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Amendment

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Offered by:

SEN. MCKINNEY, 28th Dist.

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To: House Bill No. 5389

File No. 597

Cal. No. 430

"AN ACT CONCERNING THE PALLIATIVE USE OF MARIJUANA."

1 After the last section, add the following and renumber sections and
2 internal references accordingly:

3 "Sec. 501. Subsections (a) to (c), inclusive, of section 14-227a of the
4 2012 supplement to the general statutes are repealed and the following
5 is substituted in lieu thereof (*Effective October 1, 2012*):

6 (a) No person shall operate a motor vehicle while under the
7 influence of intoxicating liquor or any drug or both. A person commits
8 the offense of operating a motor vehicle while under the influence of
9 intoxicating liquor or any drug or both if such person operates a motor
10 vehicle (1) while under the influence of intoxicating liquor or any drug
11 or both, [or] (2) while such person has an elevated blood alcohol
12 content, or (3) while such person has an elevated blood
13 tetrahydrocannabinol content. For the purposes of this section,
14 "elevated blood alcohol content" means a ratio of alcohol in the blood
15 of such person that is eight-hundredths of one per cent or more of

16 alcohol, by weight, except that if such person is operating a
17 commercial motor vehicle, "elevated blood alcohol content" means a
18 ratio of alcohol in the blood of such person that is four-hundredths of
19 one per cent or more of alcohol, by weight; [.] "elevated blood
20 tetrahydrocannabinol content" means five nanograms or more of
21 tetrahydrocannabinol per milliliter of blood of such person; and
22 "motor vehicle" includes a snowmobile and all-terrain vehicle, as those
23 terms are defined in section 14-379.

24 (b) Except as provided in subsection (c) of this section, in any
25 criminal prosecution for violation of subsection (a) of this section,
26 evidence respecting the amount of alcohol or drug in the defendant's
27 blood or urine at the time of the alleged offense, as shown by a
28 chemical analysis of the defendant's breath, blood or urine shall be
29 admissible and competent provided: (1) The defendant was afforded a
30 reasonable opportunity to telephone an attorney prior to the
31 performance of the test and consented to the taking of the test upon
32 which such analysis is made; (2) a true copy of the report of the test
33 result was mailed to or personally delivered to the defendant within
34 twenty-four hours or by the end of the next regular business day, after
35 such result was known, whichever is later; (3) the test was performed
36 by or at the direction of a police officer according to methods and with
37 equipment approved by the Department of Emergency Services and
38 Public Protection and was performed in accordance with the
39 regulations adopted under subsection (d) of this section; (4) the device
40 used for such test was checked for accuracy in accordance with the
41 regulations adopted under subsection (d) of this section; (5) an
42 additional chemical test of the same type was performed at least ten
43 minutes after the initial test was performed or, if requested by the
44 police officer for reasonable cause, an additional chemical test of a
45 different type was performed to detect the presence of a drug or drugs
46 other than or in addition to alcohol, provided the results of the initial
47 test shall not be inadmissible under this subsection if reasonable efforts
48 were made to have such additional test performed in accordance with
49 the conditions set forth in this subsection and such additional test was

50 not performed or was not performed within a reasonable time, or the
51 results of such additional test are not admissible for failure to meet a
52 condition set forth in this subsection; and (6) evidence is presented that
53 the test was commenced within two hours of operation. In any
54 prosecution under this section it shall be a rebuttable presumption that
55 the results of such chemical analysis establish the ratio of alcohol or the
56 tetrahydrocannabinol content, as the case may be, in the blood of the
57 defendant at the time of the alleged offense, except that if the results of
58 the additional test indicate that the ratio of alcohol in the blood of such
59 defendant is ten-hundredths of one per cent or less of alcohol, by
60 weight, and is higher than the results of the first test, evidence shall be
61 presented that demonstrates that the test results and the analysis
62 thereof accurately indicate the blood alcohol content at the time of the
63 alleged offense.

64 (c) In any prosecution for a violation of subdivision (1) of subsection
65 (a) of this section, reliable evidence respecting the amount of alcohol or
66 the tetrahydrocannabinol content in the defendant's blood or urine at
67 the time of the alleged offense, as shown by a chemical analysis of the
68 defendant's blood, breath or urine, otherwise admissible under
69 subsection (b) of this section, shall be admissible only at the request of
70 the defendant.

