86R3599 JSC-D

By:  Blanco H.B. No. 4097

A BILL TO BE ENTITLED

AN ACT

relating to the use of medical cannabis by veterans for post-traumatic stress disorder and the licensing of associated cultivating or dispensing organizations; authorizing fees.

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

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

CHAPTER 488. MEDICAL CANNABIS FOR CERTAIN VETERANS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 488.001.  DEFINITIONS. In this chapter:

(1)  "Commission" means the Health and Human Services Commission.

(2)  "Cultivating or dispensing facility" means a facility that:

(A)  cultivates, processes, manufactures, or dispenses medical cannabis under this chapter; and

(B)  is owned or operated by a cultivating or dispensing organization licensed under Subchapter C.

(3)  "Cultivating or dispensing organization" means an organization that cultivates, processes, manufactures, or dispenses medical cannabis under this chapter.

(4)  "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(5)  "Historically underutilized business" has the meaning assigned by Section 2161.001, Government Code.

(6)  "Medical 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.

(7)  "Post-traumatic stress disorder" means a disorder that:

(A)  meets the diagnostic criteria for posttraumatic stress disorder specified by the American Psychiatric Association in the Diagnostic and Statistical Manual of Mental Disorders, fifth edition, or a later edition adopted by the executive commissioner; and

(B)  results in an impairment of a person's functioning in the person's community, employment, family, school, or social group.

(8)  "Psychoactive medication" means a medication that is prescribed for the treatment of symptoms of psychosis or other severe mental or emotional disorders and that is used to exercise an effect on the central nervous system to influence and modify behavior, cognition, or affective state when treating the symptoms of mental illness. The term includes the following categories when used as described by this subdivision:

(A)  antipsychotics or neuroleptics;

(B)  antidepressants;

(C)  agents for control of mania or depression;

(D)  antianxiety agents;

(E)  sedatives, hypnotics, or other sleep-promoting drugs; and

(F)  psychomotor stimulants.

(9)  "Veteran" means an individual who has served in:

(A)  the army, navy, air force, coast guard, or marine corps of the United States;

(B)  the state military forces, as defined by Section 431.001, Government Code; or

(C)  a reserve component of the armed forces of the United States.

Sec. 488.002.  ADMINISTRATION BY COMMISSION; RULES. (a) The commission shall administer this chapter.

(b)  The executive commissioner shall adopt any rules necessary for the administration and enforcement of this chapter.

SUBCHAPTER B. PURCHASE OF MEDICAL CANNABIS

Sec. 488.051.  ELIGIBILITY; PURCHASER PERMIT REQUIRED. A veteran suffering from post-traumatic stress disorder is eligible to purchase medical cannabis from a cultivating or dispensing facility if the veteran is issued a purchaser permit under this subchapter.

Sec. 488.052.  APPLICATION. A veteran may apply to the commission for a purchaser permit by submitting a completed application form as prescribed by the commission and:

(1)  proof of the veteran's military service; and

(2)  proof of the veteran's post-traumatic stress disorder, including:

(A)  a written diagnosis from a physician;

(B)  the veteran's current prescription for a psychoactive medication; and

(C)  any other proof acceptable to the commission as provided by rule of the executive commissioner.

Sec. 488.053.  ISSUANCE OF PERMIT. The commission shall issue a purchaser permit to a veteran who submits an application under Section 488.052 if the commission determines that the veteran is eligible for the permit.

SUBCHAPTER C. CULTIVATING OR DISPENSING ORGANIZATION

Sec. 488.101.  LICENSE REQUIRED. A cultivating or dispensing organization may not cultivate, process, or dispense medical cannabis for purposes of this chapter without a license issued under this subchapter.

Sec. 488.102.  ELIGIBILITY FOR LICENSE. To qualify for a license under this subchapter, a cultivating or dispensing organization must:

(1)  have entered into a partnership in connection with the establishment or operation of a cultivating or dispensing facility with:

(A)  a health system that owns or operates a health care facility with at least 200 beds;

(B)  a public university in this state; or

(C)  a registered clinical research organization;

(2)  show that a partnership described by Subdivision (1) has equity partners at least 50 percent of which must:

(A)  have experience in owning 15 or more private cannabis investments;

(B)  have experience in owning five or more private health care ventures; and

(C)  have resided in this state for five or more years;

(3)  have net cash assets that include an account with at least $5 million held at a financial institution as defined by Section 201.101, Finance Code; and

(4)  have a management and operations team that meets the requirements of Section 488.103.

Sec. 488.103.  ORGANIZATION OR FACILITY MANAGEMENT OR OPERATION TEAM. (a) At least one member of the cultivating or dispensing organization's governing authority or at least one manager of the organization's cultivating or dispensing facility must:

(1)  have at least three years' experience in legal cannabis operations;

(2)  have documented experience in the cultivation, extraction, manufacturing, or dispensing of cannabis in at least four jurisdictions in which cannabis is legal; and

(3)  with respect to an organization that cultivates or processes medical cannabis:

(A)  have experience overseeing at least five indoor or greenhouse cultivation and extraction facility operations with a total flowering canopy of not less than 100,000 square feet; and

(B)  demonstrate experience in extraction and refinement of medical cannabis to create products in tightly controlled ratios of tetrahydrocannabinol and cannabidiol.

