

**Representative Brad M. Daw** proposes the following substitute bill:

**MEDICAL CANNABIS ACT AMENDMENTS**

2019 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Luz Escamilla**

House Sponsor: Brad M. Daw

Cosponsor: Evan J. Vickers

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**LONG TITLE**

**General Description:**

This bill amends provisions related to the Utah Medical Cannabis Act.

**Highlighted Provisions:**

This bill:

- ▶ amends a provision regarding the transportation of cannabis and cannabis products to certain facilities;
- ▶ provides for testing of cannabis at additional stages of production;
- ▶ delays a provision during the decriminalization period that requires labeling with a barcode on a blister pack containing unprocessed cannabis flower;
- ▶ amends the request for proposal requirements for a third-party electronic verification system to ensure that the provider does not have an ownership interest in a cannabis production establishment or a medical cannabis pharmacy;
- ▶ subjects appointees to the compassionate use board to Senate confirmation;
- ▶ provides an exception allowing certain medical professionals to recommend medical cannabis before qualified medical provider registration is available;
- ▶ clarifies an exception to an employment protection regarding a public employee's



25 lawful use of medical cannabis in the context of certain positions related to federal  
26 requirements;

- 27       ▶ requires a state or political subdivision employer to provide a written notice to an  
28 employee or prospective employee whose assignments or duties under the state's  
29 medical cannabis programs may violate federal law;
- 30       ▶ provides that a public employee who signs a notice regarding assignments or duties  
31 that may violate federal law may not subsequently rely on state whistleblower  
32 protections to refuse to carry out an assignment or duty that may violate federal law;
- 33       ▶ requires the Department of Human Resource Management to create and publish a  
34 form notice for public employees regarding the employees' involvement in the  
35 state's medical cannabis programs;
- 36       ▶ prohibits a court in a custody determination from:
  - 37           • considering a parent's lawful possession or use of medical cannabis any  
38 differently than the lawful possession or use of an opioid or opiate;
  - 39           • discriminating against a parent based on the parent's status in relation to the  
40 state's medical cannabis programs;
- 41       ▶ allows a certain insurer to issue workers' compensation insurance coverage for an  
42 employer that is a cannabis production establishment or a medical cannabis  
43 pharmacy;
- 44       ▶ allows a certain workers' compensation insurer to issue coverage to a cannabis  
45 production establishment or a medical cannabis pharmacy;
- 46       ▶ amends the decriminalization provision to include protections for parents and legal  
47 guardians of certain minor patients;
- 48       ▶ clarifies quantity limits for possession during the decriminalization period; and  
49       ▶ makes technical changes.

50 **Money Appropriated in this Bill:**

51       None

52 **Other Special Clauses:**

53       This bill provides a special effective date.

54 **Utah Code Sections Affected:**

55 AMENDS:

56 **4-41a-404**, as renumbered and amended by Laws of Utah 2018, Third Special Session,  
57 Chapter 1

58 **4-41a-701**, as renumbered and amended by Laws of Utah 2018, Third Special Session,  
59 Chapter 1

60 **26-61a-102**, as renumbered and amended by Laws of Utah 2018, Third Special Session,  
61 Chapter 1

62 **26-61a-103**, as renumbered and amended by Laws of Utah 2018, Third Special Session,  
63 Chapter 1

64 **26-61a-105**, as renumbered and amended by Laws of Utah 2018, Third Special Session,  
65 Chapter 1

66 **26-61a-106**, as renumbered and amended by Laws of Utah 2018, Third Special Session,  
67 Chapter 1

68 **26-61a-111**, as renumbered and amended by Laws of Utah 2018, Third Special Session,  
69 Chapter 1

70 **30-3-10**, as last amended by Laws of Utah 2018, Third Special Session, Chapter 1

71 **31A-15-103**, as last amended by Laws of Utah 2018, Chapter 319

72 **58-37-3.7**, as last amended by Laws of Utah 2018, Third Special Session, Chapter 1

73 ENACTS:

74 **4-41a-107**, Utah Code Annotated 1953

75 **31A-22-1016**, Utah Code Annotated 1953



77 *Be it enacted by the Legislature of the state of Utah:*

78 Section 1. Section **4-41a-107** is enacted to read:

79 **4-41a-107. Notice to prospective and current public employees.**

80 (1) (a) A state employer or a political subdivision employer shall take the action  
81 described in Subsection (1)(b) before:

82 (i) giving to a current employee an assignment or duty that arises from or directly  
83 relates to an obligation under this chapter, the state or political subdivision; or

84 (ii) hiring a prospective employee whose assignments or duties would include an  
85 assignment or duty that arises from or directly relates to an obligation under this chapter.

86 (b) The employer described in Subsection (1)(a) shall give the employee or prospective

87 employee described in Subsection (1)(a) a written notice that notifies the employee or  
88 prospective employee:

89 (i) that the employee's or prospective employee's job duties may require the employee  
90 or prospective employee to engage in conduct which is in violation of the criminal laws of the  
91 United States; and

92 (ii) that in accepting a job or undertaking a duty described in Subsection (1)(a),  
93 although the employee or prospective employee is entitled to the protections of Title 67,  
94 Chapter 21, Utah Protection of Public Employees Act, the employee may not object or refuse to  
95 carry out an assignment or duty that may be a violation of the criminal laws of the United  
96 States with respect to the manufacture, sale, or distribution of cannabis.

97 (2) The Department of Human Resource Management shall create, revise, and publish  
98 the form of the notice described in Subsection (1).

99 (3) Notwithstanding Subsection 67-21-3(3), an employee who has signed the notice  
100 described in Subsection (1) may not:

101 (a) claim in good faith that the employee's actions violate or potentially violate the laws  
102 of the United States with respect to the manufacture, sale, or distribution of cannabis; or

103 (b) refuse to carry out a directive that the employee reasonably believes violates the  
104 criminal laws of the United States with respect to the manufacture, sale, or distribution of  
105 cannabis.

106 (4) An employer of an employee who has signed the notice described in Subsection (1)  
107 may not take retaliatory action as defined in Section 67-19a-101 against a current employee  
108 who refuses to sign the notice described in Subsection (1).

109 Section 2. Section **4-41a-404** is amended to read:

110 **4-41a-404. Cannabis, cannabis product, or medical cannabis device**  
111 **transportation.**

112 (1) (a) Only the following individuals may transport cannabis in a medicinal dosage  
113 form, a cannabis product in a medicinal dosage form, or a medical cannabis device under this  
114 chapter:

115 (i) a registered cannabis production establishment agent; or

116 (ii) a medical cannabis cardholder who is transporting a medical cannabis treatment that  
117 the cardholder is authorized to possess under this chapter.

118 (b) Only an agent of a cannabis cultivating facility, when the agent is transporting  
119 cannabis plants to a cannabis processing facility or an independent cannabis testing laboratory,  
120 may transport unprocessed cannabis outside of a medicinal dosage form.

121 (2) Except for an individual with a valid medical cannabis card under Title 26, Chapter  
122 61a, Utah Medical Cannabis Act, who is transporting a medical cannabis treatment shall  
123 possess a transportation manifest that:

124 (a) includes a unique identifier that links the cannabis, cannabis product, or medical  
125 cannabis device to a relevant inventory control system;

126 (b) includes origin and destination information for any cannabis, cannabis product, or  
127 medical cannabis device that the individual is transporting; and

128 (c) identifies the departure and arrival times and locations of the individual transporting  
129 the cannabis, cannabis product, or medical cannabis device.

130 (3) (a) In addition to the requirements in Subsections (1) and (2), the department may  
131 establish by rule, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking  
132 Act, requirements for transporting cannabis in a medicinal dosage form, a cannabis product in a  
133 medicinal dosage form, or a medical cannabis device to ensure that the cannabis, cannabis  
134 product, or medical cannabis device remains safe for human consumption.

135 (b) The transportation described in Subsection (3)(a) is limited to transportation:

136 (i) between a cannabis cultivation facility and:

137 (A) another cannabis cultivation facility; or

138 (B) a cannabis processing facility; and

139 (ii) between a cannabis processing facility and:

140 (A) another cannabis processing facility;

141 (B) an independent cannabis testing laboratory; ~~or~~

142 (C) a medical cannabis pharmacy~~[-];~~ or

143 (D) the state central fill medical cannabis pharmacy.