71 Sec. 502. Section 14-227b of the general statutes is repealed and the
72 following is substituted in lieu thereof (*Effective October 1, 2012*):

73 (a) Any person who operates a motor vehicle in this state shall be
74 deemed to have given such person's consent to a chemical analysis of
75 such person's blood, breath or urine and, if such person is a minor,
76 such person's parent or parents or guardian shall also be deemed to
77 have given their consent.

78 (b) If any such person, having been placed under arrest for
79 operating a motor vehicle while under the influence of intoxicating
80 liquor or any drug or both, and thereafter, after being apprised of such
81 person's constitutional rights, having been requested to submit to a

82 blood, breath or urine test at the option of the police officer, having
83 been afforded a reasonable opportunity to telephone an attorney prior
84 to the performance of such test and having been informed that such
85 person's license or nonresident operating privilege may be suspended
86 in accordance with the provisions of this section if such person refuses
87 to submit to such test, or if such person submits to such test and the
88 results of such test indicate that such person has an elevated blood
89 alcohol content or elevated blood tetrahydrocannabinol content, and
90 that evidence of any such refusal shall be admissible in accordance
91 with subsection (e) of section 14-227a and may be used against such
92 person in any criminal prosecution, refuses to submit to the designated
93 test, the test shall not be given; provided, if the person refuses or is
94 unable to submit to a blood test, the police officer shall designate the
95 breath or urine test as the test to be taken. The police officer shall make
96 a notation upon the records of the police department that such officer
97 informed the person that such person's license or nonresident
98 operating privilege may be suspended if such person refused to submit
99 to such test or if such person submitted to such test and the results of
100 such test indicated that such person had an elevated blood alcohol
101 content or elevated blood tetrahydrocannabinol content, as the case
102 may be.

103 (c) If the person arrested refuses to submit to such test or analysis or
104 submits to such test or analysis, commenced within two hours of the
105 time of operation, and the results of such test or analysis indicate that
106 such person has an elevated blood alcohol content or elevated blood
107 tetrahydrocannabinol content, the police officer, acting on behalf of the
108 Commissioner of Motor Vehicles, shall immediately revoke and take
109 possession of the motor vehicle operator's license or, if such person is a
110 nonresident, suspend the nonresident operating privilege of such
111 person, for a twenty-four-hour period. The police officer shall prepare
112 a report of the incident and shall mail or otherwise transmit in
113 accordance with this subsection the report and a copy of the results of
114 any chemical test or analysis to the Department of Motor Vehicles
115 within three business days. The report shall contain such information

116 as prescribed by the Commissioner of Motor Vehicles and shall be
117 subscribed and sworn to under penalty of false statement as provided
118 in section 53a-157b by the arresting officer. If the person arrested
119 refused to submit to such test or analysis, the report shall be endorsed
120 by a third person who witnessed such refusal. The report shall set forth
121 the grounds for the officer's belief that there was probable cause to
122 arrest such person for a violation of subsection (a) of section 14-227a₂
123 as amended by this act, and shall state that such person had refused to
124 submit to such test or analysis when requested by such police officer to
125 do so or that such person submitted to such test or analysis,
126 commenced within two hours of the time of operation, and the results
127 of such test or analysis indicated that such person had an elevated
128 blood alcohol content or elevated blood tetrahydrocannabinol content,
129 as the case may be. The Commissioner of Motor Vehicles may accept a
130 police report under this subsection that is prepared and transmitted as
131 an electronic record, including electronic signature or signatures,
132 subject to such security procedures as the commissioner may specify
133 and in accordance with the provisions of sections 1-266 to 1-286,
134 inclusive. In any hearing conducted pursuant to the provisions of
135 subsection (g) of this section, it shall not be a ground for objection to
136 the admissibility of a police report that it is an electronic record
137 prepared by electronic means.

