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**AB-1126 Cannabis: citation and fine.** (2023-2024)

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**Assembly Bill No. 1126**

**CHAPTER 563**

An act to add Section 26031.6 to the Business and Professions Code, and to amend Section 34016 of the Revenue and Taxation Code, relating to cannabis.

[ Approved by Governor October 08, 2023. Filed with Secretary of State October 08, 2023. ]

**LEGISLATIVE COUNSEL'S DIGEST**

AB 1126, Lackey. Cannabis: citation and fine.

The Control, Regulate and Tax Adult Use of Marijuana Act (AUMA), an initiative measure approved as Proposition 64 at the November 8, 2016, statewide general election, authorizes a person who obtains a state license under AUMA to engage in commercial adult-use cannabis activity pursuant to that license and applicable local ordinances. The Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), among other things, consolidates the licensure and regulation of commercial medicinal and adult-use cannabis activities under the jurisdiction of the Department of Cannabis Control. Existing law authorizes certain employees of the California Department of Tax and Fee Administration (CDTFA) or a peace officer to enter and inspect a place at which cannabis or cannabis products are sold, cultivate, or stored and authorizes the CDTFA or a law enforcement agency to seize cannabis or cannabis products in certain circumstances, such as if the person is unlicensed, among others. Existing law makes refusal or failure to allow an inspection a misdemeanor and a violation of the Cannabis Tax Law, generally a misdemeanor.

Under existing law, the Department of Cannabis Control is authorized to issue a citation to a licensee or unlicensed person for any act or omission that violates or has violated any provision of specified statutes or regulations. Existing law authorizes the department to assess an administrative fine not to exceed \$5,000 per violation by a licensee and \$30,000 per violation by an unlicensed person.

This bill would make the possession of the universal symbol in connection with a commercial activity a violation, as described, and would make each individual package, label, advertisement, or other object bearing the universal symbol a separate violation. The bill would require a person using or possessing the universal symbol in connection with a commercial activity to maintain and produce records that the use or possession is in connection with licensed commercial activity. The bill would make a package, label, advertisement, or other document or object of any kind bearing the universal symbol contraband and require it to be seized and summarily forfeited. The bill would authorize the person from whom a package, label, advertisement, or other document or object is seized to petition for return of the object, as specified. The bill would make an exception for the educational, informational, or other noncommercial use or possession of the universal symbol. The bill would expand the places and items authorized for certain employees of the CDTFA or a peace officer to inspect and seize to include any place where any package, label, advertisement, or other document or object of any kind bearing the universal symbol are sold or stored. By expanding the locations authorized for entry and inspection, the bill expands the scope of a crime and imposes 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 Local Program: yes

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## THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

**SECTION 1.** Section 26031.6 is added to the Business and Professions Code, to read:

**26031.6.** (a) It is a violation of this division for a person to use or possess the universal symbol described in paragraph (7) of subdivision (c) of Section 26130 in connection with commercial activity other than commercial cannabis activity licensed under this division. For purposes of this section, use or possession of the universal symbol in connection with commercial activity includes, but is not limited to, possession of any package, label, or advertisement of any kind bearing the universal symbol, whether or not that package, label, or advertisement is affixed to, or otherwise associated with, cannabis or cannabis products.

(b) A person using or possessing the universal symbol in connection with commercial activity shall do both of the following:

(1) Maintain records establishing that the use or possession is in connection with commercial cannabis activity licensed pursuant to this division.

(2) Produce those records upon demand of a peace officer, an employee of the department, or an employee of the California Department of Tax and Fee Administration.

(c) Each individual package, label, advertisement, or other document or object of any kind bearing the universal symbol in violation of this section shall constitute a separate violation of this section.

(d) (1) A package, label, advertisement, or other document or object of any kind bearing the universal symbol in violation of this section is contraband and shall be seized and summarily forfeited to the state, subject to subdivision (e). A peace officer or an employee of the department may summarily seize such contraband.

(2) Failure to maintain or produce records as required pursuant to subdivision (b) in connection with a package, label, advertisement, or other document or object of any kind bearing the universal symbol shall establish that the package, label, advertisement, or other document or object is contraband for purposes of this subdivision.

(e) A person from whom a package, label, advertisement, or other document or object is seized pursuant to subdivision (d) may petition the superior court of the county in which the seizure occurred within 10 days of the seizure to seek the return of the package, label, advertisement, or other document or object. The petitioner shall bear the burden of proving, by a preponderance of the evidence, that the package, label, advertisement, or other document or object was not used or possessed in connection with commercial activity other than commercial cannabis activity licensed pursuant to this division.

(f) This section does not prohibit the educational, informational, or other noncommercial use or possession of the universal symbol.

**SEC. 2.** Section 34016 of the Revenue and Taxation Code is amended to read:

**34016.** (a) Any peace officer or department employee granted limited peace officer status pursuant to paragraph (6) of subdivision (a) of Section 830.11 of the Penal Code, upon presenting appropriate credentials, is authorized to enter any place as described in paragraph (2) and to conduct inspections in accordance with the following paragraphs, inclusive.

(1) Inspections shall be performed in a reasonable manner and at times that are reasonable under the circumstances, taking into consideration the normal business hours of the place to be entered.

(2) Inspections may be at any place at which cannabis or cannabis products are sold to purchasers, cultivated, or stored, at any site where evidence of activities involving evasion of tax may be discovered, or at any place where any package, label, advertisement, or other document or object of any kind bearing the universal symbol as described in paragraph (7) of subdivision (c) of Section 26130 of the Business and Professions Code are sold or stored in violation of Section 26031.6 of the Business and Professions Code.

(3) Inspections shall be conducted no more than once in a 24-hour period.

(b) Any person who fails or refuses to allow an inspection shall be guilty of a misdemeanor. Each offense shall be punished by a fine not to exceed five thousand dollars (\$5,000), or imprisonment not exceeding one year in a county jail, or both the fine and

imprisonment. The court shall order any fines assessed be deposited in the California Cannabis Tax Fund.

(c) (1) (A) The department or a law enforcement agency may seize cannabis or cannabis products from a person who possesses, stores, owns, or has made a retail sale of those cannabis or cannabis products if any of the following apply:

(i) Until January 1, 2023, the cannabis or cannabis products are without evidence of tax payment.

(ii) The cannabis or cannabis products are not contained in secure packaging.

(iii) The person is an unlicensed person specified in paragraph (1) of subdivision (a) of Section 34015.1.

(iv) The cannabis or cannabis products were not reported in the track and trace system, as specified in subdivision (b) of Section 34015.1.

(B) The department may seize any package, label, advertisement, or other document or object of any kind bearing the universal symbol in violation of Section 26031.6 of the Business and Professions Code and deemed contraband. Any package, label, advertisement, or other document or object seized by the department pursuant to this paragraph shall be deemed forfeited and the department shall comply with the procedures set forth in Sections 30436 to 30449, inclusive.

(C) Any cannabis or cannabis products seized by a law enforcement agency or the department shall be deemed forfeited and the department shall comply with the procedures set forth in Sections 30436 through 30449, inclusive.

(2) Any seizures authorized pursuant to paragraph (1) of this subdivision are in addition to any criminal or civil penalties that may be imposed by law, including subdivision (e) of this section.

(d) Any person who renders a false or fraudulent report is guilty of a misdemeanor and subject to a fine not to exceed one thousand dollars (\$1,000) for each offense.

(e) Any violation of any provisions of this part, except as otherwise provided, is a misdemeanor and is punishable as such.

(f) All moneys remitted to the department under this part shall be credited to the California Cannabis Tax Fund.

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