certificates, and*
25 *applications that are necessary or convenient in the reasonable*
26 *discretion of the department for the administration of this chapter*
27 *or any of the rules or regulations adopted pursuant to this chapter.*

28 (k) *Overseeing the operation of the Medical Cannabis*
29 *Regulation Fund established pursuant to Section 26028.*

30 (l) *Establishing reasonable fees for processing all applications,*
31 *registrations, notices, or reports required to be submitted to the*
32 *department. The amount of the fees shall reflect, but shall not*
33 *exceed, the direct and indirect costs of the department for the*
34 *administration of this chapter and the rules or regulations adopted*
35 *pursuant to this chapter.*

36 (m) *The department may consult with other state agencies,*
37 *departments, or public or private entities for the purposes of*
38 *establishing statewide standards and regulations.*

1 26024. (a) *The department may assist state taxation authorities*
2 *in the development of uniform policies for the taxation of*
3 *mandatory commercial registrants.*

4 (b) *The department shall assist the Division of Occupational*
5 *Safety and Health in the Department of Industrial Relations in the*
6 *development of industry-specific regulations related to commercial*
7 *medical cannabis activities.*

8 26028. (a) *The Medical Cannabis Regulation Fund is hereby*
9 *established within the State Treasury. Notwithstanding Section*
10 *16305.7 of the Government Code, the fund shall include any*
11 *interest and dividends earned on the money in the fund.*

12 (b) *All fees collected pursuant to this chapter shall be deposited*
13 *into the Medical Cannabis Regulation Fund. Notwithstanding*
14 *Section 13340 of the Government Code, all moneys within the fund*
15 *are hereby continuously appropriated, without regard to fiscal*
16 *year, to the department solely for the purposes of fully funding*
17 *and administering this chapter, including, but not limited to, the*
18 *costs incurred by the department for its administrative expenses.*

19 (c) *All moneys collected pursuant to this chapter as a result of*
20 *penalties imposed under this division shall be deposited directly*
21 *into the General Fund, to be available upon appropriation.*

22 (d) *The department may establish and administer a grant*
23 *program to allocate moneys from the Medical Cannabis Regulation*
24 *Fund to state and local entities for the purpose of assisting with*
25 *commercial medical cannabis regulation and the enforcement of*
26 *this chapter.*

27 26030. (a) *The director and the persons employed by the*
28 *department for the administration and enforcement of this chapter*
29 *are peace officers in the enforcement of the penal provisions of*
30 *this chapter, the rules of the department adopted under the*
31 *provisions of this chapter, and any other penal provisions of law*
32 *of this state prohibiting or regulating the cultivation, processing,*
33 *storing, manufacturing, testing, transporting, or selling of medical*
34 *cannabis, and these persons are authorized, while acting as peace*
35 *officers, to enforce any penal provisions of law while in the course*
36 *of their employment.*

37 (b) *The director, the persons employed by the department for*
38 *the administration and enforcement of this chapter, peace officers*
39 *listed in Section 830.1 of the Penal Code, and those officers listed*
40 *in Section 830.6 of the Penal Code while acting in the course and*

1 *scope of their employment as peace officers may, in enforcing the*
2 *provisions of this chapter, visit and inspect the premises of any*
3 *mandatory commercial registrant at any time during which the*
4 *registrant is acting pursuant to the registration.*

5 *(c) Peace officers of the Department of the California Highway*
6 *Patrol, members of the University of California and California*
7 *State University police departments, and peace officers of the*
8 *Department of Parks and Recreation, as defined in subdivisions*
9 *(a), (b), (c), and (f) of Section 830.2 of the Penal Code, may, in*
10 *enforcing this chapter, visit and inspect the premises of any*
11 *mandatory commercial registrant located on state property at any*
12 *time during which the registrant is acting pursuant to the*
13 *registration.*

14 *26034. (a) Information identifying the names of patients, their*
15 *medical conditions, or the names of their primary caregivers*
16 *received and contained in records kept by the department for the*
17 *purposes of administering this chapter are confidential and exempt*
18 *from the California Public Records Act (Chapter 3.5 (commencing*
19 *with Section 6250) of Division 7 of Title 1 of the Government Code)*
20 *and or not subject to disclosure to any individual or private entity,*
21 *except as necessary for authorized employees of the State of*
22 *California to perform official duties pursuant to this chapter:*

23 *(b) (1) Nothing in this section precludes the following:*

24 *(A) Division employees notifying state or local law enforcement*
25 *about information submitted to the division that the employee*
26 *suspects is falsified or fraudulent.*

27 *(B) Notifications from the division to state or local law*
28 *enforcement about apparent criminal violation of this chapter.*

29 *(C) Verification of requests by state or local law enforcement*
30 *to confirm registrants and certificates issued by the division or*
31 *other state agency.*

32 *(D) Provision of information requested pursuant to a court*
33 *order or subpoena issued by a court.*

34 *(2) Information shall not be disclosed beyond what is necessary*
35 *to achieve the limited goals of a specific investigation or the*
36 *parameters of a specific court order or subpoena.*

Article 3. Mandatory Commercial Registration

26040. (a) On or before January 1, 2015, the department shall promulgate regulations necessary for the implementation and enforcement of this chapter. These regulations shall be reasonable and shall include:

(1) Procedures for the issuance, renewal, suspension, and revocation of mandatory commercial registrations.

(2) Application, registration, and renewal forms and fees consistent with this act.

(3) Time periods, not to exceed 90 days, by which the department shall approve or deny an application for medical cannabis registration.

(4) Qualifications for registrants.

(5) Security requirements, including, but not limited to, procedures for limiting access to facilities and for the screening of employees. The department shall require all registrants to maintain an accurate roster of any employee's name, date of birth, and relevant personally identifying information, which shall be available for inspection by the department or state or local law enforcement upon demand.

(6) Testing and labeling requirements, including, but not limited to, disclosure of the active cannabinoid profile, constituent elements, active ingredients, and results of testing for contaminants.

(7) Health and safety requirements, including, but not limited to, prohibitions on shipping or distribution of products containing microbiological, bacterial, pathogenic yeast or mold counts, or any adulterant or contaminant, that exceed levels to be determined by the department.

(8) Inspection and tracking requirements, including, but not limited to, an electronic production and inventory tracking system that will allow the department to monitor inventory data at every level of the cultivation, processing, and distribution system through a secure, Internet Web site-based portal.

(9) Storage, packaging, and transportation procedures and protocols.

(10) Advertising restrictions and requirements.

