

MEDICAL CANNABIS AMENDMENTS

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Mark B. Madsen

House Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions related to medical cannabis.

Highlighted Provisions:

This bill:

- ▶ allows an individual with a qualifying illness who registers with the State Tax Commission to possess and use, under certain circumstances, cannabis, cannabis products, and devices designed for ingesting cannabis;
- ▶ directs the Division of Occupational and Professional Licensing to issue a license to operate a medical cannabis establishment to a person who meets certain requirements;
- ▶ allows a licensed person to grow, process, possess, and sell cannabis for the medical use of a patient, under certain circumstances; and
- ▶ directs the Division of Occupational and Professional Licensing to register an individual to act as an agent of a medical cannabis establishment under certain circumstances.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:



28 ENACTS:

- 29 **58-37-3.6**, Utah Code Annotated 1953
- 30 **58-85-101**, Utah Code Annotated 1953
- 31 **58-85-102**, Utah Code Annotated 1953
- 32 **58-85-103**, Utah Code Annotated 1953
- 33 **58-85-104**, Utah Code Annotated 1953
- 34 **58-85-105**, Utah Code Annotated 1953
- 35 **58-85-106**, Utah Code Annotated 1953
- 36 **58-85-107**, Utah Code Annotated 1953
- 37 **58-85-108**, Utah Code Annotated 1953
- 38 **58-85-201**, Utah Code Annotated 1953
- 39 **58-85-202**, Utah Code Annotated 1953
- 40 **59-28-101**, Utah Code Annotated 1953
- 41 **59-28-102**, Utah Code Annotated 1953
- 42 **59-28-103**, Utah Code Annotated 1953
- 43 **59-28-104**, Utah Code Annotated 1953

44 REPEALS:

- 45 **26-56-101**, as enacted by Laws of Utah 2014, Chapter 25
- 46 **26-56-102**, as enacted by Laws of Utah 2014, Chapter 25
- 47 **26-56-103**, as enacted by Laws of Utah 2014, Chapter 25
- 48 **58-37-4.3**, as enacted by Laws of Utah 2014, Chapter 25



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

51 Section 1. Section **58-37-3.6** is enacted to read:

52 **58-37-3.6. Exemption for possession or use of cannabis to treat a qualifying**
53 **illness.**

54 (1) As used in this section:

55 (a) "Cannabis" means marijuana.

56 (b) "Cannabis device" means a device, except for a device that facilitates cannabis
57 combustion, that is used to aid an individual in ingesting cannabis or a cannabis product.

58 (c) "Cannabis product" means a product that:

- 59 (i) is intended for human ingestion; and
- 60 (ii) contains cannabis or tetrahydrocannabinol.
- 61 (d) "Designated caregiver" means an individual who a patient with a medical cannabis
- 62 patient card designates, with the State Tax Commission, as the patient's caregiver under
- 63 Section [59-28-103](#).
- 64 (e) "Drug paraphernalia" means the same as that term is defined in Section [58-37a-3](#).
- 65 (f) "Marijuana" means the same as that term is defined in Section [58-37-2](#).
- 66 (g) "Medical cannabis establishment" means the same as that term is defined in Section
- 67 [58-85-102](#).
- 68 (h) "Medical cannabis patient card" means an official document or card, issued by the
- 69 State Tax Commission under Section [59-28-103](#), that is connected to the electronic verification
- 70 system described in Section [59-28-104](#).
- 71 (i) "Qualifying illness" means:
- 72 (i) acquired immune deficiency syndrome;
- 73 (ii) cancer;
- 74 (iii) amyotrophic lateral sclerosis;
- 75 (iv) Alzheimer's disease;
- 76 (v) post-traumatic stress disorder;
- 77 (vi) glaucoma; or
- 78 (vii) a medical condition or treatment for a medical condition that produces, for a
- 79 specific patient, one or more of the following:
- 80 (A) cachexia or physical wasting and malnutrition associated with chronic disease;
- 81 (B) persistent muscle spasms, including spasms caused by multiple sclerosis;
- 82 (C) seizures, including seizures caused by epilepsy;
- 83 (D) severe nausea; or
- 84 (E) severe pain.
- 85 (j) "Tetrahydrocannabinol" means a substance derived from cannabis that meets the
- 86 description in Subsection [58-37-4\(2\)\(a\)\(iii\)\(AA\)](#).
- 87 (2) Notwithstanding any other provision of this chapter, except as described in
- 88 Subsection (7), an individual who possesses or uses cannabis, a cannabis product, or a cannabis
- 89 device is not subject to, for the possession or use of the cannabis, cannabis product, or cannabis

