

AMENDED IN SENATE MAY 27, 2014

AMENDED IN SENATE MAY 7, 2014

AMENDED IN SENATE APRIL 21, 2014

SENATE BILL

No. 1262

Introduced by Senator Correa

February 21, 2014

An act to add Article 25 (commencing with Section 2525) to Chapter 5 of Division 2 of, and to add Part 5 (commencing with Section 18100) to Division 7 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 amended, 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. *Existing law provides for the licensure of various professions, including locksmiths and professional fiduciaries, by the Department of Consumer Affairs.*

This bill would require the ~~State Department of Public Health~~ *Consumer Affairs* to license dispensing facilities and cultivation sites that provide, process, and grow marijuana for medical use, as specified,

including requiring a background check for license applicants, 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 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. This bill would prohibit the distribution of any form of advertising for physician recommendations for medical marijuana unless the advertisement bears a specified notice and requires that the advertisement meet specified requirements and not be fraudulent, deceitful, or misleading, as specified. Violation of these provisions would be punishable by a civil fine of up to \$35,000 for each individual violation.

(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 require the board to consult with the Center for Medical Cannabis Research on developing and adopting medical guidelines for the appropriate administration and use of marijuana.

The bill would also make it a misdemeanor for a physician and surgeon who recommends marijuana to a patient for a medical purpose to accept, solicit, or offer any remuneration from or to a licensed dispensing facility in which the physician and surgeon or his or her immediate family has a financial interest. By creating a new crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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:

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

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

25 (c) All of the following elements are necessary to uphold
26 important state goals:

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

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

31 (3) An effective means of restricting access to medical marijuana
32 by persons under 21 years of age.

33 (d) Nothing in this act shall be construed to promote or facilitate
34 the nonmedical, recreational possession, sale, or use of marijuana.

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

1 Article 25. Recommending Medical Marijuana

2
3 2525. (a) It is unlawful for a physician and surgeon who
4 recommends marijuana to a patient for a medical purpose to accept,
5 solicit, or offer any form of remuneration from or to a facility
6 licensed pursuant to Article 7 (commencing with Section 111657)
7 of Chapter 6 of Part 5 of Division 104 of the Health and Safety
8 Code if the physician and surgeon or his or her immediate family
9 have a financial interest in that facility.

10 (b) For the purposes of this section, “financial interest” shall
11 have the same meaning as in Section 650.01.

12 (c) A violation of this section shall be a misdemeanor.

13 2525.1. The board shall consult with the California Marijuana
14 Research Program, known as the Center for Medicinal Cannabis
15 Research, authorized pursuant to Section 11362.9 of the Health
16 and Safety Code, on developing and adopting medical guidelines
17 for the appropriate administration and use of marijuana.

18 *SEC. 3. Part 5 (commencing with Section 18100) is added to*
19 *Division 7 of the Business and Professions Code, to read:*

20
21 *PART 5. MEDICAL MARIJUANA*

22
23 *18100. For purposes of this article, the following definitions*
24 *shall apply:*

25 (a) *“Department” means the Department of Consumer Affairs.*

26 (b) *“Licensed cultivation site” means a facility that grows or*
27 *grows and processes marijuana for medical use and that is licensed*
28 *pursuant to Section 18101.*

29 (c) *“Licensed dispensing facility” means a dispensary, mobile*
30 *dispensary, marijuana processing facility, or other facility that*
31 *provides marijuana for medical use that is licensed pursuant to*
32 *Section 18101.*

33 *18101. (a) Except as provided in Section 11362.5 of, and*
34 *Article 2.5 (commencing with Section 11362.7) of Chapter 6 of*
35 *Division 10 of, the Health and Safety Code, a person shall not sell*
36 *or provide marijuana other than at a licensed dispensing facility.*

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

- 1 (c) *The department shall require, prior to issuing a license to*
2 *a dispensing facility or a cultivation site, all of the following:*
- 3 (1) *The name of the owner or owners of the proposed facility.*
4 (2) *The address and telephone number of the proposed facility.*
5 (3) *A description of the scope of business of the proposed*
6 *facility.*
7 (4) *A certified copy of the local jurisdiction's approval to*
8 *operate within its borders.*
9 (5) *A completed application, as required by the department.*
10 (6) *Payment of a fee, in an amount to be determined by the*
11 *department not to exceed the amount necessary, but that is*
12 *sufficient to cover, the actual costs of the administration of this*
13 *part.*
14 (7) (A) *An applicant's fingerprint images and related*
15 *information required by the Department of Justice for the purpose*
16 *of obtaining information as to the existence and content of a record*
17 *of state and federal convictions and arrests, and information as*
18 *to the existence and content of a record of state and federal*
19 *convictions and arrests for which the Department of Justice*
20 *establishes that the person is free on bail, or on his or her own*
21 *recognizance, pending trial or appeal.*
22 (B) *The Department of Justice shall forward the fingerprint*
23 *images and related information received pursuant to subparagraph*
24 *(A) to the Federal Bureau of Investigation and request a federal*
25 *summary of criminal information. The Department of Justice shall*
26 *review the information returned from the Federal Bureau of*
27 *Investigation and compile and disseminate a response to the*
28 *department.*
29 (C) *The Department of Justice shall charge a fee sufficient to*
30 *cover the reasonable cost of processing the requests described in*
31 *this paragraph.*
32 (D) *The department may deny a license based on a past criminal*
33 *conviction if the crime is substantially related to the qualifications,*
34 *functions, or duties of the business for which the license will be*
35 *issued.*
36 (8) *Any other information as required by the department.*
37 18102. (a) *A licensed dispensing facility shall not acquire,*
38 *possess, cultivate, deliver, transfer, transport, or dispense*
39 *marijuana for any purpose other than those authorized by Article*

1 2.5 (commencing with Section 11362.7) of Chapter 6 of Division
2 10 of the Health and Safety Code.