(11) Requirements to ensure conformance with applicable state statutory environmental, agricultural, and food and product safety

1 requirements. The department may consult with the California
2 Environmental Protection Agency to determine whether additional
3 regulations should be issued in order to protect the state's clean
4 water and environment, including, but not limited to, protections
5 related to land conversion, grading, water diversion and pond
6 development, and agricultural discharges.

7 (12) Requirements to prevent the diversion of cannabis to
8 nonmedical use, including procedures and protocols for disposal
9 of excess, contaminated, adulterated, or deteriorated products.

10 (13) Civil penalties for the failure to comply with regulations
11 adopted pursuant to this chapter.

12 (b) A mandatory commercial registration application or renewal
13 shall not be approved if the department determines any of the
14 following:

15 (1) The applicant fails to meet the requirements of this chapter
16 or any regulation adopted pursuant to this chapter, including any
17 applicable city or county ordinance or regulation.

18 (2) The applicant, or any of its officers or directors, is under
19 21 years of age.

20 (3) The applicant has knowingly answered a question or request
21 for information falsely on the application form or failed to provide
22 information requested.

23 (4) The applicant, or any of its officers or directors, has been
24 convicted in the previous five years of a violent felony, as specified
25 in subdivision (c) of Section 667.5 of the Penal Code, a serious
26 felony as specified in subdivision (c) of Section 1192.7 of the Penal
27 Code, a felony offense involving fraud or deceit, or any other felony
28 that, in the department's estimation, would impair the applicant's
29 ability to appropriately operate as a mandatory commercial
30 registrant.

31 (5) The applicant, or any of its officers or directors, is a licensed
32 physician making patient recommendations for medical cannabis.

33 (6) The applicant, or any of its officers or directors, has been
34 sanctioned by the department, a city, or a county for unregistered
35 commercial medical cannabis activities or has had a mandatory
36 commercial registration revoked in the previous three years.

37 (7) A sufficient number of mandatory commercial registrants
38 already exists in the state, a city, or a county to provide a sufficient
39 amount of medical cannabis to satisfy patients' medical use in that
40 jurisdiction.

1 (c) (1) *In order to protect the public safety and provide patients*
2 *with prompt, safe access to medical cannabis during*
3 *implementation of this chapter, within 180 days of January 1,*
4 *2014, the department shall issue emergency regulations consistent*
5 *with this chapter that allow a qualified applicant for mandatory*
6 *commercial registration to apply, be reviewed, and be registered*
7 *to cultivate, process, manufacture, store, and transport medical*
8 *cannabis so as to ensure an adequate supply of medical cannabis*
9 *upon full implementation of this chapter.*

10 (2) *The department shall establish appropriate fees as part of*
11 *its emergency regulations adopted pursuant to this chapter.*

12 26042. *For the purpose of regulating the commercial*
13 *cultivation, manufacturing, testing, transportation, distribution,*
14 *and sale of medical cannabis, the department, in its reasonable*
15 *discretion, may establish various classes or types of registration*
16 *for specific commercial medical cannabis-related activities, as set*
17 *forth in this chapter.*

18 26043. (a) *Each mandatory commercial registration*
19 *application approved by the department pursuant to this chapter*
20 *is separate and distinct. An applicant may apply for mandatory*
21 *commercial registration in more than one class of specified medical*
22 *cannabis activities.*

23 (b) *A mandatory commercial registration application approved*
24 *by the department pursuant to this chapter shall be valid for a*
25 *period not to exceed one year from the date of approval unless*
26 *revoked or suspended pursuant to this chapter or the rules or*
27 *regulations adopted pursuant to this chapter.*

28 26044. (a) *The department shall limit the number of*
29 *registrations statewide for the cultivation, processing, extraction,*
30 *packaging, and transportation of medical cannabis to a number*
31 *no greater than what is necessary to meet statewide need. In*
32 *determining the appropriate number of registrations, the*
33 *department may take into account information obtained from*
34 *sources that include, but need not be limited to, municipalities,*
35 *patients, and registrants.*

36 (b) *The department shall ensure that the number of registrations*
37 *that it approves does not exceed the ability of the department to*
38 *enforce the provisions of this chapter, particularly with respect to*
39 *ensuring patient safety and preventing illegal diversion of*
40 *cannabis.*

1 (c) *In establishing limits pursuant to this section, the department*
2 *shall consider the following:*

3 (1) *The purposes and intent of the Compassionate Use Act of*
4 *1996 to ensure an adequate supply of medical cannabis while*
5 *endeavoring to prevent an oversupply of cannabis that may result*
6 *in diversion.*

7 (2) *The number of applicants for mandatory commercial*
8 *registrations whose application demonstrates that they will be*
9 *able to produce consistent products with strict quality controls,*
10 *in full compliance with this chapter and with all applicable state*
11 *and local regulations, and the amount of medical cannabis those*
12 *applicants will be able to provide.*

13 26045. *Every mandatory commercial registration is renewable*
14 *unless the registration has been revoked if the renewal registration*
15 *is made and the fee for it is paid. All registrations expire at 12*
16 *midnight on the last day of the month posted on the registration.*
17 *All registrations issued shall be renewed as follows:*

18 (a) *On or before the first of the month preceding the month*
19 *posted on the registration, the department shall mail to each*
20 *registrant at his or her registered premises, or at any other mailing*
21 *address that the registrant has designated, an application to renew*
22 *the registration.*

23 (b) *The application to renew the registration may be filed before*
24 *the registration expires upon payment of the annual fee.*

25 (c) *For 60 days after the registration expires, the registration*
26 *may be renewed upon payment of the annual renewal fee plus a*
27 *penalty fee that shall be equal to 50 percent of the annual fee.*

28 (d) *Unless otherwise terminated, or unless renewed pursuant*
29 *to subdivision (b) or (c), a registration that is in effect on the month*
30 *posted on the registration continues in effect through 12 midnight*
31 *of the 60th day following the month posted on the registration, at*
32 *which time it is automatically canceled.*

33 (e) *On or before the 10th day preceding the cancellation of a*
34 *registration, the department shall mail a notice of cancellation to*
35 *each registrant that has not either filed an application to renew*
36 *its registration or notified the department of its intent not to do*
37 *so. Failure to mail the renewal application in accordance with*
38 *subdivision (a) or to mail the notice provided in this subdivision*
39 *shall not continue the right to a registration.*

1 (f) A registration that has been canceled pursuant to subdivision
2 (d) may be reinstated during the 30 days immediately following
3 cancellation upon payment by cashier's check or money order of
4 the annual renewal fee, plus a penalty fee that shall be equal to
5 100 percent of the annual fee. A registration that has been canceled
6 pursuant to subdivision (d) and that has not been reinstated within
7 30 days pursuant to this subdivision is automatically revoked on
8 the 31st day after the registration has been canceled.