144 (4) (a) It is unlawful for a registered cannabis production establishment agent to make a  
145 transport described in this section with a manifest that does not meet the requirements of this  
146 section.

147 (b) Except as provided in Subsection (4)(d), an agent who violates Subsection (4)(a) is:

148 (i) guilty of an infraction; and

149 (ii) subject to a \$100 fine.

150 (c) An individual who is guilty of a violation described in Subsection (4)(b) is not  
151 guilty of a violation of Title 58, Chapter 37, Utah Controlled Substances Act, for the conduct  
152 underlying the violation described in Subsection (4)(b).

153 (d) If the agent described in Subsection (4)(a) is transporting more cannabis, cannabis  
154 product, or medical cannabis devices than the manifest identifies, except for a de minimis  
155 administrative error:

156 (i) the penalty described in Subsection (4)(b) does not apply; and

157 (ii) the agent is subject to penalties under Title 58, Chapter 37, Utah Controlled  
158 Substances Act.

159 (5) Nothing in this section prevents the department from taking administrative  
160 enforcement action against a cannabis production establishment or another person for failing to  
161 make a transport in compliance with the requirements of this section.

162 Section 3. Section **4-41a-701** is amended to read:

163 **4-41a-701. Cannabis and cannabis product testing.**

164 (1) A cannabis cultivation facility may not offer any cannabis for sale to a cannabis  
165 processing facility unless an independent cannabis testing laboratory has tested a representative  
166 sample of the cannabis or cannabis product to determine that the presence of contaminants,  
167 including mold, fungus, pesticides, microbial contaminants, heavy metals, or foreign material,  
168 does not exceed an amount that is safe for human consumption.

169 [(+)] (2) A cannabis processing facility may not offer any cannabis or cannabis  
170 products for sale to a medical cannabis pharmacy or the state central fill medical cannabis  
171 pharmacy, and a medical cannabis pharmacy and the state central fill medical cannabis  
172 pharmacy may not offer any cannabis or cannabis product for sale unless an independent  
173 cannabis testing laboratory has tested a representative sample of the cannabis or cannabis  
174 product to determine:

175 (a) (i) the amount of total composite tetrahydrocannabinol and cannabidiol in the  
176 cannabis or cannabis product; and

177 (ii) the amount of any other cannabinoid in the cannabis or cannabis product that the  
178 label claims the cannabis or cannabis product contains;

179 (b) that the presence of contaminants, including mold, fungus, pesticides, microbial

180 contaminants, heavy metals, or foreign material, does not exceed an amount that is safe for  
181 human consumption; and

182 (c) for a cannabis product that is manufactured using a process that involves extraction  
183 using hydrocarbons, that the cannabis product does not contain a level of a residual solvent that  
184 is not safe for human consumption.

185 [~~2~~] (3) By rule, in accordance with Title 63G, Chapter 3, Utah Administrative  
186 Rulemaking Act, the department:

187 (a) may determine the amount of any substance described in Subsections [~~1~~] (2)(b)  
188 and (c) that is safe for human consumption; and

189 (b) shall establish protocols for a recall of cannabis or a cannabis product by a cannabis  
190 production establishment.

191 [~~3~~] (4) The department may require testing for a toxin if:

192 (a) the department receives information indicating the potential presence of a toxin; or

193 (b) the department's inspector has reason to believe a toxin may be present based on the  
194 inspection of a facility.

195 [~~4~~] (5) The department shall establish by rule, in accordance with Title 63G, Chapter  
196 3, Utah Administrative Rulemaking Act, the standards, methods, practices, and procedures for  
197 the testing of cannabis and cannabis products by independent cannabis testing laboratories.

198 [~~5~~] (6) The department may require an independent cannabis testing laboratory to  
199 participate in a proficiency evaluation that the department conducts or that an organization that  
200 the department approves conducts.

201 Section 4. Section **26-61a-102** is amended to read:

202 **26-61a-102. Definitions.**

203 As used in this chapter:

204 (1) "Blister" means a plastic cavity or pocket used to contain no more than a single  
205 dose of cannabis or a cannabis product in a blister pack.

206 (2) "Blister pack" means a plastic, paper, or foil package with multiple blisters each  
207 containing no more than a single dose of cannabis or a cannabis product.

208 (3) "Cannabis" means marijuana.

209 (4) "Cannabis cultivation facility" means the same as that term is defined in Section  
210 [4-41a-102](#).

211 (5) "Cannabis processing facility" means the same as that term is defined in Section  
212 4-41a-102.

213 (6) "Cannabis product" means a product that:

214 (a) is intended for human use; and

215 (b) contains cannabis or tetrahydrocannabinol.

216 (7) "Cannabis production establishment agent" means the same as that term is defined  
217 in Section 4-41a-102.

218 (8) "Cannabis production establishment agent registration card" means the same as that  
219 term is defined in Section 4-41a-102.

220 (9) "Community location" means a public or private school, a church, a public library,  
221 a public playground, or a public park.

222 (10) "Department" means the Department of Health.

223 (11) "Designated caregiver" means an individual:

224 (a) whom an individual with a medical cannabis patient card or a medical cannabis  
225 guardian card designates as the patient's caregiver; and

226 (b) who registers with the department under Section 26-61a-202.

227 (12) "Dosing parameters" means quantity, routes, and frequency of administration for a  
228 recommended treatment of cannabis in a medicinal dosage form or a cannabis product in a  
229 medicinal dosage form.

230 (13) "Independent cannabis testing laboratory" means the same as that term is defined  
231 in Section 4-41a-102.

232 (14) "Inventory control system" means the system described in Section 4-41a-103.

233 (15) "Local health department" means the same as that term is defined in Section  
234 26A-1-102.

235 (16) "Local health department distribution agent" means an agent designated and  
236 registered to distribute state central fill shipments under Sections 26-61a-606 and 26-61a-607.

237 (17) "Marijuana" means the same as that term is defined in Section 58-37-2.

238 (18) "Medical cannabis" means cannabis in a medicinal dosage form or a cannabis  
239 product in a medicinal dosage form.

240 (19) "Medical cannabis card" means a medical cannabis patient card, a medical  
241 cannabis guardian card, or a medical cannabis caregiver card.



242 (20) "Medical cannabis cardholder" means a holder of a medical cannabis card.

243 (21) "Medical cannabis caregiver card" means an official card that:

244 (a) the department issues to an individual whom a medical cannabis patient cardholder  
245 or a medical cannabis guardian cardholder designates as a designated caregiver; and

246 (b) is connected to the electronic verification system.

247 (22) (a) "Medical cannabis device" means a device that an individual uses to ingest  
248 cannabis in a medicinal dosage form or a cannabis product in a medicinal dosage form.

249 (b) "Medical cannabis device" does not include a device that:

250 (i) facilitates cannabis combustion; or

251 (ii) an individual uses to ingest substances other than cannabis.

252 (23) "Medical cannabis guardian card" means an official card that:

253 (a) the department issues to the parent or legal guardian of a minor with a qualifying  
254 condition; and

255 (b) is connected to the electronic verification system.

256 (24) "Medical cannabis patient card" means an official card that:

257 (a) the department issues to an individual with a qualifying condition; and

258 (b) is connected to the electronic verification system.

259 (25) "Medical cannabis pharmacy" means a person that:

260 (a) (i) acquires or intends to acquire:

261 (A) cannabis in a medicinal dosage form or a cannabis product in a medicinal dosage  
262 form from a cannabis processing facility; or

263 (B) a medical cannabis device; or

264 (ii) possesses cannabis in a medicinal dosage form, a cannabis product in a medicinal  
265 dosage form, or a medical cannabis device; and

266 (b) sells or intends to sell cannabis in a medicinal dosage form, a cannabis product in a  
267 medicinal dosage form, or a medical cannabis device to a medical cannabis cardholder.

268 (26) "Medical cannabis pharmacy agent" means an individual who:

269 (a) is an employee of a medical cannabis pharmacy; and

270 (b) who holds a valid medical cannabis pharmacy agent registration card.

271 (27) "Medical cannabis pharmacy agent registration card" means a registration card

272 issued by the department that authorizes an individual to act as a medical cannabis pharmacy

273 agent.

