1

MEDICAL CANNABIS AMENDMENTS



26	None
27	Utah Code Sections Affected:
28	ENACTS:
29	53-17-101, Utah Code Annotated 1953
30	53-17-102, Utah Code Annotated 1953
31	53-17-103, Utah Code Annotated 1953
32	53-17-104, Utah Code Annotated 1953
33	53-17-105 , Utah Code Annotated 1953
34	58-37-3.6, Utah Code Annotated 1953
35	58-85-101, Utah Code Annotated 1953
36	58-85-102, Utah Code Annotated 1953
37	58-85-103, Utah Code Annotated 1953
38	58-85-104, Utah Code Annotated 1953
39	58-85-105 , Utah Code Annotated 1953
40	58-85-106, Utah Code Annotated 1953
41	58-85-107 , Utah Code Annotated 1953
42	58-85-108 , Utah Code Annotated 1953
43	58-85-201 , Utah Code Annotated 1953
44	58-85-202 , Utah Code Annotated 1953
45	REPEALS:
46	26-56-101, as enacted by Laws of Utah 2014, Chapter 25
47	26-56-102, as enacted by Laws of Utah 2014, Chapter 25
48	26-56-103, as enacted by Laws of Utah 2014, Chapter 25
49	58-37-4.3, as enacted by Laws of Utah 2014, Chapter 25
50	
51	Be it enacted by the Legislature of the state of Utah:
52	Section 1. Section 53-17-101 is enacted to read:
53	CHAPTER 17. MEDICAL CANNABIS REGISTRATION ACT
54	<u>53-17-101.</u> Title.
55	This chapter is known as "Medical Cannabis Registration Act."
56	Section 2. Section 53-17-102 is enacted to read:

3/	55-17-102. Definitions.
58	As used in this chapter:
59	(1) "Cannabis" means marijuana.
60	(2) "Cannabis device" means a device, except for a device that facilitates cannabis
61	combustion, that is used to aid an individual in ingesting cannabis or a cannabis product.
62	(3) "Cannabis product" means a product that:
63	(a) is intended for human ingestion; and
64	(b) contains cannabis or tetrahydrocannabinol.
65	(4) "Designated caregiver" means an individual who a patient with a medical cannabis
66	patient card designates as the patient's caregiver under Section 53-17-103.
67	(5) "Drug paraphernalia" means the same as that term is defined in Section 58-37a-3.
68	(6) "Electronic verification system" means the system described in Section 53-17-104.
69	(7) "Marijuana" means the same as that term is defined in Section 58-37-2.
70	(8) "Medical cannabis establishment" means the same as that term is defined in Section
71	<u>58-85-102.</u>
72	(9) "Medical cannabis establishment agent registration card" means a registration card
73	issued under Section 58-85-203.
74	(10) "Medical cannabis patient card" means an official document or card, issued by the
75	department under Section 53-17-103, that is connected to the electronic verification system
76	described in Section 53-17-104.
77	(11) "Physician" means an individual who:
78	(a) is licensed to practice:
79	(i) medicine, under Title 58, Chapter 67, Utah Medical Practice Act; or
80	(ii) osteopathic medicine, under Title 58, Chapter 68, Utah Osteopathic Medical
81	Practice Act; and
82	(b) has completed a residency or fellowship in:
83	(i) anesthesiology;
84	(ii) gastroenterology;
85	(iii) neurology
86	(iv) oncology;
87	(v) ophthalmology;

88	(vi) physiatry; or
89	(vi) psychiatry.
90	(12) "Qualifying illness" means:
91	(a) acquired immune deficiency syndrome;
92	(b) Alzheimer's disease;
93	(c) amyotrophic lateral sclerosis;
94	(d) an autoimmune disorder;
95	(e) cachexia or physical wasting, nausea, and malnutrition associated with chronic
96	disease;
97	(f) cancer;
98	(g) Crohn's disease;
99	(h) epilepsy, or a condition that causes debilitating seizures;
100	(i) glaucoma;
101	(j) multiple sclerosis or a similar condition that causes persistent and debilitating
102	muscle spasms;
103	(k) post-traumatic stress disorder; or
104	(1) severe, chronic pain:
105	(i) that is not responsive to conventional treatment; and
106	(ii) for which a physician determines the individual with the severe, chronic pain is at
107	risk of abusing, becoming chemically dependent on, or overdosing on pain medication.
108	(13) "Tetrahydrocannabinol" means a substance derived from cannabis that meets the
109	description in Subsection 58-37-4(2)(a)(iii)(AA).
110	Section 3. Section 53-17-103 is enacted to read:
111	53-17-103. Medical cannabis patient card Application Fees Database.
112	(1) The department shall issue a medical cannabis patient card, via the electronic
113	verification system described in Section 53-17-104, to an individual if the individual:
114	(a) is at least 18 years of age;
115	(b) is a Utah resident;
116	(c) provides the department with a statement signed by a physician that indicates that
117	the individual:
118	(i) suffers from a qualifying illness; and

