88R1536 JSC-D

By:  Alvarado S.B. No. 127

A BILL TO BE ENTITLED

AN ACT

relating to the possession, use, cultivation, distribution, transportation, and delivery of medical cannabis for use by patients as the best available medical treatment, the licensing of medical cannabis dispensing organizations, and the registration of certain individuals; 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 487A to read as follows:

CHAPTER 487A. USE OF CANNABIS FOR MEDICAL PURPOSES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 487A.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. 487A.051.  DUTIES OF DEPARTMENT. The department shall administer this chapter.

Sec. 487A.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. 487A.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)  Subject to Section 411.503, Government Code, the department shall enforce compliance of license holders and registrants and shall adopt procedures for renewing a license or registration issued under this chapter and for suspending or revoking a license or registration issued under this chapter.

Sec. 487A.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 an individual is a patient 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. 487A.101.  LICENSE REQUIRED. A person may not operate a dispensing organization unless the person holds a license issued by the department under this subchapter.

Sec. 487A.102.  ELIGIBILITY FOR LICENSE. An applicant for a license to operate 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 until at least the second anniversary of the application date;

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

(3)  the applicant satisfies any additional criteria the director determines necessary to safely implement this chapter.

Sec. 487A.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 the department considers necessary to determine the applicant's eligibility for the license.

Sec. 487A.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 487A.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 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. Chapter 2001, Government Code, applies to a proceeding under this section.

(c)  A license issued or renewed under this subchapter expires as determined by the department in accordance with Section 411.511, Government Code.

Sec. 487A.105.  CRIMINAL HISTORY RECORD 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 are eligible based on a criminal history record check and are registered as required by Subchapter D.

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

(1)  require the individual to submit a complete set of fingerprints to the department on a form prescribed by the department for purposes of a criminal history record check under this section; and

(2)  establish criteria for determining whether an individual is eligible based on the criminal history record check for the purposes of this section.

(d)  After conducting a criminal history record check under this section, the department shall notify the relevant applicant or organization and the individual who is the subject of the criminal history record check as to whether the individual is eligible based on the criminal history record check.

Sec. 487A.106.  DUTY TO MAINTAIN ELIGIBILITY. Each license holder under this subchapter must maintain compliance at all times with the eligibility requirements described by Section 487A.102.

Sec. 487A.107.  DUTIES RELATING TO DISPENSING MEDICAL CANNABIS. (a) Before dispensing medical cannabis to an individual for whom medical use is recommended under Chapter 169A, Occupations Code, the dispensing organization must verify the individual 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. 487A.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 the license holder has not maintained the eligibility requirements described by Section 487A.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. 487A.151.  REGISTRATION REQUIRED. (a) An individual may not act as a director, manager, or employee of a dispensing organization unless the individual is registered 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 record check as required by Section 487A.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. 487A.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

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.

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

(4)  "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 to any patient for treatment of the patient's medical condition or symptoms if, in the physician's medical judgment, medical use is the best available treatment for that patient's medical condition or symptoms.

(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 the physician has determined that:

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

(B)  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. (a) 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 487A.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.

(b)  The department may not publish the name of a physician registered under this section unless the physician expressly grants permission.

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 122.103(c), Agriculture Code, is amended to read as follows:

(c)  A qualified applicant who along with the application submits proof to the department that the applicant holds a license under Chapter 487 or 487A, Health and Safety Code, is not required to pay an application fee, and the department shall issue the license to the applicant within the time prescribed by Subsection (b).

SECTION 4.  Section 161.001(c), Family Code, as amended by Chapters 8 (H.B. 567) and 29 (H.B. 2536), Acts of the 87th Legislature, Regular Session, 2021, is reenacted and amended to read as follows:

(c)  Evidence of one or more of the following does not constitute clear and convincing evidence sufficient for a court to make a finding under Subsection (b) and order termination of the parent-child relationship:

(1)  the parent homeschooled the child;

(2)  the parent is economically disadvantaged;

(3)  the parent 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)  the parent provided or administered low-THC cannabis to a child for whom the low-THC cannabis was prescribed under Chapter 169, Occupations Code;

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

(6)  the parent declined immunization for the child for reasons of conscience, including a religious belief; [~~or~~]

(7) [~~(6)~~] the parent sought an opinion from more than one medical provider relating to the child's medical care, transferred the child's medical care to a new medical provider, or transferred the child to another health care facility; or

(8) [~~(6)~~]  the parent allowed the child to engage in independent activities that are appropriate and typical for the child's level of maturity, physical condition, developmental abilities, or culture.