274 (28) "Medical cannabis treatment" means cannabis in a medicinal dosage form, a  
275 cannabis product in a medicinal dosage form, or a medical cannabis device.

276 (29) (a) "Medicinal dosage form" means:

277 (i) for processed medical cannabis or a medical cannabis product, the following [~~in~~  
278 ~~single dosage form~~] with a specific and consistent cannabinoid content:

279 (A) a tablet;

280 (B) a capsule;

281 (C) a concentrated oil;

282 (D) a liquid suspension;

283 (E) a topical preparation;

284 (F) a transdermal preparation;

285 (G) a sublingual preparation;

286 (H) a gelatinous cube, gelatinous rectangular cuboid, or lozenge in a cube or  
287 rectangular cuboid shape; or

288 (I) for use only after the individual's qualifying condition has failed to substantially  
289 respond to at least two other forms described in this Subsection (29)(a)(i), a resin or wax;

290 (ii) for unprocessed cannabis flower, a blister pack, with each individual blister:

291 (A) containing a specific and consistent weight that does not exceed one gram and that  
292 varies by no more than 10% from the stated weight; and

293 (B) after December 31, 2020, labeled with a barcode that provides information  
294 connected to an inventory control system and the individual blister's content and weight; and

295 (iii) a form measured in grams, milligrams, or milliliters.

296 (b) "Medicinal dosage form" includes a portion of unprocessed cannabis flower that:

297 (i) the medical cannabis cardholder has recently removed from the blister pack  
298 described in Subsection (29)(a)(ii) for use; and

299 (ii) does not exceed the quantity described in Subsection (29)(a)(ii).

300 (c) "Medicinal dosage form" does not include:

301 (i) any unprocessed cannabis flower outside of the blister pack, except as provided in  
302 Subsection (29)(b); or

303 (ii) a process of vaporizing and inhaling concentrated cannabis by placing the cannabis

304 on a nail or other metal object that is heated by a flame, including a blowtorch.

305 (30) "Pharmacy medical provider" means the medical provider required to be on site at  
306 a medical cannabis pharmacy under Section 26-61a-403.

307 (31) "Provisional patient card" means a card that:

308 (a) the department issues to a minor with a qualifying condition for whom:

309 (i) a qualified medical provider has recommended a medical cannabis treatment; and

310 (ii) the department issues a medical cannabis guardian card to the minor's parent or  
311 legal guardian; and

312 (b) is connected to the electronic verification system.

313 (32) "Qualified medical provider" means an individual who is qualified to recommend  
314 treatment with cannabis in a medicinal dosage form under Section 26-61a-106.

315 (33) "Qualified Distribution Enterprise Fund" means the enterprise fund created in  
316 Section 26-61a-110.

317 (34) "Qualified Patient Enterprise Fund" means the enterprise fund created in Section  
318 26-61a-109.

319 (35) "Qualifying condition" means a condition described in Section 26-61a-104.

320 (36) "State central fill agent" means an employee of the state central fill medical  
321 cannabis pharmacy that the department registers in accordance with Section 26-61a-602.

322 (37) "State central fill medical cannabis pharmacy" means the central fill pharmacy that  
323 the department creates in accordance with Section 26-61a-601.

324 (38) "State central fill medical provider" means a physician or pharmacist that the state  
325 central fill medical cannabis pharmacy employs to consult with medical cannabis cardholders  
326 in accordance with Section 26-61a-601.

327 (39) "State central fill shipment" means a shipment of cannabis in a medicinal dosage  
328 form, cannabis product in a medicinal dosage form, or a medical cannabis device that the state  
329 central fill medical cannabis pharmacy prepares and ships for distribution to a medical cannabis  
330 cardholder in a local health department.

331 (40) "State electronic verification system" means the system described in Section  
332 26-61a-103.

333 Section 5. Section 26-61a-103 is amended to read:

334 **26-61a-103. Electronic verification system.**

335 (1) The Department of Agriculture and Food, the department, the Department of Public  
336 Safety, and the Department of Technology Services shall:

337 (a) enter into a memorandum of understanding in order to determine the function and  
338 operation of the state electronic verification system in accordance with Subsection (2);

339 (b) coordinate with the Division of Purchasing, under Title 63G, Chapter 6a, Utah  
340 Procurement Code, to develop a request for proposals for a third-party provider to develop and  
341 maintain the state electronic verification system in coordination with the Department of  
342 Technology Services; and

343 (c) select a third-party provider who:

344 (i) meets the requirements contained in the request for proposals issued under  
345 Subsection (1)(b)[-]; and

346 (ii) may not have any commercial or ownership interest in a cannabis production  
347 establishment or a medical cannabis pharmacy.

348 (2) The Department of Agriculture and Food, the department, the Department of Public  
349 Safety, and the Department of Technology Services shall ensure that, on or before March 1,  
350 2020, the state electronic verification system described in Subsection (1):

351 (a) allows an individual, with the individual's qualified medical provider in the qualified  
352 medical provider's office, to apply for a medical cannabis patient card or, if applicable, a  
353 medical cannabis guardian card;

354 (b) allows an individual to apply to renew a medical cannabis patient card or a medical  
355 cannabis guardian card in accordance with Section [26-61a-201](#);

356 (c) allows a qualified medical provider to:

357 (i) access dispensing and card status information regarding a patient:

358 (A) with whom the qualified medical provider has a provider-patient relationship; and

359 (B) for whom the qualified medical provider has recommended or is considering  
360 recommending a medical cannabis card;

361 (ii) electronically recommend, during a visit with a patient, treatment with cannabis in a  
362 medicinal dosage form or a cannabis product in a medicinal dosage form and optionally  
363 recommend dosing parameters;

364 (iii) electronically renew a recommendation to a medical cannabis patient cardholder or  
365 medical cannabis guardian cardholder:

366 (A) for the qualified medical provider who originally recommended a medical cannabis  
367 treatment, as that term is defined in Section 26-61a-102, using telehealth services; or

368 (B) for a qualified medical provider who did not originally recommend the medical  
369 cannabis treatment, during a face-to-face visit with a patient; and

370 (iv) at the request of a medical cannabis cardholder, initiate a state central fill shipment  
371 in accordance with Section 26-61a-603;

372 (d) connects with:

373 (i) an inventory control system that a medical cannabis pharmacy and the state central  
374 fill medical cannabis pharmacy use to track in real time and archive purchases of any cannabis  
375 in a medicinal dosage form, cannabis product in a medicinal dosage form, or medical cannabis  
376 device, including:

377 (A) the time and date of each purchase;

378 (B) the quantity and type of cannabis, cannabis product, or medical cannabis device  
379 purchased;

380 (C) any cannabis production establishment, any medical cannabis pharmacy, or the  
381 state central fill medical cannabis pharmacy associated with the cannabis, cannabis product, or  
382 medical cannabis device; and

383 (D) the personally identifiable information of the medical cannabis cardholder who  
384 made the purchase; and

385 (ii) any commercially available inventory control system that a cannabis production  
386 establishment utilizes in accordance with Section 4-41a-103 to use data that the Department of  
387 Agriculture and Food requires by rule, in accordance with Title 63G, Chapter 3, Utah  
388 Administrative Rulemaking Act, from the inventory tracking system that a licensee uses to  
389 track and confirm compliance;

390 (e) provides access to:

391 (i) the department to the extent necessary to carry out the department's functions and  
392 responsibilities under this chapter;

393 (ii) the Department of Agriculture and Food to the extent necessary to carry out the  
394 functions and responsibilities of the Department of Agriculture and Food under Title 4, Chapter  
395 41a, Cannabis Production Establishments; and

396 (iii) the Division of Occupational and Professional Licensing to the extent necessary to

397 carry functions and responsibilities related to the participation of the following in the  
398 recommendation and dispensing of medical cannabis:

399 (A) a pharmacist licensed under Title 58, Chapter 17b, Pharmacy Practice Act;  
400 (B) an advanced practice registered nurse licensed under Title 58, Chapter 31b, Nurse  
401 Practice Act;  
402 (C) a physician licensed under Title 58, Chapter 67, Utah Medical Practice Act, or  
403 Title 58, Chapter 68, Utah Osteopathic Medical Practice Act; or  
404 (D) a physician assistant licensed under Title 58, Chapter 70a, Physician Assistant Act;  
405 (f) provides access to and interaction with the state central fill medical cannabis  
406 pharmacy, state central fill agents, and local health department distribution agents, to facilitate  
407 the state central fill shipment process;  
408 (g) provides access to state or local law enforcement:  
409 (i) during a traffic stop for the purpose of determining if the individual subject to the  
410 traffic stop is in compliance with state medical cannabis law; or  
411 (ii) after obtaining a warrant; and  
412 (h) creates a record each time a person accesses the database that identifies the person  
413 who accesses the database and the individual whose records the person accesses.