90 device, the penalties described in this title for possession or use of marijuana,
91 tetrahydrocannabinol, or drug paraphernalia, if the individual:

92 (a) possesses or uses the cannabis, cannabis product, or cannabis device only to treat
93 the individual's qualifying illness; and

94 (b) holds a valid medical cannabis patient card.

95 (3) Notwithstanding any other provision of this chapter, except as described in
96 Subsection (7), an individual who possesses cannabis, a cannabis product, or a cannabis device,
97 or who distributes cannabis, a cannabis product, or a cannabis device to a patient is not subject
98 to, for the possession or distribution of the cannabis, cannabis product, or cannabis device, the
99 penalties described in this title for possession or distribution of marijuana,

100 tetrahydrocannabinol, or drug paraphernalia, if the individual:

101 (a) possesses or distributes the cannabis, cannabis product, or cannabis device only to
102 treat the patient's qualifying illness; and

103 (b) (i) if the patient is a minor, is the patient's parent or guardian and holds a valid
104 medical cannabis patient card; or

105 (ii) if the patient is 18 years of age or older and holds a medical cannabis patient card,
106 is the patient's designated caregiver.

107 (4) Notwithstanding any other provision of this chapter, except as described in
108 Subsection (7), a person who possesses, sells, or offers to sell cannabis, a cannabis product, or
109 a cannabis device is not subject to, for the possession, sale, or offer for sale of cannabis, the
110 cannabis product, or the cannabis device, the penalties described in this chapter for the
111 possession, sale, or offering for sale of marijuana, tetrahydrocannabinol, or drug paraphernalia
112 if the person:

113 (a) produces, sells, or offers to sell the cannabis, cannabis product, or cannabis device
114 for the end purpose of providing the cannabis, cannabis product, or cannabis device to a patient
115 with a qualifying illness;

116 (b) is licensed with the division under Title 58, Chapter 85, Medical Cannabis
117 Establishment Licensing Act; and

118 (c) complies with the operating requirements for a medical cannabis establishment
119 under Title 58, Chapter 85, Part 1, Medical Cannabis Establishments.

120 (5) Notwithstanding any other provision of this chapter, a person who grows, sells, or

121 offers to sell cannabis is not subject to, for the growth or sale of the cannabis, the penalties
122 described in this chapter for the growth or sale of marijuana, if the person:

123 (a) grows the cannabis only for the purpose of selling the cannabis to a licensed
124 medical cannabis establishment, for the end purpose of providing the cannabis to a patient with
125 a qualifying illness;

126 (b) is licensed with the division under Title 58, Chapter 85, Medical Cannabis
127 Establishment Licensing Act; and

128 (c) complies with the operating requirements for a cannabis cultivation facility under
129 Title 58, Chapter 85, Part 1, Medical Cannabis Establishments.

130 (6) Notwithstanding any other provision of this chapter, except as described in
131 Subsection (7), an individual who grows cannabis, or possesses, sells, or offers to sell cannabis,
132 a cannabis product, or a cannabis device is not subject to, for the growth of cannabis, or for the
133 possession, sale, or offer for sale of cannabis, the cannabis product, or the cannabis device, the
134 penalties described in this chapter for the growth, possession, sale, or offering for sale of
135 marijuana, tetrahydrocannabinol, or drug paraphernalia if the individual:

136 (a) grows, possesses, sells, or offers to sell the cannabis as an agent of a medical
137 cannabis establishment that is licensed with the division under Title 58, Chapter 85, Medical
138 Cannabis Establishment Licensing Act;

139 (b) is a valid medical cannabis establishment agent registration card holder; and

140 (c) complies with the employment requirements for a medical cannabis establishment
141 agent under Title 58, Chapter 85, Part 2, Medical Cannabis Establishment Agents.