138 (d) If the person arrested submits to a blood or urine test at the
139 request of the police officer, and the specimen requires laboratory
140 analysis in order to obtain the test results, the police officer shall not
141 take possession of the motor vehicle operator's license of such person
142 or, except as provided in this subsection, follow the procedures
143 subsequent to taking possession of the operator's license as set forth in
144 subsection (c) of this section. If the test results indicate that such
145 person has an elevated blood alcohol content or elevated blood
146 tetrahydrocannabinol content, the police officer, immediately upon
147 receipt of the test results, shall notify the Commissioner of Motor
148 Vehicles and submit to the commissioner the written report required
149 pursuant to subsection (c) of this section.

150 (e) (1) Except as provided in subdivision (2) of this subsection, upon
151 receipt of such report, the Commissioner of Motor Vehicles may
152 suspend any operator's license or nonresident operating privilege of
153 such person effective as of a date certain, which date shall be not later
154 than thirty days after the date such person received notice of such
155 person's arrest by the police officer. Any person whose operator's
156 license or nonresident operating privilege has been suspended in
157 accordance with this subdivision shall automatically be entitled to a
158 hearing before the commissioner to be held in accordance with the
159 provisions of chapter 54 and prior to the effective date of the
160 suspension. The commissioner shall send a suspension notice to such
161 person informing such person that such person's operator's license or
162 nonresident operating privilege is suspended as of a date certain and
163 that such person is entitled to a hearing prior to the effective date of
164 the suspension and may schedule such hearing by contacting the
165 Department of Motor Vehicles not later than seven days after the date
166 of mailing of such suspension notice.

167 (2) If the person arrested (A) is involved in an accident resulting in a
168 fatality, or (B) has previously had such person's operator's license or
169 nonresident operating privilege suspended under the provisions of
170 section 14-227a, as amended by this act, during the ten-year period
171 preceding the present arrest, upon receipt of such report, the
172 Commissioner of Motor Vehicles may suspend any operator's license
173 or nonresident operating privilege of such person effective as of the
174 date specified in a notice of such suspension to such person. Any
175 person whose operator's license or nonresident operating privilege has
176 been suspended in accordance with this subdivision shall
177 automatically be entitled to a hearing before the commissioner, to be
178 held in accordance with the provisions of chapter 54. The
179 commissioner shall send a suspension notice to such person informing
180 such person that such person's operator's license or nonresident
181 operating privilege is suspended as of the date specified in such
182 suspension notice, and that such person is entitled to a hearing and
183 may schedule such hearing by contacting the Department of Motor

184 Vehicles not later than seven days after the date of mailing of such
185 suspension notice. Any suspension issued under this subdivision shall
186 remain in effect until such suspension is affirmed or such operator's
187 license or nonresident operating privilege is reinstated in accordance
188 with subsections (f) and (h) of this section.

189 (f) If such person does not contact the department to schedule a
190 hearing, the commissioner shall affirm the suspension contained in the
191 suspension notice for the appropriate period specified in subsection (i)
192 or (j) of this section.

193 (g) If such person contacts the department to schedule a hearing, the
194 department shall assign a date, time and place for the hearing, which
195 date shall be prior to the effective date of the suspension, except that,
196 with respect to a person whose operator's license or nonresident
197 operating privilege is suspended in accordance with subdivision (2) of
198 subsection (e) of this section, such hearing shall be scheduled not later
199 than thirty days after such person contacts the department. At the
200 request of such person or the hearing officer and upon a showing of
201 good cause, the commissioner may grant one or more continuances.
202 The hearing shall be limited to a determination of the following issues:
203 (1) Did the police officer have probable cause to arrest the person for
204 operating a motor vehicle while under the influence of intoxicating
205 liquor or any drug or both; (2) was such person placed under arrest; (3)
206 did such person refuse to submit to such test or analysis or did such
207 person submit to such test or analysis, commenced within two hours of
208 the time of operation, and the results of such test or analysis indicated
209 that such person had an elevated blood alcohol content or elevated
210 blood tetrahydrocannabinol content, as the case may be; and (4) was
211 such person operating the motor vehicle. In the hearing, the results of
212 the test or analysis shall be sufficient to indicate the ratio of alcohol or
213 tetrahydrocannabinol content in the blood of such person at the time of
214 operation, provided such test was commenced within two hours of the
215 time of operation. The fees of any witness summoned to appear at the
216 hearing shall be the same as provided by the general statutes for
217 witnesses in criminal cases. Notwithstanding the provisions of

218 subsection (a) of section 52-143, any subpoena summoning a police
219 officer as a witness shall be served not less than seventy-two hours
220 prior to the designated time of the hearing.