414 (3) The department may release de-identified data that the system collects for the  
415 purpose of:  
416 (a) conducting medical research; and  
417 (b) providing the report required by Section [26-61a-703](#).  
418 (4) The department shall make rules, in accordance with Title 63G, Chapter 3, Utah  
419 Administrative Rulemaking Act, to establish:  
420 (a) the limitations on access to the data in the state electronic verification system as  
421 described in this section; and  
422 (b) standards and procedures to ensure accurate identification of an individual  
423 requesting information or receiving information in this section.

424 (5) (a) Any person who knowingly and intentionally releases any information in the  
425 state electronic verification system in violation of this section is guilty of a third degree felony.  
426 (b) Any person who negligently or recklessly releases any information in the state  
427 electronic verification system in violation of this section is guilty of a class C misdemeanor.

428 (6) (a) Any person who obtains or attempts to obtain information from the state  
429 electronic verification system by misrepresentation or fraud is guilty of a third degree felony.

430 (b) Any person who obtains or attempts to obtain information from the state electronic  
431 verification system for a purpose other than a purpose this chapter authorizes is guilty of a third  
432 degree felony.

433 (7) (a) Except as provided in Subsection (7)(e), a person may not knowingly and  
434 intentionally use, release, publish, or otherwise make available to any other person information  
435 obtained from the state electronic verification system for any purpose other than a purpose  
436 specified in this section.

437 (b) Each separate violation of this Subsection (7) is:

438 (i) a third degree felony; and

439 (ii) subject to a civil penalty not to exceed \$5,000.

440 (c) The department shall determine a civil violation of this Subsection (7) in  
441 accordance with Title 63G, Chapter 4, Administrative Procedures Act.

442 (d) Civil penalties assessed under this Subsection (7) shall be deposited into the  
443 General Fund.

444 (e) This Subsection (7) does not prohibit a person who obtains information from the  
445 state electronic verification system under Subsection (2)(a), (c), or (f) from:

446 (i) including the information in the person's medical chart or file for access by a person  
447 authorized to review the medical chart or file;

448 (ii) providing the information to a person in accordance with the requirements of the  
449 Health Insurance Portability and Accountability Act of 1996; or

450 (iii) discussing or sharing that information on the patient with the patient.

451 Section 6. Section **26-61a-105** is amended to read:

452 **26-61a-105. Compassionate use board.**

453 (1) (a) The department shall establish a compassionate use board consisting of:

454 (i) seven qualified medical providers that the executive director appoints and the  
455 Senate confirms:

456 (A) who are knowledgeable about the medicinal use of cannabis;

457 (B) who are physicians licensed under Title 58, Chapter 67, Utah Medical Practice Act,  
458 or Title 58, Chapter 68, Utah Osteopathic Medical Practice Act; and

459 (C) whom the appropriate board certifies in the specialty of neurology, pain medicine  
460 and pain management, medical oncology, psychiatry, infectious disease, internal medicine,  
461 pediatrics, or gastroenterology; and

462 (ii) as a nonvoting member and the chair of the board, the executive director or the  
463 director's designee.

464 (b) In appointing the seven qualified medical providers described in Subsection (1)(a),  
465 the executive director shall ensure that at least two have a board certification in pediatrics.

466 (2) (a) Of the members of the board that the executive director first appoints:

467 (i) three shall serve an initial term of two years; and

468 (ii) the remaining members shall serve an initial term of four years.

469 (b) After an initial term described in Subsection (2)(a) expires:

470 (i) each term is four years; and

471 (ii) each board member is eligible for reappointment.

472 (c) A member of the board may serve until a successor is appointed.

473 (3) Four members constitute a quorum of the compassionate use board.

474 (4) A member of the board may receive:

475 (a) compensation or benefits for the member's service; and

476 (b) per diem and travel expenses in accordance with Section 63A-3-106, Section  
477 63A-3-107, and rules made by the Division of Finance pursuant to Sections 63A-3-106 and  
478 63A-3-107.

479 (5) The compassionate use board shall:

480 (a) review and recommend for department approval an individual described in  
481 Subsection 26-61a-201(2)(a), a minor described in Subsection 26-61a-201(2)(c), or an  
482 individual who is not otherwise qualified to receive a medical cannabis card to obtain a  
483 medical cannabis card for compassionate use if:

484 (i) for an individual who is not otherwise qualified to receive a medical cannabis card,  
485 the individual's qualified medical provider is actively treating the individual for an intractable  
486 condition that:

487 (A) substantially impairs the individual's quality of life; and

488 (B) has not, in the qualified medical provider's professional opinion, adequately  
489 responded to conventional treatments;



- 490 (ii) the qualified medical provider:
- 491 (A) recommends that the individual or minor be allowed to use medical cannabis; and
- 492 (B) provides a letter, relevant treatment history, and notes or copies of progress notes
- 493 describing relevant treatment history including rationale for considering the use of medical
- 494 cannabis; and
- 495 (iii) the board determines that:
- 496 (A) the recommendation of the individual's qualified medical provider is justified; and
- 497 (B) based on available information, it may be in the best interests of the individual to
- 498 allow the use of medical cannabis;
- 499 (b) unless no petitions are pending:
- 500 (i) meet to receive or review compassionate use petitions at least quarterly; and
- 501 (ii) if there are more petitions than the board can receive or review during the board's
- 502 regular schedule, as often as necessary;
- 503 (c) complete a review of each petition and recommend to the department approval or
- 504 denial of the applicant for qualification for a medical cannabis card within 90 days after the day
- 505 on which the board received the petition; and
- 506 (d) report, before November 1 of each year, to the Health and Human Services Interim
- 507 Committee:
- 508 (i) the number of compassionate use recommendations the board issued during the past
- 509 year; and
- 510 (ii) the types of conditions for which the board approved compassionate use.
- 511 (6) (a) (i) The department shall review any compassionate use for which the board
- 512 recommends approval under Subsection (5)(c) to determine whether the board properly
- 513 exercised the board's discretion under this section.
- 514 (ii) If the department determines that the board properly exercised the board's
- 515 discretion in recommending approval under Subsection (5)(c), the department shall:
- 516 (A) issue the relevant medical cannabis card; and
- 517 (B) provide for the renewal of the medical cannabis card in accordance with the
- 518 recommendation of the qualified medical provider described in Subsection (5)(a).
- 519 (b) (i) If the board recommends denial under Subsection (5)(c), the individual seeking
- 520 to obtain a medical cannabis card may petition the department to review the board's decision.

521 (ii) If the department determines that the board's recommendation for denial under  
522 Subsection (5)(c) was arbitrary or capricious:

523 (A) the department shall notify the board of the department's determination; and

524 (B) the board shall reconsider the board's refusal to recommend approval under this  
525 section.

526 (c) In reviewing the board's recommendation for approval or denial under Subsection  
527 (5)(c) in accordance with this Subsection (6), the department shall presume the board properly  
528 exercised the board's discretion unless the department determines that the board's  
529 recommendation was arbitrary or capricious.

530 (7) Any individually identifiable health information contained in a petition that the  
531 board or department receives under this section is a protected record in accordance with Title  
532 63G, Chapter 2, Government Records Access and Management Act.

533 (8) The compassionate use board shall annually report the board's activity to the  
534 Cannabinoid Product Board created in Section 26-61-201.

535 Section 7. Section 26-61a-106 is amended to read:

536 **26-61a-106. Qualified medical provider registration -- Continuing education --**  
537 **Treatment recommendation.**

538 (1) (a) ~~[An]~~ Except as provided in Subsection (1)(b), an individual may not recommend  
539 a medical cannabis treatment unless the department registers the individual as a qualified  
540 medical provider in accordance with this section.

