

By: Dominguez

H.B. No. 43

A BILL TO BE ENTITLED

AN ACT

1
2 relating to authorizing the possession, use, cultivation,
3 distribution, transportation, and delivery of medical cannabis for
4 medical use by patients with certain eligible medical conditions
5 and the licensing of dispensing organizations; changing a fee.

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

7 ARTICLE 1. CHANGES TO CHAPTER 169, OCCUPATIONS CODE

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

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

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

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

18 (3) "Medical [~~Low-THC~~] cannabis" means the plant
19 Cannabis sativa L., and any part of that plant or any compound,
20 manufacture, salt, derivative, mixture, preparation, resin, or oil
21 of that plant [~~that contains not more than 0.5 percent by weight of~~
22 ~~tetrahydrocannabinols~~].

23 (4) "Medical use" means the ingestion by a means of
24 administration other than by smoking of a prescribed amount of

1 medical [~~low-THC~~] cannabis by a person for whom medical [~~low-THC~~]
2 cannabis is prescribed under this chapter.

3 SECTION 1.03. Section 169.0011, Occupations Code, is
4 amended to read as follows:

5 Sec. 169.0011. PRESCRIPTION FOR MEDICAL USE. A reference
6 in this chapter, Chapter 487, Health and Safety Code, or other law
7 to a prescription for medical use or a prescription for medical
8 [~~low-THC~~] cannabis means an entry in the compassionate-use registry
9 established under Section 487.054, Health and Safety Code.

10 SECTION 1.04. Section 169.003, Occupations Code, is amended
11 to read as follows:

12 Sec. 169.003. PRESCRIPTION OF MEDICAL [~~LOW-THC~~] CANNABIS.
13 A physician [~~described by Section 169.002~~] may prescribe medical
14 [~~low-THC~~] cannabis to a patient if:

15 (1) the patient is a permanent resident of the state;
16 (2) the physician complies with the registration
17 requirements of Section 169.004; and

18 (3) the physician certifies to the department that:
19 (A) the patient is diagnosed with an eligible
20 medical condition [+

- 21 [~~(i) epilepsy,~~
22 [~~(ii) a seizure disorder,~~
23 [~~(iii) multiple sclerosis,~~
24 [~~(iv) spasticity,~~
25 [~~(v) amyotrophic lateral sclerosis,~~
26 [~~(vi) autism,~~
27 [~~(vii) terminal cancer, or~~

1 [~~(viii) an incurable neurodegenerative~~
2 ~~disease~~]; and

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

6 SECTION 1.05. The heading to Section 169.004, Occupations
7 Code, is amended to read as follows:

8 Sec. 169.004. MEDICAL [~~LOW-THC~~] CANNABIS PRESCRIBER
9 REGISTRATION.

10 SECTION 1.06. Section 169.004(a), Occupations Code, is
11 amended to read as follows:

12 (a) Before a physician [~~qualified to prescribe low-THC~~
13 ~~cannabis under Section 169.002~~] may prescribe or renew a
14 prescription for medical [~~low-THC~~] cannabis for a patient under
15 this chapter, the physician must register as the prescriber for
16 that patient in the compassionate-use registry maintained by the
17 department under Section 487.054, Health and Safety Code. The
18 physician's registration must indicate:

19 (1) the physician's name;
20 (2) the patient's name and date of birth;
21 (3) the nature of the patient's eligible medical
22 condition;

23 (4) the dosage prescribed to the patient;

24 (5) [~~(4)~~] the means of administration ordered for the
25 patient; and

26 (6) [~~(5)~~] the total amount of medical [~~low-THC~~]
27 cannabis required to fill the patient's prescription.

1 SECTION 1.07. Section 169.005, Occupations Code, is amended
2 to read as follows:

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

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

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

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

12 SECTION 1.08. The following provisions are repealed:

13 (1) Sections 169.001(1-a) and (6), Occupations Code;
14 and

15 (2) Section 169.002, Occupations Code.

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

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

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

24 (3-a) "Eligible medical condition" and "medical
25 cannabis" have the meanings assigned by Section 169.001,
26 Occupations Code.

27 SECTION 2.02. Section 487.052, Health and Safety Code, is

1 amended to read as follows:

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

6 (b) The fees adopted under Subsection (a) may not exceed
7 \$30,000 for the issuance or renewal of a license.

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

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

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

17 (A) the patient's name;
18 (B) the patient's ~~and~~ date of birth;
19 (C) the nature of the patient's eligible medical
20 condition;

21 (D) ~~[of the patient,~~ the dosage prescribed;
22 (E) ~~]~~ the means of administration ordered;~~]~~

23 and

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

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

1 a prescription.