9 (g) A renewal application shall not be deemed filed within the
10 meaning of this section unless the document itself has been actually
11 delivered to, and the required renewal fee has been paid at, any
12 office of the department during office hours, or unless both the
13 document and fee have been filed and remitted pursuant to Section
14 11003 of the Government Code.

15 26046. An application for mandatory commercial registration
16 shall include, but shall not be limited to, all of the following:

17 (a) For all applicants:

18 (1) The legal name and proposed physical addresses of the
19 mandatory commercial registrant.

20 (2) The name, address, and date of birth of each principal officer
21 and board member.

22 (3) Operating and inventory control procedures to ensure
23 security and prevent diversion.

24 (4) Detailed operating procedures for the proposed facility,
25 which shall include, but not be limited to, provisions for facility
26 and operational security, prevention of diversion, employee
27 screening, storage of medical cannabis, personnel policies, and
28 recordkeeping procedures.

29 (5) A list of all persons or entities having an ownership interest
30 other than a security interest, lien, or encumbrance on any property
31 that will be used by the applicant.

32 (6) Evidence of the legal right to occupy and use an established
33 location for the activities to be conducted if the desired registration
34 is granted consistent with the provisions of this chapter and the
35 regulations developed by the department.

36 (7) Documentation that the applicant will be in compliance with
37 all local ordinances and regulations.

38 (8) Evidence that officers and owners of the applicant
39 organization are citizens of the United States and residents of the
40 State of California.

1 (b) In addition to the requirements of subdivision (a), for
2 cultivation and processing applicants, detailed operating
3 procedures for cultivation, extraction and infusion methods,
4 transportation of products, inventory procedures, procedures for
5 quality control, and onsite testing of product for potential
6 contaminants.

7 26047. Upon receipt of an application for a registration and
8 the applicable fee, the department shall make a thorough
9 investigation to determine whether the applicant and the premises
10 for which a registration is applied qualify for the registration and
11 whether the provisions of this chapter have been complied with,
12 and shall investigate all matters connected therewith which may
13 affect the public welfare and morals. The department shall deny
14 an application for a registration if either the applicant or the
15 premises for which a registration is applied do not qualify for a
16 registration under this chapter. The department further shall deny
17 an application for a registration if issuance of that registration
18 would tend to create a law enforcement problem. The department
19 may place reasonable conditions upon registrations if grounds
20 exist for denial of the registration, and the department finds those
21 grounds may be removed by the imposition of those conditions.

22 26048. A physician shall not recommend medical cannabis to
23 a patient while the physician is a mandatory commercial registrant,
24 or an officer, director, employee, or financial beneficiary of a
25 mandatory commercial registrant.

26 26049. (a) The actions of a mandatory commercial registrant
27 or provisional registrant, its employees, and its agents, permitted
28 pursuant to a mandatory commercial registration or provisional
29 registration issued by the department or otherwise permitted by
30 this chapter, that are conducted in accordance to the requirements
31 of this chapter and regulations adopted pursuant to the authority
32 granted by this chapter, are not unlawful and shall not be an
33 offense subject to arrest, prosecution, or other sanction under state
34 or local law, or be subject to a civil fine or be a basis for seizure
35 or forfeiture of assets under state or local law.

36 (b) The actions of a person who, in good faith and upon
37 appropriate investigation, allows his or her property to be used
38 by a mandatory commercial registrant or provisional registrant,
39 its employees, and its agents, as permitted pursuant to a mandatory
40 commercial registration or provisional registration issued by the

1 *department or otherwise permitted by this chapter, are not unlawful*
2 *and shall not be an offense subject to arrest, prosecution, or other*
3 *sanction under state or local law, or be subject to a civil fine or*
4 *be a basis for seizure or forfeiture of assets under state or local*
5 *law.*

6 26050. (a) A registrant shall not cultivate, process, store,
7 manufacture, test, transport, or sell medical cannabis in the state
8 unless accurate records are kept at the registered premises of the
9 growing, processing, storing, manufacturing, testing, transporting,
10 or selling by the registrant in the state. These records shall include
11 all expenditures incurred by the registrant, provided that a
12 registrant registered to act at more than one premises may keep
13 all records at one of the registered premises. Required records
14 shall be kept for a period of three years from the date of the
15 transaction.

16 (b) The department may make any examination of the books
17 and records of any registrant and may visit and inspect the
18 premises of any registrant that the department may deem necessary
19 to perform its duties under this chapter.

20 26052. (a) This chapter shall not apply to, and shall have no
21 diminishing effect on, the rights and protections granted to a
22 patient or a primary caregiver pursuant to the Compassionate Use
23 Act of 1996.

24 (b) (1) A patient who cultivates, possesses, stores, manufactures,
25 or transports cannabis exclusively for his or her personal medical
26 use and who does not sell or distribute cannabis is not considered
27 a commercial registrant and is exempt from mandatory commercial
28 registration.

29 (2) A primary caregiver who cultivates, possesses, stores,
30 manufactures, transports, or provides cannabis exclusively for the
31 personal medical purposes of a specified qualified patient for
32 whom he or she is the primary caregiver within the meaning of
33 Section 11362.7 of the Health and Safety Code and who does not
34 sell or distribute cannabis except for compensation in full
35 compliance with subdivision (c) of Section 11362.765 of the Health
36 and Safety Code is not considered a commercial registrant and is
37 exempt from mandatory commercial registration.

38 26054. Beginning January 1, 2014, the department shall
39 provide for provisional registrations as follows:

1 (a) The department shall request that every city or county,
2 provide the department with a list of approved entities providing
3 medical cannabis to qualified patients and caregivers within the
4 city or county's jurisdiction, the location at which the entity is
5 operating, and the names of the persons who operate the entity. If
6 the jurisdiction represents that the entity has been operating in
7 compliance with local laws and regulations, the department shall
8 issue a provisional registration to the entity until the time that the
9 entity's application for mandatory commercial registration has
10 been approved or denied under this chapter, but no later than 90
11 days after the department begins accepting applications for
12 mandatory commercial registration.

