

By: Watson

S.B. No. 865

A BILL TO BE ENTITLED

AN ACT

1
2 relating to authorizing the possession, use, cultivation,
3 distribution, transportation, and delivery of medical cannabis for
4 medical use by patients with certain qualifying medical conditions
5 and the licensing of medical cannabis dispensing organizations;
6 authorizing fees.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

8 SECTION 1. Subtitle C, Title 6, Health and Safety Code, is
9 amended by adding Chapter 488 to read as follows:

10 CHAPTER 488. USE OF CANNABIS FOR MEDICAL PURPOSES

11 SUBCHAPTER A. GENERAL PROVISIONS

12 Sec. 488.001. DEFINITIONS. In this chapter:

13 (1) "Department" means the Department of Public
14 Safety.

15 (2) "Director" means the public safety director of the
16 department.

17 (3) "Dispensing organization" means an organization
18 licensed by the department to cultivate, process, and dispense
19 medical cannabis to a patient for whom medical use is recommended
20 under Chapter 169A, Occupations Code.

21 (4) "Medical cannabis" and "medical use" have the
22 meanings assigned by Section 169A.001, Occupations Code.

23 SUBCHAPTER B. DUTIES OF DEPARTMENT

24 Sec. 488.051. DUTIES OF DEPARTMENT. The department shall

1 administer this chapter.

2 Sec. 488.052. RULES. (a) The director shall adopt any
3 rules necessary for the administration and enforcement of this
4 chapter.

5 (b) The director shall adopt rules imposing fees under this
6 chapter in amounts sufficient to cover the cost of administering
7 this chapter.

8 Sec. 488.053. LICENSING OF DISPENSING ORGANIZATIONS AND
9 REGISTRATION OF CERTAIN ASSOCIATED INDIVIDUALS. (a) The
10 department shall:

11 (1) issue or renew a license under Subchapter C to
12 operate as a dispensing organization to each applicant who
13 satisfies the requirements established under this chapter for
14 licensure as a dispensing organization; and

15 (2) register directors, managers, and employees under
16 Subchapter D of each dispensing organization.

17 (b) The department shall enforce compliance of license
18 holders and registrants and shall adopt procedures for suspending
19 or revoking a license or registration issued under this chapter and
20 for renewing a license or registration issued under this chapter.

21 Sec. 488.054. MEDICAL USE REGISTRY. (a) The department
22 shall establish and maintain a secure online medical use registry
23 that contains:

24 (1) the name of each physician who registers as the
25 physician recommending medical use for a patient under Section
26 169A.003, Occupations Code, and the name and date of birth of the
27 patient; and

1 (2) the amount of medical cannabis dispensed to each
2 patient.

3 (b) The department shall ensure the registry:

4 (1) is designed to prevent more than one physician
5 from registering as the physician recommending medical use for a
6 single patient;

7 (2) is accessible to law enforcement agencies and
8 dispensing organizations for the purpose of verifying whether a
9 patient is one for whom medical use is recommended under Chapter
10 169A, Occupations Code; and

11 (3) allows a physician recommending medical use under
12 Chapter 169A, Occupations Code, to input safety and efficacy data
13 derived from the treatment of patients for whom medical use is
14 recommended.

15 SUBCHAPTER C. LICENSING TO OPERATE AS DISPENSING ORGANIZATION

16 Sec. 488.101. LICENSE REQUIRED. A person may not operate as
17 a dispensing organization without a license issued by the
18 department under this subchapter.

19 Sec. 488.102. ELIGIBILITY FOR LICENSE. An applicant for a
20 license to operate as a dispensing organization is eligible for the
21 license if:

22 (1) as determined by the department, the applicant
23 possesses:

24 (A) the technical and technological ability to
25 cultivate and produce medical cannabis;

26 (B) the ability to secure:

27 (i) the resources and personnel necessary

1 to operate as a dispensing organization; and

2 (ii) premises reasonably located to allow
3 patients listed on the medical use registry access to the
4 organization through existing infrastructure;

5 (C) the ability to maintain accountability for
6 the raw materials, the finished product, and any by-products used
7 or produced in the cultivation or production of medical cannabis to
8 prevent unlawful access to or unlawful diversion or possession of
9 those materials, products, or by-products; and

10 (D) the financial ability to maintain operations
11 for not less than two years from the date of application;

12 (2) each director, manager, or employee of the
13 applicant is registered under Subchapter D; and

14 (3) the applicant satisfies any additional criteria
15 determined by the director to be necessary to safely implement this
16 chapter.