2 (b) The department shall ensure the registry:

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

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

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

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

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

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

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

23 (B) the ability to secure:

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

26 (ii) premises reasonably located to allow
27 patients listed on the compassionate-use registry access to the

1 organization through existing infrastructure;

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

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

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

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

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

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

18 [~~(1) the department determines the~~] applicant that
19 meets the eligibility requirements described by Section 487.102[+
20 and

21 [~~(2) issuance or renewal of the license is necessary~~
22 ~~to ensure reasonable statewide access to, and the availability of,~~
23 ~~low-THC cannabis for patients registered in the compassionate-use~~
24 ~~registry and for whom low-THC cannabis is prescribed under Chapter~~
25 ~~169, Occupations Code].~~

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

1 Sec. 487.107. DUTIES RELATING TO DISPENSING PRESCRIPTION.

2 (a) Before dispensing medical [~~low-THC~~] cannabis to a person for
3 whom the medical [~~low-THC~~] cannabis is prescribed under Chapter
4 169, Occupations Code, the dispensing organization must verify that
5 the prescription presented:

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

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

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

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

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

22 (c) After suspending or revoking a license issued under this
23 chapter, the director may seize or place under seal all medical
24 [~~low-THC~~] cannabis and drug paraphernalia owned or possessed by the
25 dispensing organization. If the director orders the revocation of
26 the license, a disposition may not be made of the seized or sealed
27 medical [~~low-THC~~] cannabis or drug paraphernalia until the time for

1 administrative appeal of the order has elapsed or until all appeals
2 have been concluded. When a revocation order becomes final, all
3 medical [~~low-THC~~] cannabis and drug paraphernalia may be forfeited
4 to the state as provided under Subchapter E, Chapter 481.

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

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

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

15 ARTICLE 3. CONFORMING CHANGES

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

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

- 21 (1) homeschooled the child;
22 (2) is economically disadvantaged;
23 (3) has been charged with a nonviolent misdemeanor

24 offense other than:

- 25 (A) an offense under Title 5, Penal Code;
26 (B) an offense under Title 6, Penal Code; or
27 (C) an offense that involves family violence, as

1 defined by Section 71.004 of this code;

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

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

7 SECTION 3.02. Section 262.116(a), Family Code, is amended
8 to 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 medical [~~low-THC~~]
21 cannabis to a child for whom the medical [~~low-THC~~] cannabis was
22 prescribed under Chapter 169, Occupations Code; or

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

25 SECTION 3.03. Section 443.202(a), Health and Safety Code,
26 is amended to read as follows:

27 (a) This section does not apply to medical [~~low-THC~~]

1 cannabis regulated under Chapter 487.

2 SECTION 3.04. Section 443.2025(a), Health and Safety Code,
3 is amended to read as follows:

4 (a) This section does not apply to medical [~~low-THC~~]
5 cannabis regulated under Chapter 487.

6 SECTION 3.05. Section 481.062(a), Health and Safety Code,
7 is amended to read as follows:

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

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

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

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

23 (4) an officer or employee of this state, another
24 state, a political subdivision of this state or another state, or
25 the United States who is lawfully engaged in the enforcement of a
26 law relating to a controlled substance or drug or to a customs law
27 and authorized to possess the controlled substance in the discharge

1 of the person's official duties;

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

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

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

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

15 SECTION 3.06. Section 481.111(e), Health and Safety Code,
16 is amended to read as follows:

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

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

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

27 (B) [~~the person~~] possesses medical [~~low-THC~~]

1 cannabis obtained under a valid prescription from a dispensing
2 organization; or

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

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

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

13 SECTION 3.07. Section 481.111(f)(2), Health and Safety
14 Code, is amended to read as follows:

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

17 SECTION 3.08. Section 551.004(a), Occupations Code, is
18 amended to read as follows:

19 (a) This subtitle does not apply to:

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

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

27 (3) a person who procures prescription drugs for

1 lawful research, teaching, or testing and not for resale;

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

5 (5) a dispensing organization, as defined by Section
6 487.001, Health and Safety Code, that cultivates, processes, and
7 dispenses medical [~~low-THC~~] cannabis, as authorized by a license
8 issued under Subchapter C, Chapter 487, Health and Safety Code, to a
9 patient listed in the compassionate-use registry established under
10 that chapter.

11 ARTICLE 4. TRANSITIONS AND EFFECTIVE DATE

12 SECTION 4.01. Not later than October 1, 2021, the public
13 safety director of the Department of Public Safety shall adopt
14 rules as required to implement, administer, and enforce Chapter
15 487, Health and Safety Code, as amended by this Act.

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

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

24 SECTION 4.03. This Act takes effect September 1, 2021.