13 (b) The department shall issue a provisional registration to
14 individuals and entities that the department determines were,
15 during the six months prior to January 1, 2014, regularly
16 cultivating or distributing medical cannabis collectively or
17 cooperatively in full compliance with paragraphs A and B of
18 Section IV of the Guidelines for Security and Non-Diversion of
19 Marijuana Grown for Medical Use, issued by the Department of
20 Justice in August 2008, to continue to do so until such time as the
21 registrant's application for mandatory commercial registration
22 has been approved or denied under this chapter, but no later than
23 90 days after the department begins accepting applications for
24 mandatory commercial registration. In determining compliance,
25 the department shall consider any complaints or actions made or
26 brought by a city or county against the individual or entity. To
27 qualify, provisional registrants shall be required to disclose to the
28 department the following information in writing on or before
29 January 20, 2014, in order to obtain provisional registration:

30 (1) The names, addresses, and dates of birth of each principal
31 officer, owner, or board member.

32 (2) The common street address and assessor's parcel number
33 of the property at which any cultivation activity was or is to be
34 conducted.

35 (3) For the six months prior to January 1, 2014, the quantity of
36 cannabis cultivated at a location and the quantity expected to be
37 cultivated from January 1, 2014, to June 30, 2014, inclusive. The
38 registrant shall make its records of current activity and activity
39 for the six months prior to January 1, 2014, available to the
40 department upon request.

1 (c) The department shall charge an application fee of five
2 thousand dollars (\$5,000) for each provisional registration.

3 26056. In addition to other regulations adopted by the
4 department pertaining to mandatory commercial registrants and
5 without limiting the authority of a city or a county pursuant to
6 Section 26010 or subdivision (b) of Section 26060, the department
7 shall adopt regulations regarding the minimum standards for the
8 operation of dispensaries that establish all of the following:

9 (a) Standards for labeling of products, including the name of
10 the mandatory commercial registrant from which the product was
11 obtained, and a requirement that dispensaries provide patients
12 with detailed written information about the contents of the cannabis
13 and medical cannabis products they obtain.

14 (b) Requirements for inventory control and reporting that
15 require all dispensaries to be able to demonstrate the present
16 location, amounts, and descriptions of all medical cannabis
17 products from the time of delivery to the dispensary until purchase
18 by a qualified patient or primary caregiver.

19 (c) The maximum number of dispensaries that may operate in
20 a city or county or the unincorporated areas of a county based on
21 population, taking into consideration the distances that patients
22 in rural areas may need to travel in order to reach a dispensary
23 and the availability of public transportation in both rural and
24 urban areas.

25 (d) Minimum educational and testing requirements for
26 dispensary staff, including background checks, and a requirement
27 that every dispensary maintain dedicated security staff both inside
28 and outside the dispensary.

29 (e) Maximum hours of operation for every dispensary.

30 (f) Minimum standards governing signage and advertising for
31 dispensaries.

32
33 Article 4. Enforcement
34

35 26060. (a) The department shall work in conjunction with law
36 enforcement entities throughout the state for the purpose of
37 implementing and enforcing the rules and regulations regarding
38 commercial medical cannabis and taking appropriate action
39 against businesses and individuals who fail to comply with the
40 law.

1 (b) *Nothing in this chapter shall prevent a city, county, or city*
2 *and county from enforcing a zoning ordinance or law of general*
3 *application.*

4 26062. *Except for a person identified in Section 26052, a*
5 *person shall not exercise the privilege or perform any act that a*
6 *registrant may exercise or perform under the authority of a*
7 *registration unless the person is acting pursuant to a registration,*
8 *including a provisional registration, issued pursuant to this*
9 *chapter.*

10 26063. (a) *Commencing January 1, 2015, any product*
11 *containing cannabis that is distributed, except in the case of a*
12 *primary caregiver distributing to a qualified patient, or offered*
13 *for sale shall comply with the testing and labeling requirements*
14 *established through regulation by the department.*

15 (b) *No person shall steal or fraudulently use a mandatory*
16 *commercial registrant identification certificate or registration or*
17 *other registrant's identification card or registration issued by the*
18 *department to acquire, cultivate, transport, produce, possess for*
19 *sale, sell, or distribute cannabis.*

20 (c) *No person shall counterfeit, tamper with, or fraudulently*
21 *produce an identification card or registration status.*

22 (d) *Any person who violates this section, or Section 26062, is*
23 *guilty of a misdemeanor and shall be subject to the following*
24 *penalties:*

25 (1) *For the first offense, imprisonment in a county jail for no*
26 *more than six months or a fine not to exceed one thousand dollars*
27 *(\$1,000), or both.*

28 (2) *For a second or subsequent offense, imprisonment in a*
29 *county jail for no more than one year or a fine not to exceed one*
30 *thousand dollars (\$1,000), or both.*

31 (e) *Any person who is charged, prosecuted, or subjected to a*
32 *civil penalty under this chapter shall not also be charged or*
33 *prosecuted pursuant to the Health and Safety Code for conduct*
34 *arising from the same set of facts.*

35 26064. *Any person operating an unregistered facility, building,*
36 *structure, or location where cannabis is being commercially*
37 *cultivated, manufactured, or possessed for sale in violation of this*
38 *chapter may be subject to civil penalties of up to twenty-five*
39 *thousand dollars (\$25,000) for each violation, and the department*
40 *may order the destruction of any cannabis associated with that*

1 violation. Any civil fines collected pursuant to this section shall
2 be deposited into the General Fund pursuant to Section 26028.

3 26066. The director may bring an action to enjoin a violation
4 or the threatened violation of any provision of this chapter,
5 including, but not limited to, a registrant's failure to correct
6 objectionable conditions following notice or as a result of any rule
7 promulgated pursuant to this chapter. The action shall be brought
8 in the county in which the violation occurred or is threatened to
9 occur. Any proceeding brought pursuant to this chapter shall
10 conform to the requirements of Chapter 3 (commencing with
11 Section 525) of Title 7 of Part 2 of the Code of Civil Procedure.

12 26068. (a) A state or local law enforcement agency shall
13 immediately notify the department of any arrests made for
14 violations over which the department has jurisdiction which involve
15 a registrant or registered premises. Notice shall be given within
16 10 days of the arrest. The department shall promptly cause an
17 investigation to be made as to whether grounds exist for suspension
18 or revocation of a registration of the registrant.

19 (b) The department shall not open or add an entry to a file or
20 initiate an investigation of a registrant or suspend or revoke a
21 registration in either of the following circumstances:

22 (1) Solely because the registrant or an agent acting on behalf
23 of the registrant has reported to a state or local law enforcement
24 agency that suspected controlled substance violations have taken
25 place on the registered premises.