119	(ii) may benefit from treatment with cannabis of a cannabis product,
120	(d) pays the department a \$25 fee; and
121	(e) submits an application to the department, using the electronic verification system
122	described in Section 53-17-104, that contains:
123	(i) the individual's name and address; and
124	(ii) a copy of the individual's valid photo identification.
125	(2) The department shall issue a medical cannabis patient card, via the electronic
126	verification system described in Section 53-17-104, to an individual who is the parent or legal
127	guardian of a minor if the individual:
128	(a) is at least 18 years of age;
129	(b) is a Utah resident;
130	(c) provides the department with a statement signed by the physician that indicates that
131	the minor:
132	(i) suffers from a qualifying illness; and
133	(ii) may benefit from treatment with cannabis or a cannabis product;
134	(d) pays the department a \$25 fee; and
135	(e) submits an application to the department, using the electronic verification system
136	described in Section 53-17-104, that contains:
137	(i) the parent's or legal guardian's name and address;
138	(ii) the minor's name; and
139	(iii) a copy of the parent's or legal guardian's valid photo identification.
140	(3) An individual who applies for a medical cannabis patient card under Subsection (1)
141	or (2) shall fill out and submit the application described in Subsection (1) or (2):
142	(a) online, in connection with the electronic verification system described in Section
143	<u>53-17-104; and</u>
144	(b) with a physician, during an office visit with the physician.
145	(4) An individual who holds a valid medical cannabis patient card under Subsection (1)
146	who a physician determines is unable to obtain cannabis or a cannabis product from a cannabis
147	dispensary may register with the department up to two individuals to serve as designated
148	caregivers of the individual.
149	(5) A designated caregiver registered with the department under Subsection (3) may

150	carry an individual's valid medical cannabis patient card and purchase and possess, in
151	accordance with this chapter, cannabis, a cannabis product, or a cannabis device on behalf of
152	the individual.
153	(6) A medical cannabis patient card the department issues under Subsection (1) or (2)
154	<u>is:</u>
155	(a) valid for the lesser of:
156	(i) an amount of time determined by the physician who recommends treatment with
157	cannabis or a cannabis product under Subsection (1) or (2); and
158	(ii) two years; and
159	(b) renewable, if, at the time of renewal, the individual with the medical cannabis
160	patient card meets the requirements of either Subsection (1) or (2).
161	Section 4. Section 53-17-104 is enacted to read:
162	53-17-104. Electronic verification system.
163	(1) The department shall contract, in accordance with Title 63G, Chapter 3, Utah
164	Administrative Rulemaking Act, with a private person to implement and maintain an electronic
165	verification system that:
166	(a) allows an individual, under Subsection 53-17-103(1), or an individual who is the
167	parent or legal guardian of a minor under Subsection 53-17-103(2), to apply, in the presence of
168	a physician, to the department for a medical cannabis patient card;
169	(b) allows a physician to electronically recommend, during a visit with a patient,
170	treatment with cannabis or a cannabis product for the patient;
171	(c) issues to an individual, if the individual meets the requirements in Section
172	53-17-103, a medical cannabis patient card;
173	(d) accepts and holds funds from an individual with a medical cannabis patient card;
174	(e) allows an individual with a medical cannabis patient card to use the funds described
175	in Subsection (1)(e) to purchase cannabis, a cannabis product, or a cannabis device from a
176	cannabis dispensary;
177	(f) transmits the funds described in Subsection (1)(e) to a cannabis dispensary for the
178	purchase of cannabis, a cannabis product, or a cannabis device;
179	(g) remits to the State Tax Commission the state sales tax due for a purchase of
180	cannabis, a cannabis product, or a cannabis device;

