86R6330 LHC-D

By:  Dominguez H.B. No. 4045

A BILL TO BE ENTITLED

AN ACT

relating to authorizing the possession, use, cultivation, distribution, transportation, and delivery of medical cannabis for medical use by patients with certain eligible medical conditions and the licensing of dispensing organizations; changing a fee.

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

ARTICLE 1. CHANGES TO CHAPTER 169, OCCUPATIONS CODE

SECTION 1.01.  The heading to Chapter 169, Occupations Code, is amended to read as follows:

CHAPTER 169. AUTHORITY TO PRESCRIBE MEDICAL [~~LOW-THC~~] CANNABIS TO CERTAIN PATIENTS FOR COMPASSIONATE USE

SECTION 1.02.  Section 169.001, Occupations Code, is amended by adding Subdivision (2-a) and amending Subdivisions (3) and (4) to read as follows:

(2-a)  "Eligible medical condition" means any medical condition for which a physician determines that medical cannabis is a medically necessary treatment.

(3)  "Medical [~~"Low-THC~~] cannabis" means the plant Cannabis sativa L., and any part of that plant or any compound, manufacture, salt, derivative, mixture, preparation, resin, or oil of that plant [~~that contains:~~

[~~(A)  not more than 0.5 percent by weight of tetrahydrocannabinols; and~~

[~~(B)  not less than 10 percent by weight of cannabidiol~~].

(4)  "Medical use" means the ingestion by a means of administration other than by smoking of a prescribed amount of medical [~~low-THC~~] cannabis by a person for whom medical [~~low-THC~~] cannabis is prescribed under this chapter.

SECTION 1.03.  Section 169.003, Occupations Code, is amended to read as follows:

Sec. 169.003.  PRESCRIPTION OF MEDICAL [~~LOW-THC~~] CANNABIS. A physician [~~described by Section 169.002~~] may prescribe medical [~~low-THC~~] cannabis to alleviate a patient's eligible medical condition [~~seizures~~] if:

(1)  the patient is a permanent resident of the state;

(2)  the physician complies with the registration requirements of Section 169.004; and

(3)  the physician certifies to the department that:

(A)  the patient is diagnosed with an eligible medical condition [~~intractable epilepsy~~];

(B)  the physician determines the risk of the [~~medical~~] use of medical [~~low-THC~~] cannabis by the patient is reasonable in light of the potential benefit for the patient; and

(C)  a second physician [~~qualified to prescribe low-THC cannabis under Section 169.002~~] has concurred with the determination under Paragraph (B), and the second physician's concurrence is recorded in the patient's medical record.

SECTION 1.04.  Sections 169.004 and 169.005, Occupations Code, are amended to read as follows:

Sec. 169.004.  MEDICAL  [~~LOW-THC~~] CANNABIS PRESCRIBER REGISTRATION.  Before a physician [~~qualified to prescribe low-THC cannabis under Section 169.002~~] may prescribe or renew a prescription for medical [~~low-THC~~] cannabis for a patient under this chapter, the physician must register as the prescriber for that patient in the compassionate-use registry maintained by the department under Section 487.054, Health and Safety Code.  The physician's registration must indicate:

(1)  the physician's name;

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

(3)  the nature of the patient's eligible medical condition;

(4)  the dosage prescribed to the patient;

(5) [~~(4)~~]  the means of administration ordered for the patient; and

(6) [~~(5)~~]  the total amount of medical [~~low-THC~~] cannabis required to fill the patient's prescription.

Sec. 169.005.  PATIENT TREATMENT PLAN. A physician [~~described by Section 169.002~~] who prescribes medical [~~low-THC~~] cannabis for a patient's medical use under this chapter must maintain a patient treatment plan that indicates:

(1)  the dosage, means of administration, and planned duration of treatment for the medical [~~low-THC~~] cannabis;

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

(3)  a plan for monitoring indicators of tolerance or reaction to medical [~~low-THC~~] cannabis.

SECTION 1.05.  The following provisions are repealed:

(1)  Section 169.001(2), Occupations Code; and

(2)  Section 169.002, Occupations Code.

ARTICLE 2. CHANGES TO CHAPTER 487, HEALTH AND SAFETY CODE

SECTION 2.01.  Section 487.001, Health and Safety Code, is amended by amending Subdivision (3) and adding Subdivision (3-a) to read as follows:

(3)  "Dispensing organization" means an organization licensed by the department to cultivate, process, and dispense medical [~~low-THC~~] cannabis to a patient for whom medical [~~low-THC~~] cannabis is prescribed under Chapter 169, Occupations Code.