26 (2) Solely based on activities constituting violations described
27 in a report made under paragraph (1), unless the violations
28 reported occurred with the actual knowledge and willful consent
29 of the registrant.

30 26070. Nothing in this chapter shall be construed to limit a
31 law enforcement agency's ability to investigate unlawful activity
32 in relation to a mandatory commercial registrant.

33 26072. The department shall create and maintain a searchable
34 database that will allow state and local law enforcement to verify
35 a mandatory commercial registration.

36 37 Article 5. Appeals and Judicial Review

38
39 26080. There is in the state government, in the Business,
40 Consumer Services, and Housing Agency, a Medical Cannabis

1 *Appeals Board. The Medical Cannabis Appeals Board, also*
2 *referred to as the board in this chapter, shall exercise the powers*
3 *as are vested in it by this chapter and may adopt such rules*
4 *pertaining to appeals and other matters within its jurisdiction as*
5 *may be required. The board and its duly authorized representatives*
6 *in the performance of its duties under this chapter shall have the*
7 *powers of a head of a department as set forth in Article 2*
8 *(commencing with Section 11180) of Chapter 2 of Part 1 of*
9 *Division 3 of Title 2 of the Government Code.*

10 26081. (a) Any person aggrieved by a final decision of the
11 department issuing, denying, suspending, revoking, or ordering
12 any penalty assessment against a registration for the cultivation,
13 manufacture, testing, transportation, storage, distribution, sale,
14 purchase, or possession of medical cannabis may appeal to the
15 board, which shall review the decision subject to the limitations
16 that may be imposed by the Legislature.

17 (b) No decision of the department shall become effective during
18 the period in which an appeal may be filed, and the filing of an
19 appeal shall stay the effect of the decision until such time as a final
20 order is made by the board.

21 26083. The review by the board of a decision of the department
22 shall be limited to whether:

23 (a) The department has proceeded without, or in excess of, its
24 jurisdiction.

25 (b) The department has proceeded in the manner required by
26 law.

27 (c) The decision is supported by the findings.

28 (d) The findings are supported by substantial evidence in the
29 light of the whole record.

30 (e) There is relevant evidence that, in the exercise of reasonable
31 diligence, could not have been produced or which was improperly
32 excluded at the hearing before the department.

33 26085. (a) The board shall determine the appeal upon the
34 record of the department and upon any briefs that may be filed by
35 the parties. If any party to the appeal requests to appear before
36 the board, the board may fix a time and place for argument. The
37 board shall not receive any evidence other than that contained in
38 the record of the proceedings of the department.

1 (b) Chapter 4.5 (commencing with Section 11400) of Part 1 of
2 Division 3 of Title 2 of the Government Code does not apply to
3 the determination.

4 26087. (a) Except as provided in subdivision (b), the board
5 shall enter an order either affirming or reversing the decision of
6 the department.

7 (b) If the board finds that there is relevant evidence that in the
8 exercise of reasonable diligence could not have been produced or
9 which was improperly excluded at the hearing before the
10 department, the board may enter an order remanding the matter
11 to the department for reconsideration in light of the relevant
12 evidence.

13 (c) When the board reverses a decision of the department, the
14 board may direct reconsideration in light of its order and may
15 direct the department to take further action as is specifically
16 enjoined upon it by law, but shall not limit or control in any way
17 the discretion vested by law in the department.

18 26088. Each order of the board on appeal from a decision of
19 the department shall be in writing and shall be filed by delivering
20 copies to the parties personally or in the manner prescribed by
21 Section 1013 of the Code of Civil Procedure. Each order shall
22 become final upon being filed as provided in this section, and there
23 shall be no reconsideration or rehearing by the board.

24 26090. (a) Any person affected by a final order of the board,
25 including the department, may apply to the Supreme Court or to
26 the court of appeal for the appellate district in which the
27 proceeding arose, for a writ of review of the final order. The
28 application for writ of review shall be made within 30 days after
29 filing of the final order of the board.

30 (b) No court of this state, except the Supreme Court and the
31 courts of appeal to the extent specified in this article, shall have
32 jurisdiction to review, affirm, reverse, correct, or annul any order,
33 rule, or decision of the department or to suspend, stay, or delay
34 the operation or execution of it, or to restrain, enjoin, or interfere
35 with the department in the performance of its duties, but a writ of
36 mandate shall lie from the Supreme Court or the courts of appeal
37 in any proper case.

38 (c) No decision of the department which has been appealed to
39 the board and no final order of the board shall become effective

1 *during the period in which application may be made for a writ of*
2 *review, as provided within this section.*

3 *(d) The filing of a petition for, or the pendency of, a writ of*
4 *review shall not of itself stay or suspend the operation of any order,*
5 *rule, or decision of the department, but the court before which the*
6 *petition is filed may stay or suspend, in whole or in part, the*
7 *operation of the order, rule, or decision of the department subject*
8 *to review, upon the terms and conditions which it by order directs.*

9 26091. *The writ of review shall be made returnable at a time*
10 *and place then or thereafter specified by court order and shall*
11 *direct the board to certify the whole record of the department in*
12 *the case to the court within the time specified. No new or additional*
13 *evidence shall be introduced in the court, but the cause shall be*
14 *heard on the whole record of the department as certified to by the*
15 *board.*

16 26092. *(a) The review by the court shall not extend further*
17 *than to determine, based on the whole record of the department*
18 *as certified by the board, whether:*

19 *(1) The department has proceeded without or in excess of its*
20 *jurisdiction.*

21 *(2) The department has proceeded in the manner required by*
22 *law.*

23 *(3) The decision of the department is supported by the findings.*

24 *(4) The findings in the department's decision are supported by*
25 *substantial evidence in the light of the whole record.*

26 *(5) There is relevant evidence which, in the exercise of*
27 *reasonable diligence, could not have been produced or which was*
28 *improperly excluded at the hearing before the department.*

29 *(b) Nothing in this article shall permit the court to hold a trial*
30 *de novo, to take evidence, or to exercise its independent judgment*
31 *on the evidence.*

32 26094. *The findings and conclusions of the department on*
33 *questions of fact are conclusive and final and are not subject to*
34 *review. The questions of fact shall include ultimate facts and the*
35 *findings and conclusions of the department. The board, the*
36 *department, and each party to the action or proceeding before the*
37 *board shall have the right to appear in the review proceeding.*
38 *Following the hearing, the court shall enter judgment either*
39 *affirming or reversing the decision of the department or the court*