181	(h) connects with an inventory control system used by a cannabis dispensary, described
182	in Section 58-85-104, to track, in real time, for the purchase of cannabis or a cannabis product
183	by a medical cannabis patient card holder:
184	(i) the time and date of the purchase;
185	(ii) the quantity and type of cannabis or a cannabis product purchased;
186	(iii) the amount of money the medical cannabis patient card holder spent; and
187	(iv) any medical cannabis establishment associated with the cannabis or cannabis
188	product;
189	(i) is accessible by the department; and
190	(j) is accessible by state or local law enforcement during a traffic stop.
191	(2) An individual with a medical cannabis patient card may only purchase cannabis, a
192	cannabis product, or a cannabis device using funds transmitted in advance to the individual's
193	account with the provider of the electronic verification system described in Subsection (1).
194	(3) The department may release, in a format such that it is impossible to determine the
195	identity of an individual medical cannabis patient card holder, the data collected by the system
196	under Subsection (1) for the purpose of conducting medical research.
197	Section 5. Section 53-17-105 is enacted to read:
198	53-17-105. Standard of care Medical practitioners not liable No private right
199	of action.
200	(1) It is not a breach of the applicable standard of care for a physician, other licensed to
201	recommend treatment with cannabis or a cannabis product to an individual under this chapter.
202	(2) A physician that recommends treatment with cannabis or a cannabis product to an
203	individual under this chapter may not, solely based on the cannabis or cannabis product
204	recommendation, be subject to:
205	(a) civil liability;
206	(b) criminal liability; or
207	(c) licensure sanctions under:
208	(i) Title 58, Chapter 67, Utah Medical Practice Act; or
209	(ii) Title 58, Chapter 68, Utah Osteopathic Medical Practice Act.
210	Section 6. Section 58-37-3.6 is enacted to read:
211	58-37-3.6. Exemption for possession or use of cannabis to treat a qualifying

212	mness.
213	(1) As used in this section:
214	(a) "Cannabis" means marijuana.
215	(b) "Cannabis device" means a device, except for a device that facilitates cannabis
216	combustion, that is used to aid an individual in ingesting cannabis or a cannabis product.
217	(c) "Cannabis product" means a product that:
218	(i) is intended for human ingestion; and
219	(ii) contains cannabis or tetrahydrocannabinol.
220	(d) "Designated caregiver" means an individual who a patient with a medical cannabis
221	patient card designates, with the Department of Public Safety, as the patient's caregiver under
222	Section 53-17-103.
223	(e) "Drug paraphernalia" means the same as that term is defined in Section 58-37a-3.
224	(f) "Marijuana" means the same as that term is defined in Section 58-37-2.
225	(g) "Medical cannabis establishment" means the same as that term is defined in Section
226	<u>58-85-102.</u>
227	(h) "Medical cannabis patient card" means an official document or card, issued by the
228	Department of Public Safety under Section 53-17-103, that is connected to the electronic
229	verification system described in Section 53-17-104.
230	(i) "Qualifying illness" means:
231	(i) acquired immune deficiency syndrome;
232	(ii) Alzheimer's disease;
233	(iii) amyotrophic lateral sclerosis;
234	(iv) an autoimmune disorder;
235	(v) cachexia or physical wasting, nausea, and malnutrition associated with chronic
236	disease;
237	(vi) cancer;
238	(vii) Crohn's disease;
239	(viii) epilepsy, or a condition that causes debilitating seizures;
240	(ix) glaucoma;
241	(x) multiple sclerosis or a similar condition that causes persistent and debilitating
242	muscle spasms;

243	(XI) post-traumatic stress disorder, or
244	(xii) severe, chronic pain:
245	(A) that is not responsive to conventional treatment; and
246	(B) for which a physician determines the individual with the severe, chronic pain is at
247	risk of abusing, becoming chemically dependent on, or overdosing on pain medication.
248	(j) "Tetrahydrocannabinol" means a substance derived from cannabis that meets the
249	description in Subsection 58-37-4(2)(a)(iii)(AA).
250	(2) Notwithstanding any other provision of this chapter, except as described in
251	Subsection (7), an individual who possesses or uses cannabis, a cannabis product, or a cannabis
252	device is not subject to, for the possession or use of the cannabis, cannabis product, or cannabis
253	device, the penalties described in this title for possession or use of marijuana,
254	tetrahydrocannabinol, or drug paraphernalia, if the individual holds a valid medical cannabis
255	patient card.
256	(3) Notwithstanding any other provision of this chapter, except as described in
257	Subsection (7), an individual who possesses cannabis, a cannabis product, or a cannabis device,
258	or who distributes cannabis, a cannabis product, or a cannabis device to a patient is not subject
259	to, for the possession or distribution of the cannabis, cannabis product, or cannabis device, the
260	penalties described in this title for possession or distribution of marijuana,
261	tetrahydrocannabinol, or drug paraphernalia, if the individual:
262	(a) if the patient is a minor, is the patient's parent or guardian and holds a valid medical
263	cannabis patient card; or
264	(b) if the patient is 18 years of age or older and holds a medical cannabis patient card,
265	is the patient's designated caregiver.
266	(4) Notwithstanding any other provision of this chapter, except as described in
267	Subsection (7), a person who possesses, sells, or offers to sell cannabis, a cannabis product, or
268	a cannabis device is not subject to, for the possession, sale, or offer for sale of cannabis, the
269	cannabis product, or the cannabis device, the penalties described in this chapter for the
270	possession, sale, or offering for sale of marijuana, tetrahydrocannabinol, or drug paraphernalia
271	if the person:
272	(a) produces, sells, or offers to sell the cannabis, cannabis product, or cannabis device
273	for the end purpose of providing the cannabis, cannabis product, or cannabis device to a patient