142 (7) (a) An individual is not exempt from the penalties described in Subsections (2)
143 through (6) if the individual:

144 (i) uses cannabis through a means involving cannabis combustion; or

145 (ii) uses or possesses a cannabis device that facilitates the use of cannabis through
146 cannabis combustion.

147 (b) A person is not exempt from the penalties described in Subsections (2) through (6)
148 if the person possesses or sells a cannabis device that facilitates the use of cannabis through
149 cannabis combustion.

150 Section 2. Section **58-85-101** is enacted to read:

151 **CHAPTER 85. MEDICAL CANNABIS ESTABLISHMENT LICENSING ACT**

152 **Part 1. Medical Cannabis Establishments**

153 **58-85-101. Title.**

154 (1) This chapter is known as "Medical Cannabis Establishment Licensing Act."

155 (2) This part is known as "Medical Cannabis Establishments."

156 Section 3. Section **58-85-102** is enacted to read:

157 **58-85-102. Definitions.**

158 As used in this chapter:

159 (1) "Cannabis" means the same as that term is defined in Section [58-37-2](#).

160 (2) "Cannabis cultivation facility" means a person that:

161 (a) is licensed by the commission under Section [58-85-103](#); and

162 (b) possesses, grows, and sells cannabis to:

163 (i) a cannabis dispensary;

164 (ii) a cannabis processing facility; or

165 (iii) another cannabis cultivation facility.

166 (3) "Cannabis device" means a device, except for a device that facilitates cannabis
167 combustion, that is used to aid an individual in ingesting cannabis or a cannabis product.

168 (4) "Cannabis dispensary" means a business that:

169 (a) is licensed by the division to act as a cannabis dispensary under Section [58-85-103](#);

170 and

171 (b) purchases, possesses, or sells cannabis, a cannabis product, or a cannabis device.

172 (5) "Cannabis processing facility" means a person that:

173 (a) is licensed by the division to act as a cannabis processing facility under Section
174 [58-85-103](#);

175 (b) purchases cannabis from a cannabis cultivation facility;

176 (c) possesses cannabis or a cannabis product; and

177 (d) manufactures a cannabis product for sale to a cannabis dispensary.

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

179 (a) is intended for human ingestion; and

180 (b) contains cannabis or tetrahydrocannabinol.

181 (7) "Crime of violence" means any felony involving the use or threatened use of force
182 or violence against the person or property of another.

- 183 (8) "Electronic verification system" means the system described in Section 59-28-104.
- 184 (9) (a) "Excluded felony offense" means, for an individual:
- 185 (i) a crime of violence; or
- 186 (ii) a felony conviction of a state or federal law pertaining to controlled substances.
- 187 (b) "Excluded felony offense" does not include a criminal offense for which the
- 188 individual completed the individual's sentence, including any term of probation, incarceration,
- 189 or supervised release, more than 10 years before the day on which the individual applies for a
- 190 medical cannabis patient card or a medical cannabis establishment agent registration card.
- 191 (10) "Independent testing laboratory" means a facility that:
- 192 (a) is licensed by the division under Section 58-85-103; and
- 193 (b) meets the requirements of Section 58-85-108.
- 194 (11) "Inventory control system" means a connected electronic database and associated
- 195 tracking devices that monitor the chain of custody of cannabis from the point of the cannabis's
- 196 first cultivation to the point the cannabis is sold to a medical cannabis patient card holder.
- 197 (12) "Medical cannabis establishment" means:
- 198 (a) an independent testing laboratory;
- 199 (b) a cultivation facility;
- 200 (c) a cannabis processing facility; or
- 201 (d) a cannabis dispensary.
- 202 (13) "Medical cannabis establishment agent" means an owner, officer, board member,
- 203 employee, or volunteer of a medical cannabis establishment.
- 204 (14) "Medical cannabis establishment agent registration card" means a registration card
- 205 that is issued by the division under Section 58-28-203 that authorizes an individual to volunteer
- 206 or work at a medical cannabis establishment.
- 207 (15) "Medical cannabis patient card" means an official document or card, issued by the
- 208 State Tax Commission under Section 59-28-103, that is connected to an electronic verification
- 209 system.
- 210 (16) "Physician" means an individual who is licensed to practice:
- 211 (a) medicine, under Title 58, Chapter 67, Utah Medical Practice Act; or
- 212 (b) osteopathic medicine, under Title 58, Chapter 68, Utah Osteopathic Medical
- 213 Practice Act.

