

1 **MEDICAL CANNABIS PATIENT PROTECTION AMENDMENTS**

2 2022 GENERAL SESSION

3 STATE OF UTAH

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5 **LONG TITLE**

6 **General Description:**

7 This bill amends protections for medical cannabis patients.

8 **Highlighted Provisions:**

9 This bill:

- 10 ▶ amends protections for medical cannabis patients, including public employees, to
- 11 protect the holding of a medical cannabis card and medical cannabis
- 12 recommendations; and
- 13 ▶ makes technical and conforming changes.

14 **Money Appropriated in this Bill:**

15 None

16 **Other Special Clauses:**

17 None

18 **Utah Code Sections Affected:**

19 AMENDS:

20 **26-61a-111**, as last amended by Laws of Utah 2021, Chapter 344

21 **78A-2-231**, as last amended by Laws of Utah 2021, Chapters 260 and 337

22 **80-3-110**, as last amended by Laws of Utah 2021, Chapters 38, 337 and renumbered  
23 and amended by Laws of Utah 2021, Chapter 261 and last amended by  
24 Coordination Clause, Laws of Utah 2021, Chapter 261

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

27 Section 1. Section **26-61a-111** is amended to read:

28 **26-61a-111. Nondiscrimination for medical care or government employment --**

29 **Notice to prospective and current public employees -- No effect on private employers.**

30 (1) For purposes of medical care, including an organ or tissue transplant, a patient's  
31 use, in accordance with this chapter, of cannabis in a medicinal dosage form or a cannabis  
32 product in a medicinal dosage form:

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

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

37 (2) (a) Notwithstanding any other provision of law and except as provided in  
38 Subsection (2)(b), the state or any political subdivision shall treat:

39 (i) an employee's use of medical cannabis in accordance with this chapter or Section  
40 58-37-3.7 in the same way the state or political subdivision treats employee use of any  
41 prescribed controlled substance[-]; and

42 (ii) an employee's status as a medical cannabis cardholder or an employee's medical  
43 cannabis recommendation from a qualified medical provider or limited provider in the same  
44 way the state or political subdivision treats an employees prescriptions for any prescribed  
45 controlled substance.

46 (b) A state or political subdivision employee who has a valid medical cannabis card is  
47 not subject to adverse action, as that term is defined in Section 67-21-2, for failing a drug test  
48 due to marijuana or tetrahydrocannabinol without evidence that the employee was impaired or  
49 otherwise adversely affected in the employee's job performance due to the use of medical  
50 cannabis.

51 (c) Subsections (2)(a) and (b) do not apply where the application of Subsection (2)(a)  
52 or (b) would jeopardize federal funding, a federal security clearance, or any other federal  
53 background determination required for the employee's position, or if the employee's position is  
54 dependent on a license that is subject to federal regulations.

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

57 (A) giving to a current employee an assignment or duty that arises from or directly  
58 relates to an obligation under this chapter; or

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

61 (ii) The employer described in Subsection (3)(a)(i) shall give the employee or  
62 prospective employee described in Subsection (3)(a)(i) a written notice that notifies the  
63 employee or prospective employee:

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

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

72 (b) The Division of Human Resource Management shall create, revise, and publish the  
73 form of the notice described in Subsection (3)(a).

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

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

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

81 (d) An employer may not take retaliatory action as defined in Section 67-19a-101  
82 against a current employee who refuses to sign the notice described in Subsection (3)(a).

83 (4) Nothing in this section requires a private employer to accommodate the use of  
84 medical cannabis or affects the ability of a private employer to have policies restricting the use  
85 of medical cannabis by applicants or employees.

86 Section 2. Section **78A-2-231** is amended to read:

87 **78A-2-231. Consideration of lawful use or possession of medical cannabis.**

88 (1) As used in this section:

89 (a) "Cannabis product" means the same as that term is defined in Section 26-61a-102.

90 (b) "Directions of use" means the same as that term is defined in Section 26-61a-102.

91 (c) "Dosing guidelines" means the same as that term is defined in Section 26-61a-102.

92 (d) "Medical cannabis" means the same as that term is defined in Section 26-61a-102.

93 (e) "Medical cannabis card" means the same as that term is defined in Section

94 26-61a-102.

95 (f) "Medical cannabis device" means the same as that term is defined in Section  
96 26-61a-102.

97 (g) "Recommending medical provider" means the same as that term is defined in  
98 Section 26-61a-102.

99 (2) In any judicial proceeding in which a judge, panel, jury, or court commissioner  
100 makes a finding, determination, or otherwise considers an individual's medical cannabis card,  
101 medical cannabis recommendation from a recommending medical provider, or possession or  
102 use of medical cannabis, a cannabis product, or a medical cannabis device, the judge, panel,  
103 jury, or court commissioner may not consider or treat the individual's card, recommendation,  
104 possession, or use any differently than the lawful possession or use of any prescribed controlled  
105 substance if:

106 (a) the individual's possession complies with Title 4, Chapter 41a, Cannabis Production  
107 Establishments;

108 (b) the individual's possession or use complies with Subsection 58-37-3.7(2) or (3); or

109 (c) (i) the individual's possession or use complies with Title 26, Chapter 61a, Utah  
110 Medical Cannabis Act; and

111 (ii) the individual reasonably complies with the directions of use and dosing guidelines  
112 determined by the individual's recommending medical provider or through a consultation  
113 described in Subsection 26-61a-502(4) or (5).