1 *may remand the case for further proceedings before or*
2 *reconsideration by the department.*

3 26096. *The provisions of the Code of Civil Procedure relating*
4 *to writs of review shall, insofar as applicable, apply to proceedings*
5 *in the courts as provided by this article. A copy of every pleading*
6 *filed pursuant to this article shall be served on the board, the*
7 *department, and on each party who entered an appearance before*
8 *the board.*

9 26097. *Whenever any matter is pending before the board or a*
10 *court of record involving a dispute between the department and a*
11 *registrant, and the parties to the dispute agree upon a settlement*
12 *or adjustment of it, the tribunal shall, upon the stipulation by the*
13 *parties that an agreement has been reached, remand the matter*
14 *to the department.*

15
16 *Article 6. Transportation of Medical Cannabis*
17

18 26100. *To claim the protections of this chapter and to maintain*
19 *a valid mandatory commercial registration, a registrant shall ship*
20 *medical cannabis products only in response to a request for a*
21 *specific quantity and variety from a registered dispensary or*
22 *mandatory commercial registrant.*

23 26102. (a) *Prior to transporting any medical cannabis product,*
24 *a mandatory commercial registrant shall do the following:*

25 (1) *Complete a shipping manifest using a form prescribed by*
26 *the department.*

27 (2) *Securely transmit a copy of the manifest to the mandatory*
28 *commercial registrant that will receive the medical cannabis*
29 *product and to the department prior to transport.*

30 (b) *The mandatory commercial registrant shipping and the*
31 *registrant receiving shall maintain each shipping manifest and*
32 *make it available to the department upon request.*

33 26104. (a) *Transported medical cannabis products shall:*

34 (1) *Be transported only in a locked, safe and secure storage*
35 *compartment that is securely affixed to the interior of the*
36 *transporting vehicle.*

37 (2) *Not be visible from outside the vehicle.*

38 (b) *Any vehicle transporting medical cannabis products shall*
39 *travel directly from the facilities of mandatory commercial*
40 *registrant to the registrant authorized to receive the shipment.*

1 26106. (a) A mandatory commercial registrant shall staff all
2 transport vehicles with a minimum of two employees. At least one
3 delivery team member shall remain with the vehicle at all times
4 that the vehicle contains medical cannabis.

5 (b) Each delivery team member shall have access to a secure
6 form of communication by which each member can communicate
7 with personnel at the mandatory commercial registrant facility at
8 all times that the vehicle contains medical cannabis.

9 (c) Each delivery team member shall possess documentation of
10 mandatory commercial registration and a government-issued
11 identification card at all times when transporting or delivering
12 medical cannabis and shall produce it to any representative of the
13 department or law enforcement official upon request.

14 SEC. 7. Section 11362.7 of the Health and Safety Code is
15 amended to read:

16 11362.7. For purposes of this article, the following definitions
17 shall apply:

18 (a) "Attending physician" means an individual who possesses
19 a license in good standing to practice medicine or osteopathy issued
20 by the Medical Board of California or the Osteopathic Medical
21 Board of California and who has taken responsibility for an aspect
22 of the medical care, treatment, diagnosis, counseling, or referral
23 of a patient and who has ~~conducted a medical examination of~~
24 ~~performed an appropriate prior examination, found that patient~~
25 ~~before recording in the patient's medical record the physician's~~
26 ~~assessment of whether the patient has a serious medical condition~~
27 ~~and whether the medical indication, and recommends marijuana~~
28 ~~for medical use of marijuana is appropriate. purposes to treat a~~
29 ~~serious medical condition.~~

30 (b) "Department" means the State Department of ~~Health~~
31 ~~Services. Public Health.~~

32 (c) "Person with an identification card" means an individual
33 who is a qualified patient who has applied for and received a valid
34 identification card pursuant to this article.

35 (d) "Primary caregiver" means the individual, designated by a
36 qualified patient or by a person with an identification card, who
37 has consistently assumed responsibility for the housing, health, or
38 safety of that patient or person, and may include any of the
39 following:

1 (1) In any case in which a qualified patient or person with an
2 identification card receives medical care or supportive services,
3 or both, from a clinic licensed pursuant to Chapter 1 (commencing
4 with Section 1200) of Division 2, a health care facility licensed
5 pursuant to Chapter 2 (commencing with Section 1250) of Division
6 2, a residential care facility for persons with chronic life-threatening
7 illness licensed pursuant to Chapter 3.01 (commencing with Section
8 1568.01) of Division 2, a residential care facility for the elderly
9 licensed pursuant to Chapter 3.2 (commencing with Section 1569)
10 of Division 2, a hospice, or a home health agency licensed pursuant
11 to Chapter 8 (commencing with Section 1725) of Division 2, the
12 owner or operator, or no more than three employees who are
13 designated by the owner or operator, of the clinic, facility, hospice,
14 or home health agency, if designated as a primary caregiver by
15 that qualified patient or person with an identification card.

16 (2) An individual who has been designated as a primary
17 caregiver by more than one qualified patient or person with an
18 identification card, if every qualified patient or person with an
19 identification card who has designated that individual as a primary
20 caregiver resides in the same city or county as the primary
21 caregiver.

22 (3) An individual who has been designated as a primary
23 caregiver by a qualified patient or person with an identification
24 card who resides in a city or county other than that of the primary
25 caregiver, if the individual has not been designated as a primary
26 caregiver by any other qualified patient or person with an
27 identification card.

28 (e) A primary caregiver shall be at least 18 years of age, unless
29 the primary caregiver is the parent of a minor child who is a
30 qualified patient or a person with an identification card or the
31 primary caregiver is a person otherwise entitled to make medical
32 decisions under state law pursuant to Sections 6922, 7002, 7050,
33 or 7120 of the Family Code.

34 (f) "Qualified patient" means a person who is entitled to the
35 protections of Section 11362.5, but who does not have an
36 identification card issued pursuant to this article.

37 (g) "Identification card" means a document issued by the State
38 Department of *Public Health Services* that document identifies a
39 person authorized to engage in the medical use of marijuana and
40 the person's designated primary caregiver, if any.