541 (b) An individual who meets the qualifications in Subsections 26-61a-106(2)(a)(iii)  
542 and (iv) may recommend a medical cannabis treatment without registering under Subsection  
543 (1)(a) until January 1, 2021.

544 (2) (a) The department shall, within 15 days after the day on which the department  
545 receives an application from an individual, register and issue a qualified medical provider  
546 registration card to the individual if the individual:

547 (i) provides to the department the individual's name and address;

548 (ii) provides to the department a report detailing the individual's completion of the  
549 applicable continuing education requirement described in Subsection (3);

550 (iii) provides to the department evidence that the individual:

551 (A) has the authority to write a prescription;

552 (B) is licensed to prescribe a controlled substance under Title 58, Chapter 37, Utah  
553 Controlled Substances Act; and

554 (C) possesses the authority, in accordance with the individual's scope of practice, to  
555 prescribe a Schedule II controlled substance;

556 (iv) provides to the department evidence that the individual is:

557 (A) an advanced practice registered nurse licensed under Title 58, Chapter 31b, Nurse  
558 Practice Act;

559 (B) a physician licensed under Title 58, Chapter 67, Utah Medical Practice Act, or  
560 Title 58, Chapter 68, Utah Osteopathic Medical Practice Act; or

561 (C) a physician assistant licensed under Title 58, Chapter 70a, Physician Assistant Act,  
562 whose declaration of services agreement, as that term is defined in Section 58-70a-102,  
563 includes the recommending of medical cannabis, and whose supervising physician is a  
564 qualified medical provider; and

565 (v) pays the department a fee in an amount that:

566 (A) the department sets, in accordance with Section 63J-1-504; and

567 (B) does not exceed \$300 for an initial registration.

568 (b) The department may not register an individual as a qualified medical provider if the  
569 individual is:

570 (i) a pharmacy medical provider or a state central fill medical provider; or

571 (ii) an owner, officer, director, board member, employee, or agent of a cannabis  
572 production establishment or a medical cannabis pharmacy.

573 (3) (a) An individual shall complete the continuing education described in this  
574 Subsection (3) in the following amounts:

575 (i) for an individual as a condition precedent to registration, four hours; and

576 (ii) for a qualified medical provider as a condition precedent to renewal, four hours  
577 every two years.

578 (b) In accordance with Subsection (3)(a), a qualified medical provider shall:

579 (i) complete continuing education:

580 (A) regarding the topics described in Subsection (3)(d); and

581 (B) offered by the department under Subsection (3)(c) or an accredited or approved  
582 continuing education provider that the department recognizes as offering continuing education

583 appropriate for the recommendation of cannabis to patients; and

584 (ii) make a continuing education report to the department in accordance with a process  
585 that the department establishes by rule, in accordance with Title 63G, Chapter 3, Utah  
586 Administrative Rulemaking Act, and in collaboration with the Division of Occupational and  
587 Professional Licensing and:

588 (A) for an advanced practice registered nurse licensed under Title 58, Chapter 31b,  
589 Nurse Practice Act, the Board of Nursing;

590 (B) for a qualified medical provider licensed under Title 58, Chapter 67, Utah Medical  
591 Practice Act, the Physicians Licensing Board;

592 (C) for a qualified medical provider licensed under Title 58, Chapter 68, Utah  
593 Osteopathic Medical Practice Act, the Osteopathic Physician and Surgeon's Licensing Board;  
594 and

595 (D) for a physician assistant licensed under Title 58, Chapter 70a, Physician Assistant  
596 Act, the Physician Assistant Licensing Board.

597 (c) The department may, in consultation with the Division of Occupational and  
598 Professional Licensing, develop the continuing education described in this Subsection (3).

599 (d) The continuing education described in this Subsection (3) may discuss:

600 (i) the provisions of this chapter;

601 (ii) general information about medical cannabis under federal and state law;

602 (iii) the latest scientific research on the endocannabinoid system and medical cannabis,  
603 including risks and benefits;

604 (iv) recommendations for medical cannabis as it relates to the continuing care of a  
605 patient in pain management, risk management, potential addiction, or palliative care; and

606 (v) best practices for recommending the form and dosage of medical cannabis products  
607 based on the qualifying condition underlying a medical cannabis recommendation.

608 (4) (a) Except as provided in Subsection (4)(b) or (c), a qualified medical provider may  
609 not recommend a medical cannabis treatment to more than 175 of the qualified medical  
610 provider's patients at the same time, as determined by the number of medical cannabis cards  
611 under the qualified medical provider's name in the state electronic verification system.

612 (b) Except as provided in Subsection (4)(c), a qualified medical provider may  
613 recommend a medical cannabis treatment to up to 300 of the qualified medical provider's

614 patients at any given time, as determined by the number of medical cannabis cards under the  
615 qualified medical provider's name in the state electronic verification system, if:

616 (i) the appropriate American medical board has certified the qualified medical provider  
617 in the specialty of anesthesiology, gastroenterology, neurology, oncology, pain, hospice and  
618 palliative medicine, physical medicine and rehabilitation, rheumatology, or psychiatry; or

619 (ii) a licensed business employs or contracts the qualified medical provider for the  
620 specific purpose of providing hospice and palliative care.

621 (c) (i) Notwithstanding Subsection (4)(b), a qualified medical provider described in  
622 Subsection (4)(b) may petition the Division of Occupational and Professional Licensing for  
623 authorization to exceed the limit described in Subsection (4)(b) by graduating increments of  
624 100 patients per authorization, not to exceed three authorizations.

625 (ii) The Division of Occupational and Professional Licensing shall grant the  
626 authorization described in Subsection (4)(c)(i) if:

627 (A) the petitioning qualified medical provider pays a \$100 fee;

628 (B) the division performs a review that includes the qualified medical provider's  
629 medical cannabis recommendation activity in the state electronic verification system, relevant  
630 information related to patient demand, and any patient medical records that the division  
631 determines would assist in the division's review; and

632 (C) after the review described in this Subsection (4)(c)(ii), the division determines that  
633 granting the authorization would not adversely affect public safety, adversely concentrate the  
634 overall patient population among too few qualified medical providers, or adversely concentrate  
635 the use of medical cannabis among the provider's patients.

636 (5) A qualified medical provider may recommend medical cannabis to an individual  
637 under this chapter only in the course of a qualified medical provider-patient relationship after  
638 the qualifying medical provider has completed and documented in the patient's medical record  
639 a thorough assessment of the patient's condition and medical history based on the appropriate  
640 standard of care for the patient's condition.

641 (6) (a) Except as provided in Subsection (6)(b), a qualified medical provider may not  
642 advertise that the qualified medical provider recommends medical cannabis treatment.

643 (b) For purposes of Subsection (6)(a), the communication of the following, through a  
644 website does not constitute advertising:

645 (i) a green cross;

646 (ii) a qualifying condition that the qualified medical provider treats; or

647 (iii) a scientific study regarding medical cannabis use.

648 (7) (a) A qualified medical provider registration card expires two years after the day on

649 which the department issues the card.

650 (b) The department shall renew a qualified medical provider's registration card if the

651 provider:

652 (i) applies for renewal;

653 (ii) is eligible for a qualified medical provider registration card under this section,

654 including maintaining an unrestricted license as described in Subsection (2)(a)(iii);

655 (iii) certifies to the department in a renewal application that the information in

656 Subsection (2)(a) is accurate or updates the information;

657 (iv) submits a report detailing the completion of the continuing education requirement

658 described in Subsection (3); and

659 (v) pays the department a fee in an amount that:

660 (A) the department sets, in accordance with Section 63J-1-504; and

661 (B) does not exceed \$50 for a registration renewal.

662 (8) The department may revoke the registration of a qualified medical provider who

663 fails to maintain compliance with the requirements of this section.

664 (9) A qualified medical provider may not receive any compensation or benefit for the

665 qualified medical provider's medical cannabis treatment recommendation from:

666 (a) a cannabis production establishment or an owner, officer, director, board member,

667 employee, or agent of a cannabis production establishment;

668 (b) a medical cannabis pharmacy or an owner, officer, director, board member,

669 employee, or agent of a medical cannabis pharmacy; or

670 (c) a qualified medical provider or pharmacy medical provider.