17 Sec. 488.103. APPLICATION. (a) A person may apply for an
18 initial or renewal license under this subchapter by submitting a
19 form prescribed by the department along with the application fee in
20 an amount set by the director.

21 (b) The application must include the name and address of the
22 applicant, the name and address of each of the applicant's
23 directors, managers, and employees, and any other information
24 considered necessary by the department to determine the applicant's
25 eligibility for the license.

26 Sec. 488.104. ISSUANCE, RENEWAL, OR DENIAL OF LICENSE. (a)
27 The department shall issue or renew a license under this subchapter

1 only if:

2 (1) the department determines the applicant meets the
3 eligibility requirements described by Section 488.102; and

4 (2) issuance or renewal of the license is necessary to
5 ensure reasonable statewide access to, and the availability of,
6 medical cannabis for patients registered in the medical use
7 registry and for whom medical cannabis is recommended under Chapter
8 169A, Occupations Code.

9 (b) If the department denies the issuance or renewal of a
10 license under Subsection (a), the applicant is entitled to a
11 hearing. The department shall give written notice of the grounds
12 for denial to the applicant at least 30 days before the date of the
13 hearing.

14 (c) A license issued or renewed under this section expires
15 on the second anniversary of the date of issuance or renewal, as
16 applicable.

17 Sec. 488.105. CRIMINAL HISTORY BACKGROUND CHECK. (a) An
18 applicant for the issuance or renewal of a license under this
19 subchapter shall provide the department with the applicant's name
20 and the name of each of the applicant's directors, managers, and
21 employees.

22 (b) Before a dispensing organization under this subchapter
23 hires a manager or employee for the organization, the license
24 holder must provide the department with the name of the prospective
25 manager or employee. The license holder may not transfer the
26 license to another person before that prospective applicant and the
27 applicant's directors, managers, and employees pass a criminal

1 history background check and are registered as required by
2 Subchapter D.

3 (c) The department shall conduct a criminal history
4 background check on each individual whose name is provided to the
5 department under Subsection (a) or (b). The director by rule shall:

6 (1) determine the manner by which an individual is
7 required to submit a complete set of fingerprints to the department
8 for purposes of a criminal history background check under this
9 section; and

10 (2) establish criteria for determining whether an
11 individual passes the criminal history background check for the
12 purposes of this section.

13 (d) After conducting a criminal history background check
14 under this section, the department shall notify the relevant
15 applicant or organization and the individual who is the subject of
16 the criminal history background check as to whether the individual
17 passed the criminal history background check.

18 Sec. 488.106. DUTY TO MAINTAIN ELIGIBILITY. Each license
19 holder under this subchapter must maintain compliance at all times
20 with the eligibility requirements described by Section 488.102.

21 Sec. 488.107. DUTIES RELATING TO DISPENSING MEDICAL
22 CANNABIS. (a) Before dispensing medical cannabis to a person for
23 whom medical use is recommended under Chapter 169A, Occupations
24 Code, the dispensing organization must verify that the person is
25 listed as a patient in the medical use registry.

26 (b) After dispensing medical cannabis to a patient for whom
27 medical use is recommended under Chapter 169A, Occupations Code,

1 the dispensing organization shall record in the medical use
2 registry the form and quantity of the medical cannabis dispensed
3 and the date and time of dispensation.

4 Sec. 488.108. LICENSE SUSPENSION OR REVOCATION. (a) The
5 department may at any time suspend or revoke a license issued under
6 this subchapter if the department determines that the license
7 holder has not maintained the eligibility requirements described by
8 Section 488.102 or has failed to comply with a duty imposed under
9 this chapter.

10 (b) The director shall give written notice to the license
11 holder of a license suspension or revocation under this section and
12 the grounds for the suspension or revocation. The notice must be
13 sent by certified mail, return receipt requested.