221 (h) If, after such hearing, the commissioner finds on any one of the
222 said issues in the negative, the commissioner shall reinstate such
223 license or operating privilege. If, after such hearing, the commissioner
224 does not find on any one of the said issues in the negative or if such
225 person fails to appear at such hearing, the commissioner shall affirm
226 the suspension contained in the suspension notice for the appropriate
227 period specified in subsection (i) or (j) of this section. The
228 commissioner shall render a decision at the conclusion of such hearing
229 and send a notice of the decision by bulk certified mail to such person.
230 The notice of such decision sent by bulk certified mail to the address of
231 such person as shown by the records of the commissioner shall be
232 sufficient notice to such person that such person's operator's license or
233 nonresident operating privilege is reinstated or suspended, as the case
234 may be.

235 (i) Except as provided in subsection (j) of this section, the
236 commissioner shall suspend the operator's license or nonresident
237 operating privilege of a person who did not contact the department to
238 schedule a hearing, who failed to appear at a hearing, or against
239 whom, as the result of a hearing held by the commissioner pursuant to
240 subsection (h) of this section, as of the effective date contained in the
241 suspension notice, for a period of: (1) (A) Except as provided in
242 subparagraph (B) of this subdivision, ninety days, if such person
243 submitted to a test or analysis and the results of such test or analysis
244 indicated that such person had an elevated blood alcohol content or
245 elevated blood tetrahydrocannabinol content, as the case may be, (B)
246 one hundred twenty days, if such person submitted to a test or
247 analysis and the results of such test or analysis indicated that the ratio
248 of alcohol in the blood of such person was sixteen-hundredths of one
249 per cent or more of alcohol, by weight, or the tetrahydrocannabinol
250 content in the blood of such person was five nanograms or more of
251 tetrahydrocannabinol per milliliter of blood, or (C) six months if such

252 person refused to submit to such test or analysis, (2) if such person has
253 previously had such person's operator's license or nonresident
254 operating privilege suspended under this section, (A) except as
255 provided in subparagraph (B) of this subdivision, nine months if such
256 person submitted to a test or analysis and the results of such test or
257 analysis indicated that such person had an elevated blood alcohol
258 content or elevated blood tetrahydrocannabinol content, as the case
259 may be, (B) ten months if such person submitted to a test or analysis
260 and the results of such test or analysis indicated that the ratio of
261 alcohol in the blood of such person was sixteen-hundredths of one per
262 cent or more of alcohol, by weight, or the tetrahydrocannabinol
263 content in the blood of such person was five nanograms or more of
264 tetrahydrocannabinol per milliliter of blood, and (C) one year if such
265 person refused to submit to such test or analysis, and (3) if such person
266 has two or more times previously had such person's operator's license
267 or nonresident operating privilege suspended under this section, (A)
268 except as provided in subparagraph (B) of this subdivision, two years
269 if such person submitted to a test or analysis and the results of such
270 test or analysis indicated that such person had an elevated blood
271 alcohol content or elevated blood tetrahydrocannabinol content, as the
272 case may be, (B) two and one-half years if such person submitted to a
273 test or analysis and the results of such test or analysis indicated that
274 the ratio of alcohol in the blood of such person was sixteen-hundredths
275 of one per cent or more of alcohol, by weight, or the
276 tetrahydrocannabinol content in the blood of such person was five
277 nanograms or more of tetrahydrocannabinol per milliliter of blood,
278 and (C) three years if such person refused to submit to such test or
279 analysis.

280 (j) The commissioner shall suspend the operator's license or
281 nonresident operating privilege of a person under twenty-one years of
282 age who did not contact the department to schedule a hearing, who
283 failed to appear at a hearing or against whom, after a hearing the
284 commissioner held pursuant to subsection (h) of this section, as of the
285 effective date contained in the suspension notice or the date the

286 commissioner renders a decision whichever is later, for twice the
287 appropriate period of time specified in subsection (i) of this section,
288 except that, in the case of a person who is sixteen or seventeen years of
289 age at the time of the alleged offense, the period of suspension for a
290 first offense shall be one year if such person submitted to a test or
291 analysis and the results of such test or analysis indicated that such
292 person had an elevated blood alcohol content or elevated blood
293 tetrahydrocannabinol content, as the case may be, or eighteen months
294 if such person refused to submit to such test or analysis.