3 (b) A licensed dispensing facility shall not acquire marijuana
4 plants or products except through the cultivation of marijuana by
5 that facility, if the facility is a licensed cultivation site, or another
6 licensed cultivation site.

7 18103. (a) A person shall not distribute any form of advertising
8 for physician recommendations for medical marijuana in
9 California unless the advertisement bears the following notice to
10 consumers:

11
12 *NOTICE TO CONSUMERS: The Compassionate Use Act of*
13 *1996 ensures that seriously ill Californians have the right to obtain*
14 *and use marijuana for medical purposes where medical use is*
15 *deemed appropriate and has been recommended by a physician*
16 *who has determined that the person's health would benefit from*
17 *the use of marijuana. Physicians are licensed and regulated by*
18 *the Medical Board of California and arrive at the decision to make*
19 *this recommendation in accordance with accepted standards of*
20 *medical responsibility.*

21
22 (b) Advertising for physician recommendations for medical
23 marijuana shall meet all requirements of Section 651. Price
24 advertising shall not be fraudulent, deceitful, or misleading,
25 including statements or advertisements of bait, discounts,
26 premiums, gifts, or statements of a similar nature.

27 18104. (a) A facility licensed pursuant to this part shall
28 implement sufficient security measures to both deter and prevent
29 unauthorized entrance into areas containing marijuana and theft
30 of marijuana at those facilities. These security measures shall
31 include, but not be limited to, all of the following:

32 (1) Allow only qualifying patients, the patient's primary
33 caregiver, and facility agents access to the facility.

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

37 (3) Establish limited access areas accessible only to authorized
38 facility personnel.

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

1 (b) A facility licensed pursuant to this part shall notify
2 appropriate law enforcement authorities within 24 hours after
3 discovering any of the following:

- 4 (1) Discrepancies identified during inventory.
- 5 (2) Diversion, theft, loss, or any criminal activity involving the
6 facility or a facility agent.
- 7 (3) The loss or unauthorized alteration of records related to
8 marijuana, registered qualifying patients, personal caregivers, or
9 facility agents.
- 10 (4) Any other breach of security.

11 (c) A licensed cultivation site shall weigh, inventory, and
12 account for on video, all medical marijuana to be transported
13 prior to its leaving its origination location. Within eight hours
14 after arrival at the destination, the licensed dispensing facility
15 shall reweigh, reinventory, and account for on video, all
16 transported marijuana.

17 18105. In addition to the provisions of this part, a license
18 granted pursuant to this part shall be subject to the restrictions of
19 the local jurisdiction in which the facility operates or proposes to
20 operate. Even if a license has been granted pursuant to this part,
21 a facility shall not operate in a local jurisdiction that prohibits the
22 establishment of that type of business.

23 18106. Violation of this part shall be punishable by a civil fine
24 of up to thirty-five thousand dollars (\$35,000) for each individual
25 violation.

26 18107. Nothing in this part shall prevent a city or other local
27 governing body from taking action as specified in Section 11362.83
28 of the Health and Safety Code.

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

32
33 **Article 7. Medical Marijuana**

34
35 111657. For purposes of this article, the following definitions
36 shall apply:

- 37 (a) "Department" means the State Department of Public Health.
- 38 (b) "Licensed cultivation site" means a facility that grows or
39 grows and processes marijuana for medical use and that is licensed
40 pursuant to Section 111657.1.

1 (e) ~~“Licensed dispensing facility” means a dispensary, mobile~~
2 ~~dispensary, marijuana processing facility, or other facility that~~
3 ~~provides marijuana for medical use that is licensed pursuant to~~
4 ~~Section 111657.1.~~

5 ~~111657.1. (a) Except as provided in Section 11362.5 of, and~~
6 ~~Article 2.5 (commencing with Section 11362.7) of Chapter 6 of~~
7 ~~Division 10 of, the Health and Safety Code, a person shall not sell~~
8 ~~or provide marijuana other than at a licensed dispensing facility.~~

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

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

- 15 ~~(1) The name of the owner or owners of the proposed facility.~~
16 ~~(2) The address and telephone number of the proposed facility.~~
17 ~~(3) A description of the scope of business of the proposed~~
18 ~~facility.~~
19 ~~(4) A certified copy of the local jurisdiction’s approval to operate~~
20 ~~within its borders.~~
21 ~~(5) A completed application, as required by the department.~~
22 ~~(6) Payment of a fee, in an amount to be determined by the~~
23 ~~department not to exceed the amount necessary, but that is~~
24 ~~sufficient to cover, the actual costs of the administration of this~~
25 ~~article.~~