14 (c) After suspending or revoking a license issued under this
15 subchapter, the director may seize or place under seal all medical
16 cannabis and drug paraphernalia owned or possessed by the
17 dispensing organization. If the director orders the revocation of
18 the license, a disposition may not be made of the seized or sealed
19 medical cannabis or drug paraphernalia until the time for
20 administrative appeal of the order has elapsed or until all appeals
21 have been concluded. When a revocation order becomes final, all
22 medical cannabis and drug paraphernalia may be forfeited to the
23 state as provided under Subchapter E, Chapter 481.

24 (d) Chapter 2001, Government Code, applies to a proceeding
25 under this section.

26 SUBCHAPTER D. REGISTRATION OF CERTAIN INDIVIDUALS

27 Sec. 488.151. REGISTRATION REQUIRED. (a) An individual who

1 is a director, manager, or employee of a dispensing organization
2 must apply for and obtain a registration under this section.

3 (b) An applicant for a registration under this section must:

4 (1) be at least 18 years of age;

5 (2) submit a complete set of fingerprints to the
6 department in the manner required by department rule; and

7 (3) pass a fingerprint-based criminal history
8 background check as required by Section 488.105.

9 (c) A registration expires on the second anniversary of the
10 date of the registration's issuance, unless suspended or revoked
11 under rules adopted under this chapter.

12 SUBCHAPTER E. DUTIES OF COUNTIES AND MUNICIPALITIES

13 Sec. 488.201. COUNTIES AND MUNICIPALITIES MAY NOT PROHIBIT
14 MEDICAL CANNABIS. A municipality, county, or other political
15 subdivision may not enact, adopt, or enforce a rule, ordinance,
16 order, resolution, or other regulation that prohibits the
17 cultivation, production, dispensing, or possession of medical
18 cannabis, as authorized by this chapter.

19 SECTION 2. Subtitle B, Title 3, Occupations Code, is
20 amended by adding Chapter 169A to read as follows:

21 CHAPTER 169A. AUTHORITY TO RECOMMEND MEDICAL CANNABIS TO CERTAIN
22 PATIENTS WITH QUALIFYING MEDICAL CONDITIONS

23 Sec. 169A.001. DEFINITIONS. In this chapter:

24 (1) "Department" means the Department of Public
25 Safety.

26 (2) "Medical cannabis" means the plant Cannabis sativa
27 L., and any part of that plant or any compound, manufacture, salt,

1 derivative, mixture, preparation, resin, or oil of that plant that
2 contains:

3 (A) not more than 5 percent by weight of
4 tetrahydrocannabinols; and

5 (B) not less than 10 percent by weight of
6 cannabidiol.

7 (3) "Medical use" means the ingestion by a means of
8 administration other than by smoking of a recommended amount of
9 medical cannabis by a person for whom medical use is recommended
10 under this chapter.

11 (4) "Qualifying medical condition" means cancer,
12 autism, or post-traumatic stress disorder.

13 (5) "Smoking" means burning or igniting a substance
14 and inhaling the smoke.

15 Sec. 169A.002. RECOMMENDATION OF MEDICAL USE. (a) A
16 physician may recommend medical use in accordance with this chapter
17 for a patient with a qualifying medical condition.

18 (b) A physician who recommends medical use for a patient
19 must:

20 (1) comply with the registration requirements of
21 Section 169A.003; and

22 (2) certify to the department that:

23 (A) the patient is diagnosed with a qualifying
24 medical condition; and

25 (B) the physician has determined that the risk of
26 medical use by the patient is reasonable in light of the potential
27 benefit for the patient.

1 Sec. 169A.003. RECOMMENDING PHYSICIAN REGISTRATION.

2 Before a physician may recommend medical use for a patient under
3 this chapter, the physician must register as the recommending
4 physician for that patient in the medical use registry maintained
5 by the department under Section 488.054, Health and Safety
6 Code. The physician's registration must indicate:

7 (1) the physician's name; and

8 (2) the patient's name and date of birth.

9 Sec. 169A.004. PATIENT TREATMENT PLAN. A physician who
10 recommends medical use for a patient under this chapter must
11 maintain a patient treatment plan that indicates:

12 (1) a plan for monitoring the patient's symptoms; and

13 (2) a plan for monitoring indicators of tolerance or
14 reaction to medical cannabis.