671 Section 8. Section **26-61a-111** is amended to read:

672 **26-61a-111. Nondiscrimination for medical care or government employment --**

673 **Notice to prospective and current public employees.**

674 (1) For purposes of medical care, including an organ or tissue transplant, a patient's

675 use, in accordance with this chapter, of cannabis in a medicinal dosage form or a cannabis

676 product in a medicinal dosage form:

677 (a) is considered the equivalent of the authorized use of any other medication used at  
678 the discretion of a physician; and

679 (b) does not constitute the use of an illicit substance or otherwise disqualify an  
680 individual from needed medical care.

681 (2) (a) Notwithstanding any other provision of law and except as provided in  
682 Subsection (2)(b), the state or any political subdivision shall treat an employee's use of medical  
683 cannabis in accordance with this chapter or Section 58-37-3.7 in the same way the state or  
684 political subdivision treats employee use of opioids and opiates.

685 (b) Subsection (2)(a) does not apply where the application of Subsection (2)(a) would  
686 jeopardize federal funding, a federal security clearance, or any other federal background  
687 determination required for the employee's position.

688 (3) (a) (i) A state employer or a political subdivision employer shall take the action  
689 described in Subsection (3)(a)(ii) before:

690 (A) giving to a current employee an assignment or duty that arises from or directly  
691 relates to an obligation under this chapter, the state or political subdivision; or

692 (B) hiring a prospective employee whose assignments or duties would include an  
693 assignment or duty that arises from or directly relates to an obligation under this chapter.

694 (ii) The employer described in Subsection (3)(a)(i) shall give the employee or  
695 prospective employee described in Subsection (3)(a)(i) a written notice that notifies the  
696 employee or prospective employee:

697 (A) that the employee's or prospective employee's job duties may require the employee  
698 or prospective employee to engage in conduct which is in violation of the criminal laws of the  
699 United States; and

700 (B) that in accepting a job or undertaking a duty described in Subsection (3)(a)(i),  
701 although the employee or prospective employee is entitled to the protections of Title 67,  
702 Chapter 21, Utah Protection of Public Employees Act, the employee may not object or refuse to  
703 carry out an assignment or duty that may be a violation of the criminal laws of the United  
704 States with respect to the manufacture, sale, or distribution of cannabis.

705 (b) The Department of Human Resource Management shall create, revise, and publish  
706 the form of the notice described in Subsection (3)(a).

707 (c) Notwithstanding Subsection 67-21-3(3), an employee who has signed the notice  
708 described in Subsection (3)(a) may not:

709 (i) claim in good faith that the employee's actions violate or potentially violate the laws  
710 of the United States with respect to the manufacture, sale, or distribution of cannabis; or

711 (ii) refuse to carry out a directive that the employee reasonably believes violates the  
712 criminal laws of the United States with respect to the manufacture, sale, or distribution of  
713 cannabis.

714 (d) An employer of an employee who has signed the notice described in Subsection  
715 (3)(a) may not take retaliatory action as defined in Section 67-19a-101 against a current  
716 employee who refuses to sign the notice described in Subsection (3)(a).

717 Section 9. Section 30-3-10 is amended to read:

718 **30-3-10. Custody of children in case of separation or divorce -- Custody**  
719 **consideration.**

720 (1) If a married couple having one or more minor children are separated, or their  
721 marriage is declared void or dissolved, the court shall make an order for the future care and  
722 custody of the minor children as it considers appropriate.

723 (a) In determining any form of custody, including a change in custody, the court shall  
724 consider the best interests of the child without preference for either parent solely because of the  
725 biological sex of the parent and, among other factors the court finds relevant, the following:

726 (i) in accordance with Subsection (7), the past conduct and demonstrated moral  
727 standards of each of the parties;

728 (ii) which parent is most likely to act in the best interest of the child, including  
729 allowing the child frequent and continuing contact with the noncustodial parent;

730 (iii) the extent of bonding between the parent and child, meaning the depth, quality,  
731 and nature of the relationship between a parent and child;

732 (iv) whether the parent has intentionally exposed the child to pornography or material  
733 harmful to a minor, as defined in Section 76-10-1201; and

734 (v) those factors outlined in Section 30-3-10.2.

735 (b) There is a rebuttable presumption that joint legal custody, as defined in Section  
736 30-3-10.1, is in the best interest of the child, except in cases where there is:

737 (i) domestic violence in the home or in the presence of the child;



738 (ii) special physical or mental needs of a parent or child, making joint legal custody  
739 unreasonable;

740 (iii) physical distance between the residences of the parents, making joint decision  
741 making impractical in certain circumstances; or

742 (iv) any other factor the court considers relevant including those listed in this section  
743 and Section 30-3-10.2.

744 (c) (i) The person who desires joint legal custody shall file a proposed parenting plan in  
745 accordance with Sections 30-3-10.8 and 30-3-10.9.

746 (ii) A presumption for joint legal custody may be rebutted by a showing by a  
747 preponderance of the evidence that it is not in the best interest of the child.

748 (d) A child may not be required by either party to testify unless the trier of fact  
749 determines that extenuating circumstances exist that would necessitate the testimony of the  
750 child be heard and there is no other reasonable method to present the child's testimony.

751 (e) (i) The court may inquire of the child's and take into consideration the ~~[the]~~ child's  
752 desires regarding future custody or parent-time schedules, but the expressed desires are not  
753 controlling and the court may determine the children's custody or parent-time otherwise.

754 (ii) The desires of a child 14 years of age or older shall be given added weight, but is  
755 not the single controlling factor.

756 (f) (i) If an interview with a child is conducted by the court pursuant to Subsection  
757 (1)(e), the interview shall be conducted by the judge in camera.

758 (ii) The prior consent of the parties may be obtained but is not necessary if the court  
759 finds that an interview with a child is the only method to ascertain the child's desires regarding  
760 custody.

761 (2) In awarding custody, the court shall consider, among other factors the court finds  
762 relevant, which parent is most likely to act in the best interests of the child, including allowing  
763 the child frequent and continuing contact with the noncustodial parent as the court finds  
764 appropriate.

765 (3) If the court finds that one parent does not desire custody of the child, the court shall  
766 take that evidence into consideration in determining whether to award custody to the other  
767 parent.

768 (4) (a) Except as provided in Subsection (4)(b), a court may not discriminate against a

769 parent due to a disability, as defined in Section 57-21-2, in awarding custody or determining  
770 whether a substantial change has occurred for the purpose of modifying an award of custody.

771 (b) The court may not consider the disability of a parent as a factor in awarding custody  
772 or modifying an award of custody based on a determination of a substantial change in  
773 circumstances, unless the court makes specific findings that:

774 (i) the disability significantly or substantially inhibits the parent's ability to provide for  
775 the physical and emotional needs of the child at issue; and

776 (ii) the parent with a disability lacks sufficient human, monetary, or other resources  
777 available to supplement the parent's ability to provide for the physical and emotional needs of  
778 the child at issue.

779 (c) Nothing in this section may be construed to apply to adoption proceedings under  
780 Title 78B, Chapter 6, Part 1, Utah Adoption Act.

781 (5) This section establishes neither a preference nor a presumption for or against joint  
782 physical custody or sole physical custody, but allows the court and the family the widest  
783 discretion to choose a parenting plan that is in the best interest of the child.

784 (6) When an issue before the court involves custodial responsibility in the event of a  
785 deployment of one or both parents who are servicemembers, and the servicemember has not yet  
786 been notified of deployment, the court shall resolve the issue based on the standards in Sections  
787 78B-20-306 through 78B-20-309.

788 (7) In considering the past conduct and demonstrated moral standards of each party  
789 under Subsection (1)(a)(i) or any other factor a court finds relevant, the court may not  
790 [~~discriminate against a parent because of or otherwise consider the parent's~~]:

791 (a) consider or treat a parent's lawful possession or use of cannabis in a medicinal  
792 dosage form, a cannabis product in a medicinal dosage form, or a medical cannabis device, in  
793 accordance with Title 26, Chapter 61a, Utah Medical Cannabis Act, [except as it relates to that  
794 parent's ability to care for a child] any differently than the court would consider or treat the  
795 lawful possession or use of an opioid or opiate; or

796 (b) discriminate against a parent because of the parent's status as a:

797 (i) cannabis production establishment agent, as that term is defined in Section  
798 4-41a-102;

799 (ii) medical cannabis pharmacy agent, as that term is defined in Section 26-61a-102;

800 (iii) state central fill agent, as that term is defined in Section 26-61a-102; or  
801 (iv) medical cannabis cardholder in accordance with Title 26, Chapter 61a, Utah  
802 Medical Cannabis Act.

