

**Introduced by Senator Correa**February 21, 2014

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An act to add Article 25 (commencing with Section 2525) to Chapter 5 of Division 2 of the Business and Professions Code, and to add Article 7 (commencing with Section 111657) to Chapter 6 of Part 5 of Division 104 of the Health and Safety Code, relating to medical marijuana.

## LEGISLATIVE COUNSEL'S DIGEST

SB 1262, as introduced, Correa. Medical marijuana: regulation of physicians, dispensaries, and cultivation sites.

(1) 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 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.

This bill would require the State Department of Public Health to license dispensing facilities and cultivation sites that provide, process, and grow marijuana for medical use, as specified, and would make these licenses subject to the restrictions of the local jurisdiction in which the facility operates or proposes to operate. The bill would require the department to establish standards for quality assurance testing of medical marijuana and would prohibit the use of nonorganic pesticides in any marijuana cultivation site. The bill would require licensed dispensing facilities and licensed cultivation sites to implement sufficient security measures to both deter and prevent unauthorized entrance into areas containing marijuana and theft of marijuana at those facilities, including

establishing limited access areas accessible only to authorized facility personnel, and would require these facilities to notify appropriate law enforcement authorities within 24 hours after discovering specified breaches in security. The bill would make enforcement of these provisions the responsibility of the county health departments, with oversight by the department. Violation of these provisions would be punishable by a civil fine of up to \$35,000 for each individual violation. By expanding the duties of local health officers, this bill would impose a state-mandated local program.

(2) Existing law, the Medical Practice Act, provides for licensure and regulation of physicians and surgeons by the Medical Board of California.

This bill would establish requirements for a physician and surgeon to recommend medical marijuana, including prescribed procedural and recordkeeping requirements, and would require a recommendation for medical marijuana for a minor to include a specific justification for the recommendation and why the benefit of use is more important than the possible neurological damage that could be caused by the minor using marijuana and to be approved by a board certified pediatrician. The bill would require a physician and surgeon that recommends medical marijuana to report to the board the number of recommendations issued, with supporting documentation on patient medical need.

This bill would require the board to audit a physician and surgeon who recommends medical marijuana more than 100 times in a year to ensure compliance with existing law and would require the board to establish a certification process for physicians who wish to issue medical marijuana recommendations, including a mandatory training in identifying signs of addiction and ongoing substance abuse.

Violation of these provisions would be punishable by a civil fine not to exceed \$5,000.

(3) 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, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

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

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

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

3 (a) The California Constitution grants cities and counties the  
4 authority to make and enforce, within their borders, “all local  
5 police, sanitary, and other ordinances and regulations not in conflict  
6 with the general laws.” This inherent local police power includes  
7 broad authority to determine, for purposes of public health, safety,  
8 and welfare, the appropriate uses of land within the local  
9 jurisdiction’s borders. The police power, therefore, allows each  
10 city and county to determine whether or not a medical marijuana  
11 dispensary or other facility that makes medical marijuana available  
12 may operate within its borders. This authority has been upheld by  
13 City of Riverside v. Inland Empire Patients Health & Wellness,  
14 Inc. (2013) 56 Cal.4th 729 and County of Los Angeles v. Hill  
15 (2011) 192 Cal.App.4th 861.

16 (b) If, pursuant to this authority, a city or county determines  
17 that a dispensary or other facility that makes medical marijuana  
18 available may operate within its borders, then there is a need for  
19 the state to license these dispensaries and other facilities for the  
20 purpose of adopting and enforcing protocols for training and  
21 certification of physicians who recommend the use of medical  
22 marijuana and for agricultural cultivation practices. This licensing  
23 requirement is not intended in any way nor shall it be construed  
24 to preempt local ordinances regarding the sale and use of medical  
25 marijuana, including, but not limited to, security, signage, lighting,  
26 and inspections.

27 (c) Given that the current system of all-cash transactions within  
28 the medical marijuana industry is unsustainable in the long term,  
29 there is a need to provide a monetary structure, as an alternative  
30 to the federal banking system, for the operation, regulation, and  
31 taxation of medical marijuana dispensaries.

32 (d) All of the following elements are necessary to uphold  
33 important state goals:

34 (1) Strict provisions to prevent the potential diversion of  
35 marijuana for recreational use.

36 (2) Audits to accurately track the volume of both product  
37 movement and sales.

1 (3) An effective means of restricting access to medical marijuana  
2 by minors, given the medical studies documenting marijuana’s  
3 harmful and permanent effects on the brain development of youth.

4 (4) Stricter provisions relating to physicians and their  
5 recommendation procedures in order to address widespread  
6 problems of questionable medical marijuana recommendations by  
7 physicians without a bona-fide doctor-patient relationship with  
8 the person to whom they are issuing the recommendation.