15 SECTION 3. Section 161.001(c), Family Code, is amended to
16 read as follows:

17 (c) A court may not make a finding under Subsection (b) and
18 order termination of the parent-child relationship based on
19 evidence that the parent:

20 (1) homeschooled the child;

21 (2) is economically disadvantaged;

22 (3) has been charged with a nonviolent misdemeanor
23 offense other than:

24 (A) an offense under Title 5, Penal Code;

25 (B) an offense under Title 6, Penal Code; or

26 (C) an offense that involves family violence, as
27 defined by Section 71.004 of this code;

1 (4) provided or administered low-THC cannabis to a
2 child for whom the low-THC cannabis was prescribed under Chapter
3 169, Occupations Code; ~~or~~

4 (5) provided or administered medical cannabis to a
5 child for whom medical cannabis was recommended under Chapter 169A,
6 Occupations Code; or

7 (6) declined immunization for the child for reasons of
8 conscience, including a religious belief.

9 SECTION 4. Section 262.116(a), Family Code, is amended to
10 read as follows:

11 (a) The Department of Family and Protective Services may not
12 take possession of a child under this subchapter based on evidence
13 that the parent:

- 14 (1) homeschooled the child;
- 15 (2) is economically disadvantaged;
- 16 (3) has been charged with a nonviolent misdemeanor
17 offense other than:

- 18 (A) an offense under Title 5, Penal Code;
- 19 (B) an offense under Title 6, Penal Code; or
- 20 (C) an offense that involves family violence, as

21 defined by Section 71.004 of this code;

22 (4) provided or administered low-THC cannabis to a
23 child for whom the low-THC cannabis was prescribed under Chapter
24 169, Occupations Code; ~~or~~

25 (5) provided or administered medical cannabis to a
26 child for whom medical cannabis was recommended under Chapter 169A,
27 Occupations Code; or

1 (6) declined immunization for the child for reasons of
2 conscience, including a religious belief.

3 SECTION 5. Section 481.062(a), Health and Safety Code, is
4 amended to read as follows:

5 (a) The following persons may possess a controlled
6 substance under this chapter without registering with the Federal
7 Drug Enforcement Administration:

8 (1) an agent or employee of a manufacturer,
9 distributor, analyzer, or dispenser of the controlled substance who
10 is registered with the Federal Drug Enforcement Administration and
11 acting in the usual course of business or employment;

12 (2) a common or contract carrier, a warehouseman, or
13 an employee of a carrier or warehouseman whose possession of the
14 controlled substance is in the usual course of business or
15 employment;

16 (3) an ultimate user or a person in possession of the
17 controlled substance under a lawful order of a practitioner or in
18 lawful possession of the controlled substance if it is listed in
19 Schedule V;

20 (4) an officer or employee of this state, another
21 state, a political subdivision of this state or another state, or
22 the United States who is lawfully engaged in the enforcement of a
23 law relating to a controlled substance or drug or to a customs law
24 and authorized to possess the controlled substance in the discharge
25 of the person's official duties;

26 (5) if the substance is tetrahydrocannabinol or one of
27 its derivatives:

1 (A) a Department of State Health Services
2 official, a medical school researcher, or a research program
3 participant possessing the substance as authorized under
4 Subchapter G; or

5 (B) a practitioner or an ultimate user possessing
6 the substance as a participant in a federally approved therapeutic
7 research program that the commissioner has reviewed and found, in
8 writing, to contain a medically responsible research protocol; ~~or~~

9 (6) a dispensing organization licensed under Chapter
10 487 that possesses low-THC cannabis; or

11 (7) a dispensing organization licensed under Chapter
12 488 that possesses medical cannabis.

13 SECTION 6. Sections 481.111(e) and (f), Health and Safety
14 Code, are amended to read as follows:

15 (e) Sections 481.120, 481.121, 481.122, and 481.125 do not
16 apply to a person who engages in the acquisition, possession,
17 production, cultivation, delivery, or disposal of a raw material
18 used in or by-product created by the production or cultivation of
19 low-THC cannabis or medical cannabis if the person:

20 (1) for an offense involving possession only of
21 marihuana or drug paraphernalia, is a patient for whom low-THC
22 cannabis is prescribed under Chapter 169, Occupations Code, or the
23 patient's legal guardian, and the person possesses low-THC cannabis
24 obtained under a valid prescription from a dispensing organization;
25 ~~or~~