114 (3) Notwithstanding Sections 77-18-105 and 77-2a-3, for probation, release, a plea in  
115 abeyance agreement, a diversion agreement, or a tendered admission under Utah Rules of  
116 Juvenile Procedure, Rule 25, a term or condition may not require that an individual abstain  
117 from the use or possession of medical cannabis, a cannabis product, or a medical cannabis  
118 device, either directly or through a general prohibition on violating federal law, without an  
119 exception related to medical cannabis use, if the individual's use or possession complies with:

120 (a) Title 26, Chapter 61a, Utah Medical Cannabis Act; or

121 (b) Subsection 58-37-3.7(2) or (3).

122 Section 3. Section **80-3-110** is amended to read:

123 **80-3-110. Consideration of cannabis during proceedings -- Drug testing.**

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125 (1) As used in this section:

- 126 (a) "Cannabis" means the same as that term is defined in Section 26-61a-102.  
127 (b) "Cannabis product" means the same as that term is defined in Section 26-61a-102.  
128 (c) (i) "Chronic" means repeated or patterned.  
129 (ii) "Chronic" does not mean an isolated incident.  
130 (d) "Directions of use" means the same as that term is defined in Section 26-61a-102.  
131 (e) "Dosing guidelines" means the same as that term is defined in Section 26-61a-102.  
132 (f) "Medical cannabis" means the same as that term is defined in Section 26-61a-102.  
133 (g) "Medical cannabis cardholder" means the same as that term is defined in Section  
134 26-61a-102.

135 (h) " Recommending medical provider" means the same as that term is defined in  
136 Section 26-61a-102.

137 (2) In a proceeding under this chapter, in which the juvenile court makes a finding,  
138 determination, or otherwise considers an individual's medical cannabis card, medical cannabis  
139 recommendation from a recommending medical provider, or possession or use of medical  
140 cannabis, a cannabis product, or a medical cannabis device, the juvenile court may not consider  
141 or treat the individual's medical cannabis card, recommendation, possession, or use any  
142 differently than the lawful possession or use of any prescribed controlled substance if:

143 (a) the individual's possession or use complies with Title 4, Chapter 41a, Cannabis  
144 Production Establishments;

145 (b) the individual's possession or use complies with Subsection 58-37-3.7(2) or (3); or

146 (c) (i) the individual's possession or use complies with Title 26, Chapter 61a, Utah  
147 Medical Cannabis Act; and

148 (ii) the individual reasonably complies with the directions of use and dosing guidelines  
149 determined by the individual's recommending medical provider or through a consultation  
150 described in Subsection 26-61a-502(4) or (5).

151 (3) In a proceeding under this chapter, a child's parent's or guardian's use of cannabis or  
152 a cannabis product is not abuse or neglect of the child unless there is evidence showing that:

153 (a) the child is harmed because of the child's inhalation or ingestion of cannabis, or  
154 because of cannabis being introduced to the child's body in another manner; or

155 (b) the child is at an unreasonable risk of harm because of chronic inhalation or  
156 ingestion of cannabis or chronic introduction of cannabis to the child's body in another manner.

157 (4) Unless there is harm or an unreasonable risk of harm to the child as described in  
158 Subsection (3), in a child welfare proceeding under this chapter, a child's parent's or guardian's  
159 use of medical cannabis or a cannabis product is not contrary to the best interests of the child  
160 if:

161 (a) for a medical cannabis cardholder after January 1, 2021, the parent's or guardian's  
162 possession or use complies with Title 26, Chapter 61a, Utah Medical Cannabis Act, and there  
163 is no evidence that the parent's or guardian's use of medical cannabis unreasonably deviates  
164 from the directions of use and dosing guidelines determined by the parent's or guardian's  
165 recommending medical provider or through a consultation described in Subsection  
166 26-61a-502(4) or (5); or

167 (b) before January 1, 2021, the parent's or guardian's possession or use complies with  
168 Subsection 58-37-3.7(2) or (3).

169 (5) Subsection (3) does not prohibit a finding of abuse or neglect of a child, and  
170 Subsection (3) does not prohibit a finding that a parent's or guardian's use of medical cannabis  
171 or a cannabis product is contrary to the best interests of a child, if there is evidence showing a  
172 nexus between the parent's or guardian's use of cannabis or a cannabis product and behavior  
173 that would separately constitute abuse or neglect of the child.

174 (6) If an individual, who is party to a proceeding under this chapter, is ordered by the  
175 juvenile court to submit to drug testing, or is referred by the division or a guardian ad litem for  
176 drug testing, the individual may not be ordered or referred for drug testing by means of a hair  
177 or fingernail test that is administered to detect the presence of drugs.