86R8990 JSC-D

By:  Watson S.B. No. 865

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 qualifying medical conditions and the licensing of medical cannabis 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. USE OF CANNABIS FOR MEDICAL PURPOSES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 488.001.  DEFINITIONS. In this chapter:

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

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

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

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

SUBCHAPTER B. DUTIES OF DEPARTMENT

Sec. 488.051.  DUTIES OF DEPARTMENT. The department shall administer this chapter.

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

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

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

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

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

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

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

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

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

(b)  The department shall ensure the registry:

(1)  is designed to prevent more than one physician from registering as the physician recommending medical use 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 use is recommended under Chapter 169A, Occupations Code; and

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

SUBCHAPTER C. LICENSING TO OPERATE AS DISPENSING ORGANIZATION

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

Sec. 488.102.  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 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 medical 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 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.

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

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

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

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

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

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

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

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

(b)  Before a dispensing organization under this subchapter hires a manager or employee for the organization, the license holder must provide the department with the name of the prospective manager or employee. The license holder may not transfer the license to another person before that prospective applicant and the applicant's directors, managers, and employees pass a criminal history background check and are registered as required by Subchapter D.

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

(d)  After conducting a criminal history background check under this section, the department shall notify the relevant applicant or 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.  DUTY TO MAINTAIN ELIGIBILITY. Each license holder under this subchapter must maintain compliance at all times with the eligibility requirements described by Section 488.102.

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

(b)  After dispensing medical cannabis to a patient for whom medical use is recommended under Chapter 169A, Occupations Code, the dispensing organization shall record in the medical use registry the form and quantity of the medical cannabis dispensed and the date and time of dispensation.

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

(b)  The director 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 director may seize or place under seal all medical 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 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. REGISTRATION OF CERTAIN INDIVIDUALS

Sec. 488.151.  REGISTRATION REQUIRED. (a) An individual who is a director, manager, or employee of a dispensing organization must apply for and obtain a registration under this section.

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

(1)  be at least 18 years of age;

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

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

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

SUBCHAPTER E. DUTIES OF COUNTIES AND MUNICIPALITIES

Sec. 488.201.  COUNTIES AND MUNICIPALITIES MAY NOT PROHIBIT MEDICAL 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 cannabis, as authorized by this chapter.

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

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

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

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

(2)  "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 that contains:

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

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

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

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

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

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

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

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

(2)  certify to the department that:

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

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

Sec. 169A.003.  RECOMMENDING PHYSICIAN REGISTRATION. Before a physician may recommend medical use for a patient under this chapter, the physician must register as the recommending physician for that patient in the medical use registry maintained by the department under Section 488.054, Health and Safety Code.  The physician's registration must indicate:

(1)  the physician's name; and

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

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

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

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

SECTION 3.  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 low-THC cannabis to a child for whom the low-THC cannabis was prescribed under Chapter 169, Occupations Code; [~~or~~]

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

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

SECTION 4.  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 low-THC cannabis to a child for whom the low-THC cannabis was prescribed under Chapter 169, Occupations Code; [~~or~~]

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

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

SECTION 5.  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 Chapter 487 that possesses low-THC cannabis; or

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

SECTION 6.  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 for whom medical use is recommended under Chapter 169A, Occupations Code; or

(4)  is a director, manager, or employee of a medical 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 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" and "medical use" have the meanings assigned by Section 169A.001, Occupations Code.

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

SECTION 7.  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 dispensing organization that cultivates, processes, and dispenses medical cannabis, as authorized by a license issued under Subchapter C, Chapter 488, Health and Safety Code, to a patient listed in the medical use registry established under 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 dispensing organization" means a dispensing organization as defined by Section 488.001, Health and Safety Code.

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

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