26 (2) is a director, manager, or employee of a low-THC
27 cannabis dispensing organization and the person, solely in

1 performing the person's regular duties at the organization,
2 acquires, possesses, produces, cultivates, dispenses, or disposes
3 of:

4 (A) in reasonable quantities, any low-THC
5 cannabis or raw materials used in or by-products created by the
6 production or cultivation of low-THC cannabis; or

7 (B) any drug paraphernalia used in the
8 acquisition, possession, production, cultivation, delivery, or
9 disposal of low-THC cannabis;

10 (3) for an offense involving possession only of
11 marihuana or drug paraphernalia, is a patient for whom medical use
12 is recommended under Chapter 169A, Occupations Code; or

13 (4) is a director, manager, or employee of a medical
14 cannabis dispensing organization and the person, solely in
15 performing the person's regular duties at the organization,
16 acquires, possesses, produces, cultivates, dispenses, or disposes
17 of:

18 (A) in reasonable quantities, any medical
19 cannabis or raw materials used in or by-products created by the
20 production or cultivation of medical cannabis; or

21 (B) any drug paraphernalia used in the
22 acquisition, possession, production, cultivation, delivery, or
23 disposal of medical cannabis.

24 (f) For purposes of Subsection (e):

25 (1) [~~"Dispensing organization" has the meaning~~
26 ~~assigned by Section 487.001.~~

27 [~~2~~] "Low-THC cannabis" has the meaning assigned by

1 Section 169.001, Occupations Code.

2 (2) "Low-THC cannabis dispensing organization" means
3 a dispensing organization as defined by Section 487.001.

4 (3) "Medical cannabis" and "medical use" have the
5 meanings assigned by Section 169A.001, Occupations Code.

6 (4) "Medical cannabis dispensing organization" means
7 a dispensing organization as defined by Section 488.001.

8 SECTION 7. Section 551.004, Occupations Code, is amended by
9 amending Subsection (a) and adding Subsection (a-1) to read as
10 follows:

11 (a) This subtitle does not apply to:

12 (1) a practitioner licensed by the appropriate state
13 board who supplies a patient of the practitioner with a drug in a
14 manner authorized by state or federal law and who does not operate a
15 pharmacy for the retailing of prescription drugs;

16 (2) a member of the faculty of a college of pharmacy
17 recognized by the board who is a pharmacist and who performs the
18 pharmacist's services only for the benefit of the college;

19 (3) a person who procures prescription drugs for
20 lawful research, teaching, or testing and not for resale;

21 (4) a home and community support services agency that
22 possesses a dangerous drug as authorized by Section 142.0061,
23 142.0062, or 142.0063, Health and Safety Code; ~~[or]~~

24 (5) a low-THC cannabis dispensing organization~~[, as~~
25 ~~defined by Section 487.001, Health and Safety Code,~~] that
26 cultivates, processes, and dispenses low-THC cannabis, as
27 authorized by a license issued under Subchapter C, Chapter 487,

1 Health and Safety Code, to a patient listed in the
2 compassionate-use registry established under that chapter; or
3 (6) a medical cannabis dispensing organization that
4 cultivates, processes, and dispenses medical cannabis, as
5 authorized by a license issued under Subchapter C, Chapter 488,
6 Health and Safety Code, to a patient listed in the medical use
7 registry established under that chapter.

8 (a-1) For purposes of Subsections (a)(5) and (6):

9 (1) "Low-THC cannabis dispensing organization" means
10 a dispensing organization as defined by Section 487.001, Health and
11 Safety Code.

12 (2) "Medical cannabis dispensing organization" means
13 a dispensing organization as defined by Section 488.001, Health and
14 Safety Code.

15 SECTION 8. Not later than January 1, 2020, the public safety
16 director of the Department of Public Safety shall adopt rules as
17 required to implement, administer, and enforce Chapter 488, Health
18 and Safety Code, as added by this Act, including rules to establish
19 the medical use registry required by that chapter.

20 SECTION 9. This Act takes effect immediately if it receives
21 a vote of two-thirds of all the members elected to each house, as
22 provided by Section 39, Article III, Texas Constitution. If this
23 Act does not receive the vote necessary for immediate effect, this
24 Act takes effect September 1, 2019.