

By: Alvarado

S.B. No. 1837

A BILL TO BE ENTITLED

1 AN ACT
2 relating to authorizing the possession, use, cultivation,
3 distribution, transportation, and delivery of medical cannabis for
4 medical use by patients for whom a physician determines medical use
5 is the best available treatment for the patient's medical condition
6 or symptoms, and the licensing of medical cannabis dispensing
7 organizations; authorizing fees.

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

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

11 CHAPTER 488. USE OF CANNABIS FOR MEDICAL PURPOSES

12 SUBCHAPTER A. GENERAL PROVISIONS

13 Sec. 488.001. DEFINITIONS. In this chapter:

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

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

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

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

1 SUBCHAPTER B. DUTIES OF DEPARTMENT

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

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

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

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

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

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

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

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

26 (1) the name of each physician who registers as the
27 physician recommending medical use for a patient under Section

1 169A.003, Occupations Code, and the name and date of birth of the
2 patient; and

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

5 (b) The department shall ensure the registry:

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

9 (2) is accessible to law enforcement agencies and
10 dispensing organizations for the purpose of verifying whether a
11 patient is one for whom medical use is recommended under Chapter
12 169A, Occupations Code; and

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

17 SUBCHAPTER C. LICENSING TO OPERATE AS DISPENSING ORGANIZATION

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

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

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

26 (A) the technical and technological ability to
27 cultivate and produce medical cannabis;

1 (B) the ability to secure:

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

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

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

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

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

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

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

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

1 Sec. 488.104. ISSUANCE, RENEWAL, OR DENIAL OF LICENSE. (a)

2 The department shall issue or renew a license under this subchapter
3 only if:

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

6 (2) issuance or renewal of the license is necessary to
7 ensure reasonable statewide access to, and the availability of,
8 medical cannabis for patients registered in the medical use
9 registry and for whom medical cannabis is recommended under Chapter
10 169A, Occupations Code.

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

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

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

24 (b) Before a dispensing organization under this subchapter
25 hires a manager or employee for the organization, the license
26 holder must provide the department with the name of the prospective
27 manager or employee. The license holder may not transfer the

1 license to another person before that prospective applicant and the
2 applicant's directors, managers, and employees pass a criminal
3 history background check and are registered as required by
4 Subchapter D.

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

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

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

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

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

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

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

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

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

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

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

1 SUBCHAPTER D. REGISTRATION OF CERTAIN INDIVIDUALS

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

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

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

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

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

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

14 SUBCHAPTER E. DUTIES OF COUNTIES AND MUNICIPALITIES

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

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

23 CHAPTER 169A. AUTHORITY TO RECOMMEND MEDICAL CANNABIS TO CERTAIN
24 PATIENTS

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

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

1 (2) "Medical cannabis" means the plant Cannabis sativa
2 L., and any part of that plant or any compound, manufacture, salt,
3 derivative, mixture, preparation, resin, or oil of that plant.

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

8 (4) "Smoking" means burning or igniting a substance
9 and inhaling the smoke.

10 Sec. 169A.002. RECOMMENDATION OF MEDICAL USE. (a) A
11 physician may recommend medical use in accordance with this chapter
12 to any patient for the treatment of the patient's medical condition
13 or symptoms if, in the physician's medical judgment, medical use is
14 the best available treatment for that patient's medical condition
15 or symptoms.

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

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

20 (2) certify to the department that the physician has
21 determined that:

22 (A) medical use is the best available treatment
23 for the patient's medical condition or symptoms; and

24 (B) the risk of medical use by the patient is
25 reasonable in light of the potential benefit for the patient.

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

27 Before a physician may recommend medical use for a patient under

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

- 5 (1) the physician's name; and
- 6 (2) the patient's name and date of birth.

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

- 10 (1) a plan for monitoring the patient's symptoms; and
- 11 (2) a plan for monitoring indicators of tolerance or
12 reaction to medical cannabis.

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

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

- 18 (1) homeschooled the child;
- 19 (2) is economically disadvantaged;
- 20 (3) has been charged with a nonviolent misdemeanor
21 offense other than:

- 22 (A) an offense under Title 5, Penal Code;
- 23 (B) an offense under Title 6, Penal Code; or
- 24 (C) an offense that involves family violence, as
25 defined by Section 71.004 of this code;

26 (4) provided or administered low-THC cannabis to a
27 child for whom the low-THC cannabis was prescribed under Chapter

1 169, Occupations Code; [~~or~~]

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

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

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

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

12 (1) homeschooled the child;

13 (2) is economically disadvantaged;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (A) a Department of State Health Services
27 official, a medical school researcher, or a research program

1 participant possessing the substance as authorized under
2 Subchapter G; or

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

7 (6) a dispensing organization licensed under Chapter
8 487 that possesses low-THC cannabis; or

9 (7) a dispensing organization licensed under Chapter
10 488 that possesses medical cannabis.

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

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

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

24 (2) is a director, manager, or employee of a low-THC
25 cannabis dispensing organization and the person, solely in
26 performing the person's regular duties at the organization,
27 acquires, possesses, produces, cultivates, dispenses, or disposes

1 of:

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

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

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

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

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

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

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

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

25 [~~2~~] "Low-THC cannabis" has the meaning assigned by
26 Section 169.001, Occupations Code.

27 (2) "Low-THC cannabis dispensing organization" means

1 a dispensing organization as defined by Section 487.001.

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

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

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

9 (a) This subtitle does not apply to:

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

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

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

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

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

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

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

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

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

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

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