214 (17) "Tetrahydrocannabinol" means a substance that meets the description in
215 Subsection 58-37-4(2)(a)(iii)(AA).

216 Section 4. Section **58-85-103** is enacted to read:

217 **58-85-103. Medical cannabis establishment -- License -- General operating**
218 **requirements.**

219 (1) Subject to Subsection (2), the division shall issue a license to operate a medical
220 cannabis establishment to a person who submits to the division:

221 (a) a proposed name, address, and physical location where the person will operate the
222 medical cannabis establishment;

223 (b) evidence that the person possesses or controls a minimum of \$750,000 in liquid
224 assets;

225 (c) a \$5,000 application fee;

226 (d) evidence that the person meets the eligibility requirements for:

227 (i) a cannabis cultivation facility;

228 (ii) a cannabis processing facility;

229 (iii) a cannabis dispensary; or

230 (iv) an independent cannabis testing laboratory;

231 (e) a security plan for the medical cannabis establishment;

232 (f) evidence that the person will implement an inventory control system at the medical
233 cannabis establishment; and

234 (g) the results of a criminal background check for each owner, principal, or shareholder
235 of the person that will operate the medical cannabis establishment.

236 (2) The division shall, for a medical cannabis establishment to which the division
237 issues a license under Subsection (1), designate whether the license authorizes the medical
238 cannabis establishment to operate as:

239 (a) a cannabis cultivation facility;

240 (b) a cannabis processing facility;

241 (c) a cannabis dispensary; or

242 (d) an independent cannabis testing laboratory.

243 (3) The commission may not issue more than the greater of, in each county in the state:

244 (a) one cannabis dispensary license; or

245 (b) one cannabis dispensary license per 200,000 county residents.

246 (4) A medical cannabis establishment licensed by the division under Subsection (1)

247 shall:

248 (a) operate in a facility that houses, for the medical cannabis establishment's business

249 address, only the medical cannabis establishment; and

250 (b) have a single, secure public entrance.

251 (5) A medical cannabis establishment may not allow any person to consume cannabis

252 on the property or premises of the establishment.

253 (6) The division may inspect a medical cannabis establishment by appointment in order

254 to determine if the medical cannabis establishment complies with the requirements of this

255 chapter.

256 (7) A medical cannabis establishment shall individually package, label, and seal

257 cannabis in a unit size that contains no more than two ounces of cannabis by weight.

258 (8) A medical cannabis establishment may only accept payment for cannabis or a

259 cannabis product in a transaction approved by the State Tax Commission, facilitated by the

260 inventory control system described in Section [58-85-104](#) and the electronic verification system

261 described in Section [59-28-104](#).

262 (9) The division may revoke the license of a medical cannabis establishment under this

263 section if the medical cannabis establishment violates the requirements of this chapter.

264 Section 5. Section **58-85-104** is enacted to read:

265 **58-85-104. Inventory control system.**

266 Each medical cannabis establishment licensed under Section [58-85-103](#) shall maintain

267 an inventory control system that:

268 (1) is capable of tracking, in real time, cannabis from the first point the cannabis is

269 planted as a seed until the cannabis produced from the seed is sold, in the form of unprocessed

270 cannabis or a cannabis product, to a medical cannabis patient card holder;

271 (2) stores, in real time, a record of the amount of cannabis or cannabis products in a

272 medical cannabis establishment's possession;

273 (3) keeps a record of the medical cannabis establishment's sales to medical cannabis

274 patient card holders and other medical cannabis establishments;

275 (4) is capable of interfacing with the electronic verification system maintained by the

276 State Tax Commission under Section 59-28-104 in order for a medical cannabis patient card
277 holder who purchases cannabis or a cannabis product to:

278 (a) identify the origin of the cannabis or cannabis product the medical cannabis patient
279 card holder purchased; and

280 (b) identify each medical cannabis establishment that had contact with the cannabis the
281 medical cannabis patient card holder purchased;

282 (5) transmits, for each medical cannabis purchase by a medical cannabis patient
283 cardholder, a 25 cents transaction fee to the State Tax Commission;

284 (6) transfers, with State Tax Commission approval, funds, used for cannabis or a
285 cannabis product, between a medical cannabis patient card holder, a medical cannabis
286 establishment, and the commission; and

287 (7) is accessible by the State Tax Commission and the division.