(h) “Serious medical condition” means all of the following medical conditions:

- (1) Acquired immune deficiency syndrome (AIDS).
- (2) Anorexia.
- (3) Arthritis.
- (4) Cachexia.
- (5) Cancer.
- (6) Chronic pain.
- (7) Glaucoma.
- (8) Migraine.
- (9) Persistent muscle spasms, including, but not limited to, spasms associated with multiple sclerosis.
- (10) Seizures, including, but not limited to, seizures associated with epilepsy.
- (11) Severe nausea.
- (12) Any other chronic or persistent medical symptom that either:

(A) Substantially limits the ability of the person to conduct one or more major life activities as defined in the Americans with Disabilities Act of 1990 (Public Law 101-336).

(B) If not alleviated, may cause serious harm to the patient’s safety or physical or mental health.

(i) “Written documentation” means accurate reproductions of those portions of a patient’s medical records that have been created by the attending physician, that contain the information required by paragraph (2) of subdivision (a) of Section 11362.715, and that the patient may submit to a county health department or the county’s designee as part of an application for an identification card.

SEC. 8. Section 11362.775 of the Health and Safety Code is amended to read:

11362.775. (a) Qualified patients, persons with valid identification cards, and the designated primary caregivers of qualified patients and persons with identification cards, who associate within the State of California in order collectively or cooperatively to cultivate marijuana for medical purposes, shall not solely on the basis of that fact be subject to state criminal sanctions under Section 11357, 11358, 11359, 11360, 11366, 11366.5, or 11570.

1 (b) *This section shall remain in effect only until 90 days after*
2 *the Department of Alcoholic Beverage Control posts a notice on*
3 *its Internet Web site that it began accepting applications for*
4 *mandatory commercial registration pursuant to Article 3*
5 *(commencing with Section 26040) of Chapter 18 of Division 9 of*
6 *the Business and Professions Code, and as of that date is repealed.*

7 *SEC. 9. The provisions of this act are severable. If any*
8 *provision of this act or its application is held invalid, that invalidity*
9 *shall not affect other provisions or applications that can be given*
10 *effect without the invalid provision or application.*

11 *SEC. 10. The Legislature finds and declares that Section 3 of*
12 *this act imposes a limitation on the public's right of access to*
13 *documents in the possession of a public agency within the meaning*
14 *of Section 3 of Article I of the California Constitution. Pursuant*
15 *to that constitutional provision, the Legislature makes the following*
16 *finding to demonstrate the interest protected by this limitation and*
17 *the need for protecting that interest:*

18 *It is necessary to maintain the confidentiality of patient and*
19 *physician information provided to the Division of Medical*
20 *Cannabis Regulation and Enforcement in order to protect the*
21 *private medical information of patients who use medical cannabis*
22 *and to preserve the essential confidentiality of the physician and*
23 *patient relationship.*

24 *SEC. 11. No reimbursement is required by this act pursuant*
25 *to Section 6 of Article XIII B of the California Constitution because*
26 *the only costs that may be incurred by a local agency or school*
27 *district will be incurred because this act creates a new crime or*
28 *infraction, eliminates a crime or infraction, or changes the penalty*
29 *for a crime or infraction, within the meaning of Section 17556 of*
30 *the Government Code, or changes the definition of a crime within*
31 *the meaning of Section 6 of Article XIII B of the California*
32 *Constitution.*

33 ~~SECTION 1. The Legislature finds and declares the following:~~

34 ~~(a) The goal of a law enforcement criminal investigation is to~~
35 ~~find and apprehend the person or persons responsible for~~
36 ~~committing a crime.~~

37 ~~(b) Eyewitness identification procedure studies indicate that the~~
38 ~~criminal justice system can significantly decrease the rate of~~
39 ~~erroneous eyewitness identifications by implementing changes to~~
40 ~~identification procedures.~~

1 ~~(e) A decrease in the number of erroneous eyewitness~~
2 ~~identifications will increase public trust in the criminal justice~~
3 ~~system, which, in turn, will increase the ability of law enforcement~~
4 ~~and prosecutors to convict the guilty and protect our communities.~~

5 ~~(d) New policies and procedures, such as those recommended~~
6 ~~by the National Institute of Justice, are readily available and have~~
7 ~~proven effective in other jurisdictions. States, including New Jersey~~
8 ~~and Oregon, have recognized and adopted the importance of tested~~
9 ~~eyewitness identification procedures that are shown to increase~~
10 ~~reliability. Several local jurisdictions in California have also~~
11 ~~adopted tested eyewitness identification procedures with great~~
12 ~~success and significant cost savings.~~

13 ~~SEC. 2. Section 806 is added to the Evidence Code, to read:~~

14 ~~806. Expert testimony may be admitted regarding factors that~~
15 ~~affect the reliability of eyewitness identification, including the~~
16 ~~identification procedure, if the proponent of the evidence~~
17 ~~establishes relevancy and proper qualifications of the witness.~~

18 ~~SEC. 3. Section 686.3 is added to the Penal Code, to read:~~

19 ~~686.3. (a) Any local law enforcement agency, including, but~~
20 ~~not limited to, police departments, sheriffs, and prosecutors, may~~
21 ~~adopt regulations for conducting photo and live lineups with~~
22 ~~eyewitnesses. In adopting the regulations, those agencies are~~
23 ~~encouraged to consider all of the following procedures:~~

24 ~~(1) Prior to conducting the identification procedure, and as close~~
25 ~~in time to the incident as possible, have the eyewitness complete~~
26 ~~a standardized form describing the perpetrator of the offense.~~

27 ~~(2) If practicable, have the investigator conducting the~~
28 ~~identification procedure be a person who is not aware of which~~
29 ~~person in the identification procedure is suspected as the perpetrator~~
30 ~~of the offense.~~

31 ~~(3) Present photos used in an identification procedure~~
32 ~~sequentially, and not simultaneously.~~

33 ~~(4) Prior to any identification procedure, instruct an eyewitness~~
34 ~~of all the following:~~

35 ~~(A) The perpetrator may not be among the persons in the~~
36 ~~identification procedure.~~

37 ~~(B) The eyewitness should not feel compelled to make an~~
38 ~~identification.~~

39 ~~(C) An identification or failure to make an identification will~~
40 ~~not end the investigation.~~

1 ~~(5) If the identification procedure is being done sequentially,~~
2 ~~instruct an eyewitness of all of the following prior to the~~
3 ~~identification procedure:~~

4 ~~(A) Each photograph or person shall be viewed one at a time.~~

5 ~~(B) The photographs or persons shall be displayed in random~~
6 ~~order.~~

7 ~~(C) The eyewitness should take as much time as needed in~~
8 ~~making a decision about each photograph or person before moving~~
9 ~~to the next one.~~