(3-a)  "Eligible medical condition" and "medical cannabis" have the meanings assigned by Section 169.001, Occupations Code.

SECTION 2.02.  Section 487.052, Health and Safety Code, is amended to read as follows:

Sec. 487.052.  RULES. (a) The director shall adopt any rules necessary for the administration and enforcement of this chapter, including rules imposing fees under this chapter in amounts sufficient to cover the cost of administering this chapter.

(b)  The fees adopted under Subsection (a) may not exceed $30,000 for the issuance or renewal of a license.

SECTION 2.03.  Section 487.054, Health and Safety Code, is amended to read as follows:

Sec. 487.054.  COMPASSIONATE-USE REGISTRY. (a) The department shall establish and maintain a secure online compassionate-use registry that contains:

(1)  the name of each physician who registers as the prescriber for a patient under Section 169.004, Occupations Code, and for each patient for whom the physician has registered as the prescriber:

(A)  the patient's name;

(B)  the patient's [~~and~~] date of birth;

(C)  the nature of the patient's eligible medical condition;

(D)  [~~of the patient,~~] the dosage prescribed;

(E)  [~~,~~] the means of administration ordered;[~~,~~] and

(F)  the total amount of medical [~~low-THC~~] cannabis required to fill the patient's prescription; and

(2)  a record of each amount of medical [~~low-THC~~] cannabis dispensed by a dispensing organization to a patient under a prescription.

(b)  The department shall ensure the registry:

(1)  is designed to prevent more than one qualified physician from registering as the prescriber for a single patient;

(2)  is accessible to law enforcement agencies and dispensing organizations for the purpose of verifying whether a patient is one for whom medical [~~low-THC~~] cannabis is prescribed and whether the patient's prescriptions have been filled; and

(3)  allows a physician [~~qualified to prescribe low-THC cannabis under Section 169.002, Occupations Code,~~] to input safety and efficacy data derived from the treatment of patients for whom medical [~~low-THC~~] cannabis is prescribed under Chapter 169, Occupations Code.

SECTION 2.04.  Section 487.102, Health and Safety Code, is amended to read as follows:

Sec. 487.102.  ELIGIBILITY FOR LICENSE. An applicant for a license to operate as a dispensing organization is eligible for the license if:

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

(A)  the technical and technological ability to cultivate and produce medical [~~low-THC~~] cannabis;

(B)  the ability to secure:

(i)  the resources and personnel necessary to operate as a dispensing organization; and

(ii)  premises reasonably located to allow patients listed on the compassionate-use registry access to the organization through existing infrastructure;

(C)  the ability to maintain accountability for the raw materials, the finished product, and any by-products used or produced in the cultivation or production of medical [~~low-THC~~] cannabis to prevent unlawful access to or unlawful diversion or possession of those materials, products, or by-products; and

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

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

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

SECTION 2.05.  Section 487.104(a), Health and Safety Code, is amended to read as follows:

(a)  The department shall issue or renew a license for each [~~to operate as a dispensing organization only if:~~

[~~(1)  the department determines the~~] applicant that meets the eligibility requirements described by Section 487.102[~~; and~~

[~~(2)  issuance or renewal of the license is necessary to ensure reasonable statewide access to, and the availability of, low-THC cannabis for patients registered in the compassionate-use registry and for whom low-THC cannabis is prescribed under Chapter 169, Occupations Code~~].

SECTION 2.06.  Section 487.107, Health and Safety Code, is amended to read as follows:

Sec. 487.107.  DUTIES RELATING TO DISPENSING PRESCRIPTION. (a) Before dispensing medical [~~low-THC~~] cannabis to a person for whom the medical [~~low-THC~~] cannabis is prescribed under Chapter 169, Occupations Code, the dispensing organization must verify that the prescription presented:

(1)  is for a person listed as a patient in the compassionate-use registry;

(2)  matches the entry in the compassionate-use registry with respect to the total amount of medical [~~low-THC~~] cannabis required to fill the prescription; and

(3)  has not previously been filled by a dispensing organization as indicated by an entry in the compassionate-use registry.

(b)  After dispensing medical [~~low-THC~~] cannabis to a patient for whom the medical [~~low-THC~~] cannabis is prescribed under Chapter 169, Occupations Code, the dispensing organization shall record in the compassionate-use registry the form and quantity of medical [~~low-THC~~] cannabis dispensed and the date and time of dispensation.