9 (e) Nothing in this act shall be construed to promote or facilitate  
10 the nonmedical, recreational possession, sale, or use of marijuana.

11 SEC. 2. Article 25 (commencing with Section 2525) is added  
12 to Chapter 5 of Division 2 of the Business and Professions Code,  
13 to read:

14  
15 Article 25. Recommending Medical Marijuana

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17 2525. (a) Prior to recommending marijuana to a patient  
18 pursuant to Article 2.5 (commencing with Section 11362.7) of  
19 Chapter 6 of Division 10 of the Health and Safety Code, a  
20 physician and surgeon shall meet all of the following requirements:

21 (1) Have a bona fide doctor-patient relationship, with medical  
22 marijuana recommendations to be made by a patient’s primary  
23 care physician or by a physician and surgeon to whom the patient  
24 is referred by their primary care physician.

25 (2) Conduct an in-person examination to establish the patient’s  
26 need for medical marijuana.

27 (3) Consult with the patient as necessary and periodically review  
28 the treatment’s efficacy.

29 (b) A physician and surgeon that recommends medical marijuana  
30 shall do all of the following:

31 (1) Address, in the recommendation, the quantity of use and  
32 method of delivery, including a discussion of side effects. If the  
33 recommended method of delivery is smoking, the recommendation  
34 shall state the reasons for selecting this method of delivery in the  
35 context of health issues created by smoking.

36 (2) Address, in the recommendation, what kind of marijuana to  
37 obtain, including high tetrahydrocannabinol (THC) levels, low  
38 THC levels, high cannabidiol (CBD) levels, low CBD levels, and  
39 explain the reason for recommending the particular strain. Under

1 no circumstances shall a physician and surgeon recommend butane  
2 hash oil.

3 (3) Maintain a system of recordkeeping that supports the  
4 decision to recommend the use of medical marijuana for individual  
5 patients.

6 (c) A recommendation for medical marijuana provided to a  
7 minor shall include a specific justification for the recommendation  
8 and why the benefit of use is more important than the possible  
9 neurological damage that could be caused by the minor using  
10 marijuana. A recommendation for a minor shall be approved by a  
11 board certified pediatrician. A recommendation for a minor shall  
12 be for high CBD marijuana and all recommendations for minors  
13 must be for nonsmoking delivery.

14 2525.1. (a) A physician and surgeon who recommends medical  
15 marijuana shall report to the California Medical Board the number  
16 of recommendations issued, with supporting documentation on  
17 patient medical need. The board shall forward these reports to the  
18 State Department of Public Health.

19 (b) A physician and surgeon who makes more than 100  
20 recommendations in a calendar year shall be audited by the  
21 California Medical Board to determine compliance with Article  
22 2.5 (commencing with Section 11362.7) of Chapter 6 of Division  
23 10 of the Health and Safety Code.

24 2525.2. The California Medical Board shall establish a  
25 certification process for physicians who wish to issue medical  
26 marijuana recommendations, including a mandatory training in  
27 identifying signs of addiction and ongoing substance abuse.

28 2525.3. In addition to all other remedies available pursuant to  
29 this chapter, violation of any provision of this article shall be  
30 punishable by a civil fine of up to five thousand dollars (\$5,000).

31 SEC. 3. Article 7 (commencing with Section 111657) is added  
32 to Chapter 6 of Part 5 of Division 104 of the Health and Safety  
33 Code, to read:

34

35 Article 7. Medical Marijuana

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37 111657. For purposes of this article, the following definitions  
38 shall apply:

39 (a) "Department" means the State Department of Public Health.

1 (b) “Licensed cultivation site” means a facility that grows or  
2 grows and processes marijuana for medical use and that is licensed  
3 pursuant to Section 111657.1.

4 (c) “Licensed dispensing facility” means a dispensary, mobile  
5 dispensary, marijuana processing facility, or other facility that  
6 provides marijuana for medical use that is licensed pursuant to  
7 Section 111657.1.

8 111657.1. (a) Except as provided in Section 11362.5 of, and  
9 Article 2.5 (commencing with Section 11362.7) of Chapter 6 of  
10 Division 10 of, the Health and Safety Code, a person shall not sell  
11 or provide marijuana other than at a licensed dispensing facility.

12 (b) Except as provided in Section 11362.5 of, and Article 2.5  
13 (commencing with Section 11362.7) of Chapter 6 of Division 10  
14 of, the Health and Safety Code, a person shall not grow or process  
15 marijuana other than at a licensed cultivation site.