288 Section 6. Section **58-85-105** is enacted to read:

289 **58-85-105. Cannabis cultivation facility -- Operating requirements.**

290 (1) A cannabis cultivation facility shall cultivate cannabis only:

291 (a) indoors, in an enclosed, locked facility that is accessible only by an individual with
292 a valid medical cannabis agent registration card under Section 58-85-202; and

293 (b) at the physical address provided to the division under Section 58-85-103.

294 (2) A cannabis cultivation facility shall ensure that any cannabis growing inside the
295 facility is not visible from outside the building.

296 (3) A cannabis cultivation facility shall use a unique batch identifier for each batch of
297 cannabis transferred to a cannabis dispensary or cannabis processing facility.

298 Section 7. Section **58-85-106** is enacted to read:

299 **58-85-106. Cannabis processing facility -- Eligibility requirements -- Operating**
300 **requirements.**

301 (1) A cannabis processing facility shall ensure that a cannabis product that the cannabis
302 processing facility sells or provides to a cannabis dispensary:

303 (a) has a label that:

304 (i) clearly and unambiguously states that the cannabis product contains cannabis;

305 (ii) clearly displays the full cannabinoid profile of the cannabis product; and

306 (iii) has a unique batch identifier;

- 307 (b) is sold in packaging that:
- 308 (i) is not appealing to children;
- 309 (ii) is opaque;
- 310 (iii) makes a physician's instructions easy to follow; and
- 311 (iv) allows the cannabis product to be tracked by an inventory control system; and
- 312 (c) is not configured or colored to resemble candy.

313 (2) A cannabis processing facility shall produce a cannabis product only:

314 (a) in an enclosed, locked facility that is accessible only by an individual with a valid
315 medical cannabis agent registration card under Section 58-85-202; and

316 (b) at the physical address provided to the division under Section 58-85-103.

317 Section 8. Section 58-85-107 is enacted to read:

318 **58-85-107. Cannabis dispensary -- Eligibility requirements -- Operating**
319 **requirements.**

320 (1) A cannabis dispensary shall ensure that:

321 (a) the cannabinoid profile in cannabis or a cannabis product that the dispensary sells
322 or offers for sale is clearly and accurately stated on the cannabis or cannabis product
323 packaging;

324 (b) the cannabis dispensary does not sell to an individual, in any one 14-day period:

325 (i) an amount of cannabis that exceeds two ounces by weight; or

326 (ii) an amount of cannabis products that exceeds the amount recommended by the
327 individual's physician; and

328 (c) the legal limit on the possession of cannabis is posted clearly and conspicuously
329 within the public area of the cannabis dispensary.

330 (2) A cannabis dispensary shall only sell cannabis, a cannabis product, or a cannabis
331 device in a separate and defined area where only an individual with a medical cannabis patient
332 card, or a designated caregiver authorized to use a medical cannabis patient card, may enter.

333 Section 9. Section 58-85-108 is enacted to read:

334 **58-85-108. Independent cannabis testing laboratory -- Eligibility requirements --**
335 **Operating requirements.**

336 In addition to the requirements described in Section 58-85-104, the division shall
337 license a private laboratory as an independent cannabis testing laboratory if the laboratory is

338 able to determine accurately, for cannabis or a cannabis product that a cannabis dispensary sells
339 or offers to sell:

- 340 (1) the concentration of cannabinoids in the cannabis or cannabis product;
- 341 (2) whether the cannabis or cannabis product is or contains organic or nonorganic
- 342 material;
- 343 (3) whether the cannabis or cannabis product contains mold or fungus;
- 344 (4) the concentration of pesticides and fertilizers in the cannabis or cannabis product;

345 and

- 346 (5) the concentration of nutrients in the cannabis or cannabis product.

347 Section 10. Section **58-85-201** is enacted to read:

Part 2. Medical Cannabis Establishment Agents

58-85-201. Title.

350 This part is known as "Medical Cannabis Establishment Agents."

351 Section 11. Section **58-85-202** is enacted to read:

58-85-202. Medical cannabis establishment agent -- Registration.