SECTION 5.  Section 262.116(a), Family Code, as amended by Chapters 8 (H.B. 567) and 29 (H.B. 2536), Acts of the 87th Legislature, Regular Session, 2021, is reenacted and 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;

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

(6)  declined immunization for the child for reasons of conscience, including a religious belief; [~~or~~]

(7) [~~(6)~~]  sought an opinion from more than one medical provider relating to the child's medical care, transferred the child's medical care to a new medical provider, or transferred the child to another health care facility;

(8) [~~(6)~~]  allowed the child to engage in independent activities that are appropriate and typical for the child's level of maturity, physical condition, developmental abilities, or culture; or

(9) [~~(7)~~]  tested positive for marihuana, unless the department has evidence that the parent's use of marihuana has caused significant impairment to the child's physical or mental health or emotional development.

SECTION 6.  Section 411.0891(a), Government Code, is amended to read as follows:

(a)  Subject to Section 411.087, the department is authorized to obtain and use criminal history record information maintained by the Federal Bureau of Investigation or the department that relates to a person who:

(1)  is an applicant for or holds a registration issued by the director under Subchapter C, Chapter 481, Health and Safety Code, that authorizes the person to manufacture, distribute, analyze, or conduct research with a controlled substance;

(2)  is an applicant for or holds a registration issued by the department under Chapter 487 or 487A, Health and Safety Code, to be a director, manager, or employee of a dispensing organization, as defined by Section 487.001 or 487A.001, Health and Safety Code;

(3)  is an applicant for or holds an authorization issued by the department under Section 521.2476, Transportation Code, to do business in this state as a vendor of ignition interlock devices;

(4)  is an applicant for or holds certification by the department as an inspection station or an inspector under Subchapter G, Chapter 548, Transportation Code, holds an inspection station or inspector certificate issued under that subchapter, or is the owner of an inspection station operating under that chapter; or

(5)  is an applicant for or holds a certificate of registration issued by the department under Chapter 1956, Occupations Code, to act as a metal recycling entity.

SECTION 7.  Section 411.502, Government Code, is amended to read as follows:

Sec. 411.502.  APPLICABILITY.  This subchapter applies to a program, and persons regulated under the program, administered by the department under the following laws, including rules adopted under those laws:

(1)  Section 411.0625;

(2)  Chapter 487, Health and Safety Code;

(3)  Chapter 487A, Health and Safety Code;

(4)  Chapter 1702, Occupations Code;

(5) [~~(4)~~]  Chapter 1956, Occupations Code;

(6) [~~(5)~~]  Section 521.2476, Transportation Code; and

(7) [~~(6)~~]  Subchapter G, Chapter 548, Transportation Code.

SECTION 8.  Section 443.202(a), Health and Safety Code, is amended to read as follows:

(a)  This section does not apply to low-THC cannabis regulated under Chapter 487 or medical cannabis regulated under Chapter 487A.

SECTION 9.  Section 443.2025(a), Health and Safety Code, is amended to read as follows:

(a)  This section does not apply to low-THC cannabis regulated under Chapter 487 or medical cannabis regulated under Chapter 487A.

SECTION 10.  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 dispensing organization licensed under Chapter 487A that possesses medical cannabis.

SECTION 11.  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 the patient's legal guardian; or

(4)  is a director, manager, or employee of a medical cannabis dispensing organization and the individual, solely in performing the individual'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 487A.001.

SECTION 12.  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 487A, 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 487A.001, Health and Safety Code.

SECTION 13.  Not later than January 1, 2024, the public safety director of the Department of Public Safety shall adopt rules as required to implement, administer, and enforce Chapter 487A, Health and Safety Code, as added by this Act, including rules to establish the medical use registry required by that chapter.

SECTION 14.  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, 2023.