16 (c) The department shall require, prior to issuing a license to a  
17 dispensing facility or a cultivation site, all of the following:

18 (1) The name of the owner or owners of the proposed facility.

19 (2) The address and telephone number of the proposed facility.

20 (3) A description of the scope of business of the proposed  
21 facility.

22 (4) A certified copy of the local jurisdiction’s approval to operate  
23 within its borders.

24 (5) A completed application, as required by the department.

25 (6) Payment of a fee, in an amount to be determined by the  
26 department not to exceed the amount necessary, but that is  
27 sufficient to cover, the actual costs of the administration of this  
28 article.

29 (7) Any other information as required by the department.

30 111657.2. The department shall, after consulting with outside  
31 entities as needed, establish standards for quality assurance testing  
32 of medical marijuana, to ensure protection against microbiological  
33 contaminants. Nonorganic pesticides shall not be used in any  
34 marijuana cultivation site, irrespective of size or location.

35 111657.3. (a) A licensed dispensing facility shall not acquire,  
36 possess, cultivate, deliver, transfer, transport, or dispense marijuana  
37 for any purpose other than those authorized by Article 2.5  
38 (commencing with Section 11362.7) of Chapter 6 of Division 10.

39 (b) A licensed dispensing facility shall not acquire marijuana  
40 plants or products except through the cultivation of marijuana by

1 that facility, if the facility is a licensed cultivation site, or another  
2 licensed cultivation site.

3 111657.4. (a) A facility licensed pursuant to this article shall  
4 implement sufficient security measures to both deter and prevent  
5 unauthorized entrance into areas containing marijuana and theft  
6 of marijuana at those facilities. These security measures shall  
7 include, but not be limited to, all of the following:

8 (1) Allow only registered qualifying patients, personal  
9 caregivers, and facility agents access to the facility.

10 (2) Prevent individuals from remaining on the premises of the  
11 facility if they are not engaging in activity expressly related to the  
12 operations of the facility.

13 (3) Establish limited access areas accessible only to authorized  
14 facility personnel.

15 (4) Store all finished marijuana in a secure, locked safe or vault  
16 and in a manner as to prevent diversion, theft, and loss.

17 (b) A facility licensed pursuant to this article shall notify  
18 appropriate law enforcement authorities within 24 hours after  
19 discovering any of the following:

20 (1) Discrepancies identified during inventory.

21 (2) Diversion, theft, loss, or any criminal activity involving the  
22 facility or a facility agent.

23 (3) The loss or unauthorized alteration of records related to  
24 marijuana, registered qualifying patients, personal caregivers, or  
25 facility agents.

26 (4) Any other breach of security.

27 (c) A licensed cultivation site shall weigh, inventory, and  
28 account for on video, all medical marijuana to be transported prior  
29 to its leaving its origination location. Within eight hours after  
30 arrival at the destination, the licensed dispensing facility shall  
31 re-weigh, re-inventory, and account for on video, all transported  
32 marijuana.

33 111657.5. (a) Enforcement of this article shall be the  
34 responsibility of the county health departments, with oversight by  
35 the department.

36 (b) An enforcement officer may enter a facility licensed pursuant  
37 to this article during the facility's hours of operation and other  
38 reasonable times to do either of the following:

1 (1) Conduct inspections, issue citations, and secure samples,  
2 photographs, or other evidence from the facility, or a facility  
3 suspected of being a dispensing facility or cultivation site.  
4 (2) Secure as evidence documents, or copies of documents,  
5 including inventories required pursuant to subdivision (c) of  
6 Section 111657.4, or any record, file, paper, process, invoice,  
7 video, or receipt for the purpose of determining compliance with  
8 this chapter.  
9 (c) A written report shall be made and a copy shall be supplied  
10 or mailed to the owner of the facility at the completion of an  
11 inspection or investigation.  
12 (d) Upon request by the department, local governments shall  
13 provide the department with reports on the number and types of  
14 facilities operating within their jurisdiction.  
15 111657.6. In addition to the provisions of this article, a license  
16 granted pursuant to this article shall be subject to the restrictions  
17 of the local jurisdiction in which the facility operates or proposes  
18 to operate. Even if a license has been granted pursuant to this  
19 article, a facility shall not operate in a local jurisdiction that  
20 prohibits the establishment of that type of business.  
21 111657.7. Violation of this provision shall be punishable by a  
22 civil fine of up to thirty-five thousand dollars (\$35,000) for each  
23 individual violation.  
24 SEC. 4. If the Commission on State Mandates determines that  
25 this act contains costs mandated by the state, reimbursement to  
26 local agencies and school districts for those costs shall be made  
27 pursuant to Part 7 (commencing with Section 17500) of Division  
28 4 of Title 2 of the Government Code.