353 (1) An individual may not act as an owner, shareholder, employee, or agent of a
354 medical cannabis establishment unless the individual is registered by the division as a medical
355 cannabis establishment agent.

356 (2) The division shall register and issue a medical cannabis establishment agent
357 registration card to an individual who:

- 358 (a) has not been convicted of an excluded felony offense;
- 359 (b) provides to the division:
 - 360 (i) the individual's name and address; and
 - 361 (ii) the name and location of licensed medical cannabis establishments where the
 - 362 individual seeks to act as the medical cannabis establishment's agent; and
 - 363 (c) authorizes the division to conduct a criminal background check on the individual.

364 (3) The division shall designate, for a medical cannabis establishment agent
365 registration card the division issues under Subsection (2), whether the medical cannabis
366 establishment agent registration card holder is authorized to act as an agent for:

- 367 (a) a cannabis cultivation facility;
- 368 (b) a cannabis processing facility;

369 (c) a cannabis dispensary; or

370 (d) an independent cannabis testing laboratory.

371 (4) The division may revoke the medical cannabis agent registration card of an
372 individual who:

373 (a) violates the requirements of this chapter; or

374 (b) commits an excluded felony offense.

375 Section 12. Section **59-28-101** is enacted to read:

376 **CHAPTER 28. MEDICAL CANNABIS REGISTRATION ACT**

377 **59-28-101. Title.**

378 This chapter is known as "Medical Cannabis Registration Act."

379 Section 13. Section **59-28-102** is enacted to read:

380 **59-28-102. Definitions.**

381 As used in this chapter:

382 (1) "Cannabis" means marijuana.

383 (2) "Cannabis device" means a device, except for a device that facilitates cannabis
384 combustion, that is used to aid an individual in ingesting cannabis or a cannabis product.

385 (3) "Cannabis product" means a product that:

386 (a) is intended for human ingestion; and

387 (b) contains cannabis or tetrahydrocannabinol.

388 (4) "Designated caregiver" means an individual who a patient with a medical cannabis
389 patient card designates, with the State Tax Commission, as the patient's caregiver under
390 Section [59-28-103](#).

391 (5) "Drug paraphernalia" means the same as that term is defined in Section [58-37a-3](#).

392 (6) "Electronic verification system" means the system described in Section [59-28-104](#).

393 (7) "Marijuana" means the same as that term is defined in Section [58-37-2](#).

394 (8) "Medical cannabis establishment" means the same as that term is defined in Section
395 [58-85-102](#).

396 (9) "Medical cannabis establishment agent registration card" means a registration card
397 issued under Section [58-85-203](#).

398 (10) "Medical cannabis patient card" means an official document or card, issued by the
399 State Tax Commission under Section [59-28-103](#), that is connected to the electronic verification

400 system described in Section 59-28-104.

401 (11) "Physician" means an individual who is licensed to practice:

402 (a) medicine, under Title 58, Chapter 67, Utah Medical Practice Act; or

403 (b) osteopathic medicine, under Title 58, Chapter 68, Utah Osteopathic Medical

404 Practice Act.

405 (12) "Qualifying illness" means:

406 (a) acquired immune deficiency syndrome;

407 (b) cancer;

408 (c) amyotrophic lateral sclerosis;

409 (d) Alzheimer's disease;

410 (e) post-traumatic stress disorder;

411 (f) glaucoma; or

412 (g) a medical condition or treatment for a medical condition that produces, for a
413 specific patient, one or more of the following:

414 (i) cachexia or physical wasting and malnutrition associated with chronic disease;

415 (ii) persistent muscle spasms, including spasms caused by multiple sclerosis;

416 (iii) seizures, including seizures caused by epilepsy;

417 (iv) severe nausea; or

418 (v) severe pain.

419 (13) "Tetrahydrocannabinol" means a substance derived from cannabis that meets the
420 description in Subsection 58-37-4(2)(a)(iii)(AA).

