

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~~

1 ~~cannabidiol~~].

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

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

8 Sec. 169.003. PRESCRIPTION OF MEDICAL [~~LOW-THC~~] CANNABIS.

9 A physician [~~described by Section 169.002~~] may prescribe medical  
10 [~~low-THC~~] cannabis to alleviate a patient's eligible medical  
11 condition [~~seizures~~] if:

12 (1) the patient is a permanent resident of the state;  
13 (2) the physician complies with the registration  
14 requirements of Section 169.004; and

15 (3) the physician certifies to the department that:

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

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

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

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

27 Sec. 169.004. MEDICAL [~~LOW-THC~~] CANNABIS PRESCRIBER

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

- 8 (1) the physician's name;
- 9 (2) the patient's name and date of birth;
- 10 (3) the nature of the patient's eligible medical  
11 condition;
- 12 (4) the dosage prescribed to the patient;
- 13 (5) [~~(4)~~] the means of administration ordered for the  
14 patient; and
- 15 (6) [~~(5)~~] the total amount of medical [~~low-THC~~]  
16 cannabis required to fill the patient's prescription.

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

- 21 (1) the dosage, means of administration, and planned  
22 duration of treatment for the medical [~~low-THC~~] cannabis;
- 23 (2) a plan for monitoring the patient's symptoms; and
- 24 (3) a plan for monitoring indicators of tolerance or  
25 reaction to medical [~~low-THC~~] cannabis.

26 SECTION 1.05. The following provisions are repealed:

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

1 (2) Section 169.002, Occupations Code.

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

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

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

10 (3-a) "Eligible medical condition" and "medical  
11 cannabis" have the meanings assigned by Section 169.001,  
12 Occupations Code.

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

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

19 (b) The fees adopted under Subsection (a) may not exceed  
20 \$30,000 for the issuance or renewal of a license.

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

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

26 (1) the name of each physician who registers as the  
27 prescriber for a patient under Section 169.004, Occupations Code,

1 and for each patient for whom the physician has registered as the  
2 prescriber:

- 3 (A) the patient's name;
- 4 (B) the patient's ~~[and]~~ date of birth;
- 5 (C) the nature of the patient's eligible medical  
6 condition;
- 7 (D) ~~[of the patient,~~ ] the dosage prescribed;
- 8 (E) ~~[~~ ] the means of administration ordered;~~]~~

9 and

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

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

15 (b) The department shall ensure the registry:

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

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

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

27 SECTION 2.04. Section 487.102, Health and Safety Code, is

1 amended to read as follows:

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

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

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

9           (B) the ability to secure:

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

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

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

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

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

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

27           SECTION 2.05. Section [487.104\(a\)](#), Health and Safety Code,

1 is amended to read as follows:

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

4 ~~[(1) the department determines the]~~ applicant that  
5 meets the eligibility requirements described by Section 487.102[~~+~~  
6 ~~and~~

7 ~~[(2) issuance or renewal of the license is necessary~~  
8 ~~to ensure reasonable statewide access to, and the availability of,~~  
9 ~~low-THC cannabis for patients registered in the compassionate-use~~  
10 ~~registry and for whom low-THC cannabis is prescribed under Chapter~~  
11 ~~169, Occupations Code].~~

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

14 Sec. 487.107. DUTIES RELATING TO DISPENSING PRESCRIPTION.

15 (a) Before dispensing medical ~~[low-THC]~~ cannabis to a person for  
16 whom the medical ~~[low-THC]~~ cannabis is prescribed under Chapter  
17 169, Occupations Code, the dispensing organization must verify that  
18 the prescription presented:

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

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

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

27 (b) After dispensing medical ~~[low-THC]~~ cannabis to a

1 patient for whom the medical [~~low-THC~~] cannabis is prescribed under  
2 Chapter 169, Occupations Code, the dispensing organization shall  
3 record in the compassionate-use registry the form and quantity of  
4 medical [~~low-THC~~] cannabis dispensed and the date and time of  
5 dispensation.

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

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

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

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

26 SECTION 2.09. Section 487.001(4), Health and Safety Code,  
27 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

1 offense other than:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27                   (1) for an offense involving possession only of

1 marihuana or drug paraphernalia:

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

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

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

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

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

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

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

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

24           (a) This subtitle does not apply to:

25           (1) a practitioner licensed by the appropriate state  
26 board who supplies a patient of the practitioner with a drug in a  
27 manner authorized by state or federal law and who does not operate a

1 pharmacy for the retailing of prescription drugs;

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

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

7 (4) a home and community support services agency that  
8 possesses a dangerous drug as authorized by Section 142.0061,  
9 142.0062, or 142.0063, Health and Safety Code; or

10 (5) a dispensing organization, as defined by Section  
11 487.001, Health and Safety Code, that cultivates, processes, and  
12 dispenses medical [~~low-THC~~] cannabis, as authorized by a license  
13 issued under Subchapter C, Chapter 487, Health and Safety Code, to a  
14 patient listed in the compassionate-use registry established under  
15 that chapter.

16 ARTICLE 4. TRANSITIONS AND EFFECTIVE DATE

17 SECTION 4.01. Not later than October 1, 2019, the public  
18 safety director of the Department of Public Safety shall adopt  
19 rules as required to implement, administer, and enforce Chapter  
20 487, Health and Safety Code, as amended by this Act.

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

25 (b) The registration of a director, manager, or employee of  
26 a dispensing organization under Subchapter D, Chapter 487, Health  
27 and Safety Code, continues to be valid after the effective date of

1 this Act until that registration expires.

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