803 Section 10. Section 31A-15-103 is amended to read:

804 **31A-15-103. Surplus lines insurance -- Unauthorized insurers.**

805 (1) Notwithstanding Section 31A-15-102, when this state is the home state as defined  
806 in Section 31A-3-305, a nonadmitted insurer may make an insurance contract for coverage of a  
807 person in this state and on a risk located in this state, subject to the limitations and  
808 requirements of this section.

809 (2) (a) For a contract made under this section, the insurer may, in this state:

- 810 (i) inspect the risks to be insured;
- 811 (ii) collect premiums;
- 812 (iii) adjust losses; and
- 813 (iv) do another act reasonably incidental to the contract.

814 (b) An act described in Subsection (2)(a) may be done through:

- 815 (i) an employee; or
- 816 (ii) an independent contractor.

817 (3) (a) Subsections (1) and (2) do not permit a person to solicit business in this state on  
818 behalf of an insurer that has no certificate of authority.

819 (b) Insurance placed with a nonadmitted insurer shall be placed by a surplus lines  
820 producer licensed under Chapter 23a, Insurance Marketing - Licensing Producers, Consultants,  
821 and Reinsurance Intermediaries.

822 (c) The commissioner may by rule prescribe how a surplus lines producer may:

- 823 (i) pay or permit the payment, commission, or other remuneration on insurance placed  
824 by the surplus lines producer under authority of the surplus lines producer's license to one  
825 holding a license to act as an insurance producer; and
- 826 (ii) advertise the availability of the surplus lines producer's services in procuring, on  
827 behalf of a person seeking insurance, a contract with a nonadmitted insurer.

828 (4) For a contract made under this section, a nonadmitted insurer is subject to Sections  
829 31A-23a-402, 31A-23a-402.5, and 31A-23a-403 and the rules adopted under those sections.

830 (5) A nonadmitted insurer may not issue workers' compensation insurance coverage to

831 an employer located in this state, except:

832 (a) for stop loss coverage issued to an employer securing workers' compensation under  
833 Subsection [34A-2-201\(2\)](#)[-];

834 (b) a cannabis production establishment as defined in Section [4-41a-102](#); or

835 (c) a medical cannabis pharmacy as defined in Section [26-61a-102](#).

836 (6) (a) The commissioner may by rule prohibit making a contract under Subsection (1)  
837 for a specified class of insurance if authorized insurers provide an established market for the  
838 class in this state that is adequate and reasonably competitive.

839 (b) The commissioner may by rule place a restriction or a limitation on and create  
840 special procedures for making a contract under Subsection (1) for a specified class of insurance  
841 if:

842 (i) there have been abuses of placements in the class; or

843 (ii) the policyholders in the class, because of limited financial resources, business  
844 experience, or knowledge, cannot protect their own interests adequately.

845 (c) The commissioner may prohibit an individual insurer from making a contract under  
846 Subsection (1) and all insurance producers from dealing with the insurer if:

847 (i) the insurer willfully violates:

848 (A) this section;

849 (B) Section [31A-4-102](#), [31A-23a-402](#), [31A-23a-402.5](#), or [31A-26-303](#); or

850 (C) a rule adopted under a section listed in Subsection (6)(c)(i)(A) or (B);

851 (ii) the insurer fails to pay the fees and taxes specified under Section [31A-3-301](#); or

852 (iii) the commissioner has reason to believe that the insurer is:

853 (A) in an unsound condition;

854 (B) operated in a fraudulent, dishonest, or incompetent manner; or

855 (C) in violation of the law of its domicile.

856 (d) (i) The commissioner may issue one or more lists of nonadmitted foreign insurers

857 whose:

858 (A) solidity the commissioner doubts; or

859 (B) practices the commissioner considers objectionable.

860 (ii) The commissioner shall issue one or more lists of nonadmitted foreign insurers the  
861 commissioner considers to be reliable and solid.

862 (iii) In addition to the lists described in Subsections (6)(d)(i) and (ii), the commissioner  
863 may issue other relevant evaluations of nonadmitted insurers.

864 (iv) An action may not lie against the commissioner or an employee of the department  
865 for a written or oral communication made in, or in connection with the issuance of, a list or  
866 evaluation described in this Subsection (6)(d).

867 (e) A foreign nonadmitted insurer shall be listed on the commissioner's "reliable" list  
868 only if the nonadmitted insurer:

869 (i) delivers a request to the commissioner to be on the list;

870 (ii) establishes satisfactory evidence of good reputation and financial integrity;

871 (iii) (A) delivers to the commissioner a copy of the nonadmitted insurer's current  
872 annual statement certified by the insurer and, each subsequent year, delivers to the  
873 commissioner a copy of the nonadmitted insurer's annual statement within 60 days after the day  
874 on which the nonadmitted insurer files the annual statement with the insurance regulatory  
875 authority where the nonadmitted insurer is domiciled; or

876 (B) files the nonadmitted insurer's annual statements with the National Association of  
877 Insurance Commissioners and the nonadmitted insurer's annual statements are available  
878 electronically from the National Association of Insurance Commissioners;

879 (iv) (A) is in substantial compliance with the solvency standards in Chapter 17, Part 6,  
880 Risk-Based Capital, or maintains capital and surplus of at least \$15,000,000, whichever is  
881 greater; or

882 (B) in the case of any "Lloyd's" or other similar incorporated or unincorporated group  
883 of alien individual insurers, maintains a trust fund that:

884 (I) shall be in an amount not less than \$50,000,000 as security to its full amount for all  
885 policyholders and creditors in the United States of each member of the group;

886 (II) may consist of cash, securities, or investments of substantially the same character  
887 and quality as those which are "qualified assets" under Section [31A-17-201](#); and

888 (III) may include as part of this trust arrangement a letter of credit that qualifies as  
889 acceptable security under Section [31A-17-404.1](#); and

890 (v) for an alien insurer not domiciled in the United States or a territory of the United  
891 States, is listed on the Quarterly Listing of Alien Insurers maintained by the National  
892 Association of Insurance Commissioners International Insurers Department.

893 (7) (a) Subject to Subsection (7)(b), a surplus lines producer may not, either knowingly  
894 or without reasonable investigation of the financial condition and general reputation of the  
895 insurer, place insurance under this section with:

- 896 (i) a financially unsound insurer;
- 897 (ii) an insurer engaging in unfair practices; or
- 898 (iii) an otherwise substandard insurer.

899 (b) A surplus line producer may place insurance under this section with an insurer  
900 described in Subsection (7)(a) if the surplus line producer:

901 (i) gives the applicant notice in writing of the known deficiencies of the insurer or the  
902 limitations on the surplus line producer's investigation; and

903 (ii) explains the need to place the business with that insurer.

904 (c) A copy of the notice described in Subsection (7)(b) shall be kept in the office of the  
905 surplus line producer for at least five years.

906 (d) To be financially sound, an insurer shall satisfy standards that are comparable to  
907 those applied under the laws of this state to an authorized insurer.

908 (e) An insurer on the "doubtful or objectionable" list under Subsection (6)(d) or an  
909 insurer not on the commissioner's "reliable" list under Subsection (6)(e) is presumed  
910 substandard.

911 (8) (a) A policy issued under this section shall:

912 (i) include a description of the subject of the insurance; and

913 (ii) indicate:

914 (A) the coverage, conditions, and term of the insurance;

915 (B) the premium charged the policyholder;

916 (C) the premium taxes to be collected from the policyholder; and

917 (D) the name and address of the policyholder and insurer.

918 (b) If the direct risk is assumed by more than one insurer, the policy shall state:

919 (i) the names and addresses of all insurers; and

920 (ii) the portion of the entire direct risk each assumes.

921 (c) A policy issued under this section shall have attached or affixed to the policy the  
922 following statement: "The insurer issuing this policy does not hold a certificate of authority to  
923 do business in this state and thus is not fully subject to regulation by the Utah insurance

924 commissioner. This policy receives no protection from any of the guaranty associations created  
925 under Title 31A, Chapter 28, Guaranty Associations."