421 Section 14. Section **59-28-103** is enacted to read:

422 **59-28-103. Medical cannabis patient card -- Application -- Fees -- Database.**

423 (1) The commission shall issue a medical cannabis patient card to an individual if the
424 individual:

425 (a) is at least 18 years of age;

426 (b) is a Utah resident;

427 (c) provides the commission with a statement signed by a physician, provided by the
428 physician during an office visit with the individual, that indicates that the individual:

429 (i) suffers from a qualifying illness; and

430 (ii) may benefit from treatment with cannabis or a cannabis product;

- 431 (d) pays the commission a \$25 fee; and
- 432 (e) submits an application to the commission, on a form created by the commission,
- 433 that contains:
- 434 (i) the individual's name and address; and
- 435 (ii) a copy of the individual's valid photo identification.
- 436 (2) The commission shall issue a medical cannabis patient card to an individual who is
- 437 the parent or legal guardian of a minor if the individual:
- 438 (a) is at least 18 years of age;
- 439 (b) is a Utah resident;
- 440 (c) provides the commission with a statement signed by a physician, provided by the
- 441 physician during an office visit with the individual and the minor, that indicates that the minor:
- 442 (i) suffers from a qualifying illness; and
- 443 (ii) may benefit from treatment with cannabis or a cannabis product;
- 444 (d) pays the commission a \$25 fee; and
- 445 (e) submits an application to the commission, on a form created by the commission,
- 446 that contains:
- 447 (i) the parent's or legal guardian's name and address;
- 448 (ii) the minor's name; and
- 449 (iii) a copy of the parent's or legal guardian's valid photo identification.
- 450 (3) An individual who holds a valid medical cannabis patient card under Subsection (1)
- 451 who the commission determines is physically unable to obtain cannabis or a cannabis product
- 452 from a dispensary may register with the commission up to two individuals to serve as
- 453 designated caregivers of the individual.
- 454 (4) A designated caregiver registered with the commission under Subsection (3) may
- 455 carry an individual's valid medical cannabis patient card and purchase and possess, in
- 456 accordance with this chapter, cannabis, a cannabis product, or a cannabis device on behalf of
- 457 the individual.
- 458 (5) The commission shall maintain a record, via an electronic verification system, of:
- 459 (a) the name of each individual who registers with the division under Subsection (1) or
- 460 (2);
- 461 (b) the name of each minor receiving care from an individual registered with the

462 division under Subsection (2); and

463 (c) the name of each registered designated caregiver.

464 (6) The commission shall contract with a private person to implement an electronic
465 verification system that satisfies the requirements of Section 59-28-104.

466 (7) A medical cannabis patient card issued under Subsection (1) or (2) is:

467 (a) valid for two years; and

468 (b) renewable, if, at the time of renewal, the registrant meets the requirements of either
469 Subsection (1) or (2).

470 Section 15. Section 59-28-104 is enacted to read:

471 **59-28-104. Electronic verification system.**

472 (1) The commission shall contract in accordance with Title 63G, Chapter 3, Utah
473 Administrative Rulemaking Act, with a private person to implement and maintain an electronic
474 verification system that:

475 (a) allows an individual, under Subsection 59-28-103(1), or an individual who is the
476 parent or legal guardian of a minor under Subsection 59-28-103(2), to apply to the commission
477 for a medical cannabis patient card;

478 (b) allows a physician to electronically recommend, during a visit with a patient,
479 treatment with cannabis or a cannabis product for the patient;

480 (c) connects with an inventory control system used by a medical cannabis
481 establishment, described in Section 58-85-104, to track, in real time, for the purchase of
482 cannabis or a cannabis product by a medical cannabis patient card holder:

483 (i) the time and date of the purchase;

484 (ii) the quantity and type of cannabis or a cannabis product purchased;

485 (iii) the amount of money the medical cannabis patient card holder spent; and

486 (iv) the medical cannabis establishment associated with the cannabis or cannabis
487 product;

488 (d) accepts from and securely transfers funds to the commission for the commission to
489 hold on behalf of a medical cannabis patient card holder;

490 (e) transfers, with commission approval, funds used for cannabis or a cannabis product
491 between a medical cannabis patient card holder, a medical cannabis establishment, and the
492 commission; and

493 (f) is accessible by the commission and the Division of Occupational and Professional
 494 Licensing.