26 ~~(7) (A) An applicant’s fingerprint images and related~~
27 ~~information required by the Department of Justice for the purpose~~
28 ~~of obtaining information as to the existence and content of a record~~
29 ~~of state and federal convictions and arrests and information as to~~
30 ~~the existence and content of a record of state and federal~~
31 ~~convictions and arrests for which the Department of Justice~~
32 ~~establishes that the person is free on bail, or on his or her own~~
33 ~~recognizance, pending trial or appeal.~~

34 ~~(B) The Department of Justice shall forward the fingerprint~~
35 ~~images and related information received pursuant to subparagraph~~
36 ~~(A) to the Federal Bureau of Investigation and request a federal~~
37 ~~summary of criminal information. The Department of Justice shall~~
38 ~~review the information returned from the Federal Bureau of~~
39 ~~Investigation and compile and disseminate a response to the~~
40 ~~department.~~

1 ~~(C) The Department of Justice shall charge a fee sufficient to~~
2 ~~cover the reasonable cost of processing the requests described in~~
3 ~~this paragraph.~~

4 ~~(D) The department may deny a license based on a past criminal~~
5 ~~conviction if the crime is substantially related to the qualifications,~~
6 ~~functions, or duties of the business for which the license will be~~
7 ~~issued.~~

8 ~~(8) Any other information as required by the department.~~

9 ~~111657.2. (a) A licensed dispensing facility shall not acquire,~~
10 ~~possess, cultivate, deliver, transfer, transport, or dispense marijuana~~
11 ~~for any purpose other than those authorized by Article 2.5~~
12 ~~(commencing with Section 11362.7) of Chapter 6 of Division 10.~~

13 ~~(b) A licensed dispensing facility shall not acquire marijuana~~
14 ~~plants or products except through the cultivation of marijuana by~~
15 ~~that facility, if the facility is a licensed cultivation site, or another~~
16 ~~licensed cultivation site.~~

17 ~~111657.3. (a) A person shall not distribute any form of~~
18 ~~advertising for physician recommendations for medical marijuana~~
19 ~~in California unless the advertisement bears the following notice~~
20 ~~to consumers:~~

21
22 ~~NOTICE TO CONSUMERS: The Compassionate Use Act of~~
23 ~~1996 ensures that seriously ill Californians have the right to obtain~~
24 ~~and use marijuana for medical purposes where medical use is~~
25 ~~deemed appropriate and has been recommended by a physician~~
26 ~~who has determined that the person’s health would benefit from~~
27 ~~the use of marijuana. Physicians are licensed and regulated by the~~
28 ~~Medical Board of California and arrive at the decision to make~~
29 ~~this recommendation in accordance with accepted standards of~~
30 ~~medical responsibility.~~

31
32 ~~(b) Advertising for physician recommendations for medical~~
33 ~~marijuana shall meet all requirements of Section 651 of the~~
34 ~~Business and Professions Code. Price advertising shall not be~~
35 ~~fraudulent, deceitful, or misleading, including statements or~~
36 ~~advertisements of bait, discount, premiums, gifts, or statements of~~
37 ~~a similar nature.~~

38 ~~111657.4. (a) A facility licensed pursuant to this article shall~~
39 ~~implement sufficient security measures to both deter and prevent~~
40 ~~unauthorized entrance into areas containing marijuana and theft~~

1 of marijuana at those facilities. These security measures shall
2 include, but not be limited to, all of the following:

3 (1) Allow only qualifying patients, the patient's primary
4 caregiver, and facility agents access to the facility.

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

8 (3) Establish limited access areas accessible only to authorized
9 facility personnel.

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

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

15 (1) Discrepancies identified during inventory.

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

18 (3) The loss or unauthorized alteration of records related to
19 marijuana, registered qualifying patients, personal caregivers, or
20 facility agents.

21 (4) Any other breach of security.

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

28 111657.5. In addition to the provisions of this article, a license
29 granted pursuant to this article shall be subject to the restrictions
30 of the local jurisdiction in which the facility operates or proposes
31 to operate. Even if a license has been granted pursuant to this
32 article, a facility shall not operate in a local jurisdiction that
33 prohibits the establishment of that type of business.

34 111657.6. Violation of this article shall be punishable by a
35 civil fine of up to thirty-five thousand dollars (\$35,000) for each
36 individual violation.

37 111657.7. Nothing in this article shall prevent a city or other
38 local governing body from taking action as specified in Section
39 11362.83.

1 SEC. 4. No reimbursement is required by this act pursuant to
2 Section 6 of Article XIII B of the California Constitution because
3 the only costs that may be incurred by a local agency or school
4 district will be incurred because this act creates a new crime or
5 infraction, eliminates a crime or infraction, or changes the penalty
6 for a crime or infraction, within the meaning of Section 17556 of
7 the Government Code, or changes the definition of a crime within
8 the meaning of Section 6 of Article XIII B of the California
9 Constitution.

O