926 (9) Upon placing a new or renewal coverage under this section, a surplus lines  
927 producer shall promptly deliver to the policyholder or the policyholder's agent evidence of the  
928 insurance consisting either of:

929 (a) the policy as issued by the insurer; or

930 (b) if the policy is not available upon placing the coverage, a certificate, cover note, or  
931 other confirmation of insurance complying with Subsection (8).

932 (10) If the commissioner finds it necessary to protect the interests of insureds and the  
933 public in this state, the commissioner may by rule subject a policy issued under this section to  
934 as much of the regulation provided by this title as is required for a comparable policy written  
935 by an authorized foreign insurer.

936 (11) (a) A surplus lines transaction in this state shall be examined to determine whether  
937 it complies with:

938 (i) the surplus lines tax levied under Chapter 3, Department Funding, Fees, and Taxes;

939 (ii) the solicitation limitations of Subsection (3);

940 (iii) the requirement of Subsection (3) that placement be through a surplus lines  
941 producer;

942 (iv) placement limitations imposed under Subsections (6)(a), (b), and (c); and

943 (v) the policy form requirements of Subsections (8) and (10).

944 (b) The examination described in Subsection (11)(a) shall take place as soon as  
945 practicable after the transaction. The surplus lines producer shall submit to the examiner  
946 information necessary to conduct the examination within a period specified by rule.

947 (c) (i) The examination described in Subsection (11)(a) may be conducted by the  
948 commissioner or by an advisory organization created under Section [31A-15-111](#) and authorized  
949 by the commissioner to conduct these examinations. The commissioner is not required to  
950 authorize an additional advisory organization to conduct an examination under this Subsection  
951 (11)(c).

952 (ii) The commissioner's authorization of one or more advisory organizations to act as  
953 examiners under this Subsection (11)(c) shall be:

954 (A) by rule; and

955 (B) evidenced by a contract, on a form provided by the commissioner, between the  
956 authorized advisory organization and the department.

957 (d) (i) (A) A person conducting the examination described in Subsection (11)(a) shall  
958 collect a stamping fee of an amount not to exceed 1% of the policy premium payable in  
959 connection with the transaction.

960 (B) A stamping fee collected by the commissioner shall be deposited in the General  
961 Fund.

962 (C) The commissioner shall establish a stamping fee by rule.

963 (ii) A stamping fee collected by an advisory organization is the property of the advisory  
964 organization to be used in paying the expenses of the advisory organization.

965 (iii) Liability for paying a stamping fee is as required under Subsection 31A-3-303(1)  
966 for taxes imposed under Section 31A-3-301.

967 (iv) The commissioner shall adopt a rule dealing with the payment of stamping fees. If  
968 a stamping fee is not paid when due, the commissioner or advisory organization may impose a  
969 penalty of 25% of the stamping fee due, plus 1-1/2% per month from the time of default until  
970 full payment of the stamping fee.

971 (e) The commissioner, representatives of the department, advisory organizations,  
972 representatives and members of advisory organizations, authorized insurers, and surplus lines  
973 insurers are not liable for damages on account of statements, comments, or recommendations  
974 made in good faith in connection with their duties under this Subsection (11)(e) or under  
975 Section 31A-15-111.

976 (f) An examination conducted under this Subsection (11) and a document or materials  
977 related to the examination are confidential.

978 (12) (a) For a surplus lines insurance transaction in the state entered into on or after  
979 May 13, 2014, if an audit is required by the surplus lines insurance policy, a surplus lines  
980 insurer:

981 (i) shall exercise due diligence to initiate an audit of an insured, to determine whether  
982 additional premium is owed by the insured, by no later than six months after the expiration of  
983 the term for which premium is paid; and

984 (ii) may not audit an insured more than three years after the surplus lines insurance  
985 policy expires.



986 (b) A surplus lines insurer that does not comply with this Subsection (12) may not  
987 charge or collect additional premium in excess of the premium agreed to under the surplus  
988 lines insurance policy.

989 Section 11. Section **31A-22-1016** is enacted to read:

990 **31A-22-1016. Workers' compensation coverage for medical cannabis operations.**

991 A licensed and admitted workers' compensation insurer may issue coverage to:

992 (1) a cannabis production establishment as defined in Section [4-41a-102](#); or

993 (2) a medical cannabis pharmacy as defined in Section [26-61a-102](#).

994 Section 12. Section **58-37-3.7** is amended to read:

995 **58-37-3.7. Medical cannabis decriminalization.**

996 (1) As used in this section:

997 (a) "Cannabis" means the same as that term is defined in Section [26-61a-102](#).

998 (b) "Cannabis product" means the same as that term is defined in Section [26-61a-102](#).

999 (c) "Medical cannabis card" means the same as that term is defined in Section  
1000 [26-61a-102](#).

1001 (d) "Medical cannabis device" means the same as that term is defined in Section  
1002 [26-61a-102](#).

1003 (e) "Medical cannabis pharmacy" means the same as that term is defined in Section  
1004 [26-61a-102](#).

1005 (f) "Medicinal dosage form" means the same as that term is defined in Section  
1006 [26-61a-102](#).

1007 (g) "Qualified medical provider" means the same as that term is defined in Section  
1008 [26-61a-102](#).

1009 (h) "Qualifying condition" means the same as that term is defined in Section  
1010 [26-61a-102](#).

1011 (i) "Tetrahydrocannabinol" means the same as that term is defined in Section  
1012 [58-37-3.9](#).

1013 (2) Before January 1, 2021, an individual is not guilty under this chapter for the use or  
1014 possession of marijuana, tetrahydrocannabinol, or marijuana drug paraphernalia if:

1015 (a) at the time of the arrest or citation, the individual:

1016 (i) (A) had been diagnosed with a qualifying condition; and

1017 (B) had a pre-existing provider-patient relationship with an advanced practice  
1018 registered nurse licensed under Title 58, Chapter 31b, Nurse Practice Act, a physician licensed  
1019 under Title 58, Chapter 67, Utah Medical Practice Act, a physician licensed under Title 58,  
1020 Chapter 68, Utah Osteopathic Medical Practice Act, or a physician assistant licensed under  
1021 Title 58, Chapter 70a, Physician Assistant Act, who believed that the individual's illness  
1022 described in Subsection (2)(a)(i)(A) could benefit from the use in question; [or]

1023 (ii) for possession, was:

1024 (A) the parent or legal guardian of an individual described in Subsection (2)(a)(i) who  
1025 is a minor; or

1026 (B) the spouse of an individual described in Subsection (2)(a)(i); or

1027 ~~[(it)]~~ (iii) (A) for possession, was a medical cannabis cardholder; or

1028 (B) for use, was a medical cannabis patient cardholder or a minor with a qualifying  
1029 condition under the supervision of a medical cannabis guardian cardholder; and

1030 (b) the marijuana or tetrahydrocannabinol was in a medicinal dosage form in [a  
1031 ~~quantity described in Subsection 26-61a-502(2).~~] one of the following amounts:

1032 (i) no more than 56 grams by weight of unprocessed cannabis; or

1033 (ii) an amount of cannabis products that contains, in total, no more than 10 grams of  
1034 total composite tetrahydrocannabinol.

1035 (3) An individual is not guilty under this chapter for the use or possession of marijuana,  
1036 tetrahydrocannabinol, or marijuana drug paraphernalia under this chapter if:

1037 (a) at the time of the arrest or citation, the individual:

1038 (i) was not a resident of Utah or has been a resident of Utah for less than 45 days;

1039 (ii) had a currently valid medical cannabis card or the equivalent of a medical cannabis  
1040 card under the laws of another state, district, territory, commonwealth, or insular possession of  
1041 the United States; and

1042 (iii) had been diagnosed with a qualifying condition as described in Section  
1043 26-61a-104; and

1044 (b) the marijuana or tetrahydrocannabinol is in a medicinal dosage form in a quantity  
1045 described in Subsection 26-61a-502(2).

1046 Section 13. **Effective date.**

1047 If approved by two-thirds of all the members elected to each house, this bill takes effect

1048 upon approval by the governor, or the day following the constitutional time limit of Utah  
1049 Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto,  
1050 the date of veto override.