SECTION 2.07.  Section 487.108(c), Health and Safety Code, is amended to read as follows:

(c)  After suspending or revoking a license issued under this chapter, the director may seize or place under seal all medical [~~low-THC~~] cannabis and drug paraphernalia owned or possessed by the dispensing organization. If the director orders the revocation of the license, a disposition may not be made of the seized or sealed medical [~~low-THC~~] cannabis or drug paraphernalia until the time for administrative appeal of the order has elapsed or until all appeals have been concluded. When a revocation order becomes final, all medical [~~low-THC~~] cannabis and drug paraphernalia may be forfeited to the state as provided under Subchapter E, Chapter 481.

SECTION 2.08.  Section 487.201, Health and Safety Code, is amended to read as follows:

Sec. 487.201.  COUNTIES AND MUNICIPALITIES MAY NOT PROHIBIT MEDICAL [~~LOW-THC~~] CANNABIS. A municipality, county, or other political subdivision may not enact, adopt, or enforce a rule, ordinance, order, resolution, or other regulation that prohibits the cultivation, production, dispensing, or possession of medical [~~low-THC~~] cannabis, as authorized by this chapter.

SECTION 2.09.  Section 487.001(4), Health and Safety Code, is repealed.

ARTICLE 3. CONFORMING CHANGES

SECTION 3.01.  Section 161.001(c), Family Code, is amended to read as follows:

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

(1)  homeschooled the child;

(2)  is economically disadvantaged;

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

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

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

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

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

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

SECTION 3.02.  Section 262.116(a), Family Code, is amended to read as follows:

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

(1)  homeschooled the child;

(2)  is economically disadvantaged;

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

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

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

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

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

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

SECTION 3.03.  Section 481.062(a), Health and Safety Code, is amended to read as follows:

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

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

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

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

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

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

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

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

(6)  a dispensing organization licensed under Subchapter C, Chapter 487, that possesses medical [~~low-THC~~] cannabis.

SECTION 3.04.  Section 481.111(e), Health and Safety Code, is amended to read as follows:

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

(1)  for an offense involving possession only of marihuana or drug paraphernalia:

(A)  [~~,~~] is a patient for whom medical [~~low-THC~~] cannabis is prescribed under Chapter 169, Occupations Code, or the patient's legal guardian;[~~,~~] and

(B)  [~~the person~~] possesses medical [~~low-THC~~] cannabis obtained under a valid prescription from a dispensing organization; or

(2)  is a director, manager, or employee of a dispensing organization and the person, solely in performing the person's regular duties at the organization, acquires, possesses, produces, cultivates, dispenses, or disposes of:

(A)  in reasonable quantities, any medical [~~low-THC~~] cannabis or raw materials used in or by-products created by the production or cultivation of medical [~~low-THC~~] cannabis; or

(B)  any drug paraphernalia used in the acquisition, possession, production, cultivation, delivery, or disposal of medical [~~low-THC~~] cannabis.

SECTION 3.05.  Section 481.111(f)(2), Health and Safety Code, is amended to read as follows:

(2)  "Medical cannabis" [~~"Low-THC cannabis"~~] has the meaning assigned by Section 169.001, Occupations Code.

SECTION 3.06.  Section 551.004(a), Occupations Code, is amended to read as follows:

(a)  This subtitle does not apply to:

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

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

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

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

(5)  a dispensing organization, as defined by Section 487.001, Health and Safety Code, that cultivates, processes, and dispenses medical [~~low-THC~~] cannabis, as authorized by a license issued under Subchapter C, Chapter 487, Health and Safety Code, to a patient listed in the compassionate-use registry established under that chapter.

ARTICLE 4. TRANSITIONS AND EFFECTIVE DATE

SECTION 4.01.  Not later than October 1, 2019, the public safety director of the Department of Public Safety shall adopt rules as required to implement, administer, and enforce Chapter 487, Health and Safety Code, as amended by this Act.

SECTION 4.02.  (a) A license to operate as a dispensing organization issued under Chapter 487, Health and Safety Code, before the effective date of this Act continues to be valid after the effective date of this Act until that license expires.

(b)  The registration of a director, manager, or employee of a dispensing organization under Subchapter D, Chapter 487, Health and Safety Code, continues to be valid after the effective date of this Act until that registration expires.

SECTION 4.03.  This Act takes effect September 1, 2019.