495 (2) An individual may only purchase cannabis or a cannabis product using funds
 496 deposited in advance with the commission via the electronic verification system described in

497 Subsection (1).

498 Section 16. **Repealer.**

499 This bill repeals:

500 Section **26-56-101, Title.**

501 Section **26-56-102, Definitions.**

502 Section **26-56-103, Hemp extract registration card -- Application -- Fees --**

503 **Database.**

504 Section **58-37-4.3, Exemption for use or possession of hemp extract.**

Legislative Review Note

as of 2-25-15 10:05 AM

The Utah Legislature's Joint Rule 4-2-402 requires legislative general counsel to place a legislative review note on legislation. The Legislative Management Committee has further directed legislative general counsel to include legal analysis in the legislative review note only if legislative general counsel determines there is a high probability that a court would declare the legislation to be unconstitutional under the Utah Constitution, the United States Constitution, or both. As explained in the legal analysis below, legislative general counsel has determined, based on applicable state and federal constitutional language and current interpretations of that language in state and federal court case law, that this legislation has a high probability of being declared unconstitutional by a court.

S.B. 259: (1) defines "cannabis" as marijuana, defines "cannabis product" as a product containing tetrahydrocannabinol, and defines "cannabis device" as a device, except for a device that facilitates cannabis combustion, that is used to aid an individual in ingesting cannabis or a cannabis product; (2) gives the State Tax Commission the authority to issue a registration card to an individual who, based on a statement from a physician, could benefit from treatment by cannabis or a cannabis product, or to an individual caring for a minor who, based on a statement from a physician, could benefit from treatment by cannabis; (3) allows a registered individual, within certain limitations, to use or possess cannabis, a cannabis product, or a cannabis device; (4) allows a person licensed with the Utah Division of Occupational and Professional Licensing to grow cannabis, to possess and process cannabis and a cannabis product, and to sell cannabis and a cannabis product to a registered individual or another licensed person; and (5) directs the State Tax Commission to hold and transfer funds from

cannabis and cannabis product transactions for and between licensed persons and registered individuals.

There is a high probability that a court will find S.B. 259 unconstitutional as preempted by federal law.

The federal Controlled Substances Act defines "marihuana" as "all parts of the plant *Cannabis sativa* L., whether growing or not," and only exempts a compound or other mixture made from the "mature stalks" or sterilized seeds of the plant. 21 U.S.C. § 802(16) (2015). The act lists marihuana as a controlled substance and makes it illegal to possess a controlled substance without a prescription, or to possess a controlled substance with intent to distribute the substance. *Id.* at §§ 841, 844. In addition to the federal Controlled Substances Act, other federal laws regarding banking and racketeering prohibit commercial and banking activity involving a controlled substance, including marihuana.

Under the Supremacy Clause in the U.S. Constitution, the U.S. Supreme Court has "long recognized that state laws that conflict with federal law are without effect." *Altira Group v. Good*, 555 U.S. 70 (2008). Federal law limits preemption under the federal Controlled Substances Act to those cases where a "positive conflict" exists between the Act and a state law, such that it is impossible for a party to comply with both state and federal requirements. See 21 U.S.C. § 903; *Sprietsma v. Mercury Marine*, 537 U.S. 51, 64 (2002).

Substances that meet S.B. 259's definitions of cannabis and cannabis product need not be made exclusively from the mature stalks or sterilized seeds of the cannabis plant, and therefore are likely to be considered "marihuana" under the federal Controlled Substances Act. Any substance that meets the federal Controlled Substances Act's definition of marihuana will trigger the possession and distribution prohibitions contained in the Act. An individual possessing or using cannabis or a cannabis product likely could not comply with the provisions of S.B. 259 without also violating the possession prohibitions in federal law, creating a positive conflict with the bill and federal law. Likewise, a person that possesses and sells cannabis or a cannabis product likely could not comply with the provisions of S.B. 259 without violating the possession and distribution provisions in federal law, creating a second positive conflict.

In addition to the positive conflicts S.B. 259 creates with the federal Controlled Substances Act, S.B. 259 likely creates additional positive conflicts with federal banking and racketeering laws prohibiting commercial and banking activity involving a controlled substance. Those laws are likely to conflict with the regulatory scheme established by S.B. 259 for the transfer of funds related to the possession, sale, and distribution of cannabis and cannabis products.

Those positive conflicts result in a high probability that a court will hold that S.B. 259 is preempted by federal law and unconstitutional under the Supremacy Clause.

Office of Legislative Research and General Counsel