(b)  The operating team of the cultivating or dispensing organization or a cultivating or dispensing facility of the organization must:

(1)  have at least six years' experience in legal cannabis operations, collectively; and

(2)  with respect to an organization that cultivates or processes medical cannabis, have overseen the growth of at least 75,000 pounds of dry cannabis flower.

Sec. 488.104.  LICENSE APPLICATION. (a) An eligible cultivating or dispensing organization may apply for a license under this subchapter by submitting an application, in the form provided by the commission, along with the application fee prescribed by Section 488.111.

(b)  The application must:

(1)  contain:

(A)  the name and address of the applicant; and

(B)  the name and address of each member of the applicant's governing authority, as defined by Section 1.002, Business Organizations Code;

(2)  include a plan to hire a workforce for its cultivating or dispensing facilities that, to the extent possible, is composed of at least 33 percent veterans;

(3)  include a plan to use technology and processes to minimize water and electricity uses by the applicant's cannabis cultivating and processing facilities while maintaining the production of high quality medical cannabis;

(4)  contain a detailed explanation of the applicant's capability to cultivate and manufacture a sufficient amount of quality-controlled medical cannabis to support the qualifying veteran base in this state; and

(5)  contain any other information considered necessary by the commission to determine the applicant's eligibility for the license.

Sec. 488.105.  CRIMINAL HISTORY BACKGROUND CHECK. (a) An applicant for the issuance or renewal of a license under this subchapter shall provide to the Department of Public Safety the applicant's name and the name of:

(1)  each person who has a 20 percent equity interest in the applicant; and

(2)  each employee or prospective employee of each of the applicant's cultivating or dispensing facilities.

(b)  The Department of Public Safety shall conduct a criminal history background check on each individual whose name is provided to the department under Subsection (a). The public safety director of the Department of Public Safety by rule shall:

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

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

(c)  After conducting a criminal history background check under this section, the Department of Public Safety shall notify the commission and the applicant organization or relevant facility of the organization and the individual who is the subject of the criminal history background check as to whether the individual passed the criminal history background check.

Sec. 488.106.  APPROVAL OR DENIAL OF APPLICATION. (a) The commission shall approve the application and issue to the applicant a license under this subchapter if the commission determines that:

(1)  the applicant meets the eligibility requirements of Section 488.102;

(2)  the applicant satisfies any additional criteria determined by the commission to be necessary to implement this chapter; and

(3)  issuance of the license is necessary to ensure reasonable statewide access to, and the availability of, medical cannabis for qualifying veterans under Subchapter B.

(b)  The commission shall approve or deny the application not later than the 120th day after the date of the filing of a completed application with payment of the required fees under Section 488.111.

(c)  If the commission denies the application, the commission shall notify the applicant.

(d)  If an applicant requests a hearing on the application not later than the 30th day after the date of notification under Subsection (c), the applicant is entitled to a hearing not later than the 60th day after the date of the request.

Sec. 488.107.  ORGANIZATION PREFERENCES. The commission shall give preference to historically underutilized businesses in the issuance or renewal of licenses under this subchapter.

Sec. 488.108.  COMMENCEMENT OF OPERATIONS ON APPROVAL OF APPLICATION. If an organization's application is approved, a cultivating or dispensing facility owned or operated by the organization shall commence operations in this state not later than the 270th day after the date of the approval.

Sec. 488.109.  DUTY TO MAINTAIN ELIGIBILITY. Each license holder under this subchapter must maintain compliance at all times with the eligibility requirements of Section 488.102.

Sec. 488.110.  TERM OF LICENSE; RENEWAL. (a) A license issued or renewed under this subchapter expires on the second anniversary of the date of issuance or renewal, as applicable.

(b)  A license holder may apply for renewal of a license as prescribed by rule of the executive commissioner.

Sec. 488.111.  FEES. (a) The executive commissioner by rule shall set application and licensing fees under this subchapter in amounts sufficient to cover the cost of administering and enforcing this chapter.

(b)  In adopting rules under Subsection (a), the executive commissioner shall:

(1)  set an application fee in an amount that is at least $10,000 but not more than $25,000;

(2)  set an initial licensing fee in an amount that is at least $250,000 but not more than $1 million; and

(3)  set an annual licensing renewal fee in an amount that is at least $15,000 but not more than $25,000.

Sec. 488.112.  LICENSE SUSPENSION OR REVOCATION. (a) The commission may at any time suspend or revoke a license issued under this subchapter if the commission determines that:

(1)  the license holder has not maintained the eligibility requirements described by Section 488.102;

(2)  the license holder has failed to comply with this chapter or a rule adopted under this chapter; or

(3)  the license holder's cultivating or dispensing facility has failed to comply with this chapter or a rule adopted under this chapter.