295 (k) Notwithstanding the provisions of subsections (b) to (j),
296 inclusive, of this section, any police officer who obtains the results of a
297 chemical analysis of a blood sample taken from an operator of a motor
298 vehicle involved in an accident who suffered or allegedly suffered
299 physical injury in such accident, or is otherwise deemed by a police
300 officer to require treatment or observation at a hospital, shall notify the
301 Commissioner of Motor Vehicles and submit to the commissioner a
302 written report if such results indicate that such person had an elevated
303 blood alcohol content or elevated blood tetrahydrocannabinol content,
304 as the case may be, and if such person was arrested for violation of
305 section 14-227a, as amended by this act, in connection with such
306 accident. The report shall be made on a form approved by the
307 commissioner containing such information as the commissioner
308 prescribes, and shall be subscribed and sworn to under penalty of false
309 statement, as provided in section 53a-157b, by the police officer. The
310 commissioner may, after notice and an opportunity for hearing, which
311 shall be conducted by a hearing officer on behalf of the commissioner
312 in accordance with chapter 54, suspend the motor vehicle operator's
313 license or nonresident operating privilege of such person for the
314 appropriate period of time specified in subsection (i) or (j) of this
315 section. Each hearing conducted under this subsection shall be limited
316 to a determination of the following issues: (1) Whether the police
317 officer had probable cause to arrest the person for operating a motor
318 vehicle while under the influence of intoxicating liquor or drug or
319 both; (2) whether such person was placed under arrest; (3) whether

320 such person was operating the motor vehicle; (4) whether the results of
321 the analysis of the blood of such person indicate that such person had
322 an elevated blood alcohol content or elevated blood
323 tetrahydrocannabinol content, as the case may be; and (5) whether the
324 blood sample was obtained in accordance with conditions for
325 admissibility and competence as evidence as set forth in subsection (k)
326 of section 14-227a, as amended by this act. If, after such hearing, the
327 commissioner finds on any one of the said issues in the negative, the
328 commissioner shall not impose a suspension. The fees of any witness
329 summoned to appear at the hearing shall be the same as provided by
330 the general statutes for witnesses in criminal cases, as provided in
331 section 52-260.

332 (l) The provisions of this section shall apply with the same effect to
333 the refusal by any person to submit to an additional chemical test as
334 provided in subdivision (5) of subsection (b) of section 14-227a, as
335 amended by this act.

336 (m) The provisions of this section shall not apply to any person
337 whose physical condition is such that, according to competent medical
338 advice, such test would be inadvisable.

339 (n) The state shall pay the reasonable charges of any physician who,
340 at the request of a municipal police department, takes a blood sample
341 for purposes of a test under the provisions of this section.

342 (o) For the purposes of this section: [, "elevated]

343 (1) "Elevated blood alcohol content" means [(1)] (A) a ratio of
344 alcohol in the blood of such person that is eight-hundredths of one per
345 cent or more of alcohol, by weight, [(2)] (B) if such person is operating
346 a commercial motor vehicle, a ratio of alcohol in the blood of such
347 person that is four-hundredths of one per cent or more of alcohol, by
348 weight, or [(3)] (C) if such person is less than twenty-one years of age,
349 a ratio of alcohol in the blood of such person that is two-hundredths of
350 one per cent or more of alcohol, by weight; and

351 (2) "Elevated blood tetrahydrocannabinol content" means five
352 nanograms or more of tetrahydrocannabinol per milliliter of blood of
353 such person.

354 (p) The Commissioner of Motor Vehicles shall adopt regulations, in
355 accordance with chapter 54, to implement the provisions of this
356 section."

This act shall take effect as follows and shall amend the following sections:		
Sec. 501	<i>October 1, 2012</i>	14-227a(a) to (c)
Sec. 502	<i>October 1, 2012</i>	14-227b