10 ~~(D) All photographs or persons will be shown to the eyewitness,~~
11 ~~even if an identification is made before all photographs or persons~~
12 ~~have been viewed.~~

13 ~~(6) Compose an identification procedure so that the fillers~~
14 ~~generally fit the description of the person suspected as the~~
15 ~~perpetrator, and in the case of a photo lineup, the photograph of~~
16 ~~the person suspected as the perpetrator resemble his or her~~
17 ~~appearance at the time of the offense and does not unduly stand~~
18 ~~out.~~

19 ~~(7) If the eyewitness has previously viewed an identification~~
20 ~~procedure in connection with the identification of another person~~
21 ~~suspected of involvement in the offense, have the fillers in the~~
22 ~~lineup in which the person suspected as the perpetrator participates~~
23 ~~be different from the fillers used in any prior lineups.~~

24 ~~(8) In a live lineup, have any identification actions, such as~~
25 ~~speaking or making gestures or other movements, be performed~~
26 ~~by all lineup participants.~~

27 ~~(9) All live lineup participants shall be out of the view of the~~
28 ~~eyewitness prior to the beginning of the identification procedure.~~

29 ~~(10) Have only one suspected perpetrator included in any~~
30 ~~identification procedure.~~

31 ~~(11) Have all witnesses separated when viewing an identification~~
32 ~~procedure.~~

33 ~~(12) If the eyewitness identifies a person he or she believes to~~
34 ~~be the perpetrator, then have all of the following apply:~~

35 ~~(A) The investigator shall immediately inquire as to the~~
36 ~~eyewitness's confidence level in the accuracy of the identification.~~

37 ~~(B) No information concerning the identified person shall be~~
38 ~~given to the eyewitness prior to obtaining the eyewitness's~~
39 ~~statement of confidence level.~~

1 ~~(13) Have a written record of the identification procedure be~~
2 ~~made that includes, at a minimum, all of the following:~~

3 ~~(A) All identification and nonidentification results obtained~~
4 ~~during the identification procedure and signed by the eyewitness.~~

5 ~~(B) A statement of the eyewitness' own words regarding how~~
6 ~~certain he or she is regarding the accuracy of his or her~~
7 ~~identification and signed by him or her.~~

8 ~~(C) The names of all persons present at the identification~~
9 ~~procedure.~~

10 ~~(D) The date, time, and location of the identification procedure.~~

11 ~~(E) If the identification procedure was conducted sequentially,~~
12 ~~the order in which the photographs or persons were displayed to~~
13 ~~the eyewitness.~~

14 ~~(F) Color copies of all photographs used in a photo lineup.~~

15 ~~(G) Identification information and the sources of all photographs~~
16 ~~used in a photo lineup.~~

17 ~~(H) Identification information for all individuals used in a live~~
18 ~~lineup and a video recording of the lineup.~~

19 ~~(b) For purposes of this section, the following terms have the~~
20 ~~following meanings:~~

21 ~~(1) "Eyewitness" means a person whose identification of another~~
22 ~~person may be relevant in a criminal investigation.~~

23 ~~(2) "Filler" means either a person or a photograph of a person~~
24 ~~who is not suspected of an offense and is included in an~~
25 ~~identification procedure.~~

26 ~~(3) "Identification procedure" means either a photo lineup or a~~
27 ~~live lineup.~~

28 ~~(4) "Investigator" means the person conducting the live or photo~~
29 ~~lineup.~~

30 ~~(5) "Live lineup" means a procedure in which a group of~~
31 ~~persons, including the person suspected as the perpetrator of an~~
32 ~~offense and other persons not suspected of the offense, is displayed~~
33 ~~to an eyewitness for the purpose of determining whether the~~
34 ~~eyewitness is able to identify the suspect as the perpetrator.~~

35 ~~(6) "Photo lineup" means a procedure in which an array of~~
36 ~~photographs, including a photograph of the person suspected as~~
37 ~~the perpetrator of an offense and additional photographs of other~~
38 ~~persons not suspected of the offense, is displayed to an eyewitness~~
39 ~~for the purpose of determining whether the eyewitness is able to~~
40 ~~identify the suspect as the perpetrator.~~

1 SEC. 4. ~~Section 1127i is added to the Penal Code, to read:~~

2 ~~1127i. (a) In any criminal trial or proceeding in which a~~
3 ~~witness testifies to an identification made before trial, either by~~
4 ~~viewing photographs or in-person lineups, and where the local law~~
5 ~~enforcement agency in that jurisdiction has adopted the~~
6 ~~recommended live and photo eyewitness identification procedures~~
7 ~~listed in Section 686.3, the court shall instruct the jury as follows~~
8 ~~or admonish the jury with a substantially similar instruction:~~

9 ~~(1) The procedures listed in Section 686.3 are designed to~~
10 ~~decrease the likelihood of misidentification when the police~~
11 ~~conduct an identification procedure, such as a lineup. As jurors,~~
12 ~~you may consider evidence that police officers did or did not follow~~
13 ~~those procedures when you decide whether a witness in this case~~
14 ~~was correct or mistaken in identifying the defendant as the~~
15 ~~perpetrator of the crime.~~

16 ~~(2) Use of these procedures alone does not mean that the witness~~
17 ~~is correct or is credible, but only that police followed procedures~~
18 ~~that are designed to decrease the likelihood that the witness will~~
19 ~~make a mistake during the lineup or other identification procedure.~~

20 ~~(3) If police officers did not follow the procedures recommended~~
21 ~~in Section 686.3, consider the eyewitness identification with~~
22 ~~caution and close scrutiny. This does not mean that you may~~
23 ~~arbitrarily disregard his or her testimony, but you should give it~~
24 ~~the weight you think it deserves in the light of all the evidence in~~
25 ~~the case.~~

26 ~~(b) In any criminal proceeding or trial in which a witness~~
27 ~~testifies to an identification made before trial in a jurisdiction that~~
28 ~~has not adopted the recommended live and photo eyewitness~~
29 ~~identification procedures listed in Section 686.3, the court may,~~
30 ~~but is not required to, provide the jury with the instruction in~~
31 ~~subdivision (a) or admonish the jury with a substantially similar~~
32 ~~instruction.~~

33 ~~(c) In addition to the jury instruction required under subdivision~~
34 ~~(a) and authorized under subdivision (b), the court may, but is not~~
35 ~~required to, provide the jury with any additional instructions the~~
36 ~~court may deem necessary.~~