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

(c)  After suspending or revoking a license issued under this subchapter, the commission shall notify the public safety director of the Department of Public Safety. The director may seize or place under seal all medical cannabis and drug paraphernalia owned or possessed by the license holder. If the commission orders the revocation of the license, a disposition may not be made of the seized or sealed medical 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 cannabis and drug paraphernalia may be forfeited to the state as provided under Subchapter E, Chapter 481.

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

SUBCHAPTER D. CULTIVATING AND MANUFACTURING PRACTICES

Sec. 488.151.  POTENCY. Each medical cannabis product of a cultivating or dispensing facility must consistently test within five percent of the stated amount of tetrahydrocannabinol and cannabidiol on the label of the product.

Sec. 488.152.  SAFETY TESTING. (a) Medical cannabis products of a cultivating or dispensing facility must be tested for harmful substances, including microbials, pesticides, and residual solvents.

(b)  The executive commissioner shall consult with the Department of Agriculture in adopting rules setting safety standards for medical cannabis made available through a dispensary under this chapter.

Sec. 488.153.  GOOD MANUFACTURING PRACTICES. Medical cannabis to be dispensed under this chapter must be produced using good manufacturing practices, as defined by executive commissioner rule.

SUBCHAPTER E. DISPENSING REGULATIONS

Sec. 488.201.  FORM OF CANNABIS. (a) Medical cannabis may be dispensed to veterans with a purchaser permit under Subchapter B only as a pill, patch, oil, or other derivative form that may be produced with consistent concentrations of tetrahydrocannabinol and cannabidiol.

(b)  Edible cannabis products may not be in shapes or forms appealing to children.

Sec. 488.202.  LABELING. Each product containing medical cannabis dispensed under this chapter must bear a label that clearly states the concentrations of tetrahydrocannabinol and cannabidiol in the product.

SUBCHAPTER F. REQUIREMENTS FOR LICENSEES AND FACILITIES

Sec. 488.251.  CHARITABLE DONATIONS. A license holder must annually donate at least five percent of the license holder's net profit to a nonprofit organization that focuses on getting veterans access to treatment for post-traumatic stress disorder.

Sec. 488.252.  LOCATION. A cultivating or dispensing facility owned or operated by a license holder may not be located within 1,000 feet of a primary or secondary school or day-care center that exists on the date of the license holder's initial application for licensure under Subchapter C.

SECTION 2.  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 [~~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 [~~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 Chapter 487 that possesses low-THC cannabis; or

(7)  a cultivating or dispensing organization licensed under Subchapter C, Chapter 488, that possesses medical cannabis.

SECTION 3.  Sections 481.111(e) and (f), Health and Safety Code, are 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 low-THC cannabis or medical cannabis if the person:

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

(2)  is a director, manager, or employee of a low-THC cannabis 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 low-THC cannabis or raw materials used in or by-products created by the production or cultivation of low-THC cannabis; or

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

(3)  for an offense involving possession only of marihuana or drug paraphernalia, is a patient who holds a purchaser permit under Subchapter B, Chapter 488; or

(4)  is a member of the governing authority, as defined by Section 1.002, Business Organizations Code, or a manager or employee of a medical cannabis cultivating or dispensing organization or facility and the person, solely in performing the person's duties at the organization or facility, acquires, possesses, produces, cultivates, delivers, or disposes of:

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

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

(f)  For purposes of Subsection (e):

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

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

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

(3)  "Medical cannabis" has the meaning assigned by Section 488.001.

(4)  "Medical cannabis cultivating or dispensing organization" means an organization licensed under Subchapter C, Chapter 488.

SECTION 4.  Section 551.004, Occupations Code, is amended by amending Subsection (a) and adding Subsection (a-1) 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 low-THC cannabis dispensing organization[~~, as defined by Section 487.001, Health and Safety Code,~~] that cultivates, processes, and dispenses 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; or

(6)  a medical cannabis cultivating or dispensing organization that cultivates, manufactures, or dispenses medical cannabis, as authorized by a license issued under Subchapter C, Chapter 488, Health and Safety Code, to a patient who holds a purchaser permit under Subchapter B of that chapter.

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

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

(2)  "Medical cannabis cultivating or dispensing organization" means an organization licensed under Subchapter C, Chapter 488, Health and Safety Code.

SECTION 5.  Not later than July 1, 2020, the executive commissioner of the Health and Human Services Commission shall adopt all rules necessary to administer Chapter 488, Health and Safety Code, as added by this Act, and provide copies of applications for prospective cultivating or dispensing organization licensees.

SECTION 6.  After September 1, 2020, but not later than January 1, 2021, the Health and Human Services Commission shall begin accepting applications under Chapter 488, Health and Safety Code, as added by this Act.

SECTION 7.  This Act takes effect September 1, 2019.