274	with a qualifying illness;
275	(b) is licensed with the division under Title 58, Chapter 85, Medical Cannabis
276	Establishment Licensing Act; and
277	(c) complies with the operating requirements for a medical cannabis establishment
278	under Title 58, Chapter 85, Part 1, Medical Cannabis Establishments.
279	(5) Notwithstanding any other provision of this chapter, a person who grows, sells, or
280	offers to sell cannabis is not subject to, for the growth or sale of the cannabis, the penalties
281	described in this chapter for the growth or sale of marijuana, if the person:
282	(a) grows the cannabis only for the purpose of selling the cannabis to a licensed
283	medical cannabis establishment, for the end purpose of providing the cannabis to a patient with
284	a qualifying illness;
285	(b) is licensed with the division under Title 58, Chapter 85, Medical Cannabis
286	Establishment Licensing Act; and
287	(c) complies with the operating requirements for a cannabis cultivation facility under
288	Title 58, Chapter 85, Part 1, Medical Cannabis Establishments.
289	(6) Notwithstanding any other provision of this chapter, except as described in
290	Subsection (7), an individual who grows cannabis, or possesses, sells, or offers to sell cannabis,
291	a cannabis product, or a cannabis device is not subject to, for the growth of cannabis, or for the
292	possession, sale, or offer for sale of cannabis, the cannabis product, or the cannabis device, the
293	penalties described in this chapter for the growth, possession, sale, or offering for sale of
294	marijuana, tetrahydrocannabinol, or drug paraphernalia if the individual:
295	(a) grows, possesses, sells, or offers to sell the cannabis as an agent of a medical
296	cannabis establishment that is licensed with the division under Title 58, Chapter 85, Medical
297	Cannabis Establishment Licensing Act;
298	(b) is a valid medical cannabis establishment agent registration card holder; and
299	(c) complies with the employment requirements for a medical cannabis establishment
300	agent under Title 58, Chapter 85, Part 2, Medical Cannabis Establishment Agents.
301	(7) An individual is not exempt from the penalties described in Subsections (2) through
302	(6) if the individual:
303	(a) uses cannabis through a means involving cannabis combustion; or
304	(b) uses or possesses a cannabis device that facilitates the use of cannabis through

305	cannabis combustion.
306	Section 7. Section 58-85-101 is enacted to read:
307	CHAPTER 85. MEDICAL CANNABIS ESTABLISHMENT LICENSING ACT
308	Part 1. Medical Cannabis Establishments
309	<u>58-85-101.</u> Title.
310	(1) This chapter is known as "Medical Cannabis Establishment Licensing Act."
311	(2) This part is known as "Medical Cannabis Establishments."
312	Section 8. Section 58-85-102 is enacted to read:
313	<u>58-85-102.</u> Definitions.
314	As used in this chapter:
315	(1) "Cannabis" means the same as that term is defined in Section 58-37-2.
316	(2) "Cannabis cultivation facility" means a person that:
317	(a) is licensed by the division under Section 58-85-103; and
318	(b) possesses, grows, and sells cannabis to:
319	(i) a cannabis dispensary;
320	(ii) a cannabis processing facility; or
321	(iii) another cannabis cultivation facility.
322	(3) "Cannabis device" means a device, except for a device that facilitates cannabis
323	combustion, that is used to aid an individual in ingesting cannabis or a cannabis product.
324	(4) "Cannabis dispensary" means a business that:
325	(a) is licensed by the division to act as a cannabis dispensary under Section 58-85-103;
326	<u>and</u>
327	(b) purchases, possesses, or sells cannabis, a cannabis product, or a cannabis device.
328	(5) "Cannabis processing facility" means a person that:
329	(a) is licensed by the division to act as a cannabis processing facility under Section
330	<u>58-85-103;</u>
331	(b) purchases cannabis from a cannabis cultivation facility;
332	(c) possesses cannabis or a cannabis product; and
333	(d) manufactures a cannabis product for sale to a cannabis dispensary.
334	(6) "Cannabis product" means a product that:
335	(a) is intended for human ingestion; and

336	(b) contains cannabis or tetrahydrocannabinol.
337	(7) "Crime of violence" means any felony involving the use or threatened use of force
338	or violence against the person or property of another.
339	(8) "Electronic verification system" means the system described in Section 53-17-104.
340	(9) (a) "Excluded felony offense" means, for an individual:
341	(i) a crime of violence; or
342	(ii) a felony conviction of a state or federal law pertaining to controlled substances.
343	(b) "Excluded felony offense" does not include a criminal offense for which the
344	individual completed the individual's sentence, including any term of probation, incarceration,
345	or supervised release, more than 10 years before the day on which the individual applies for a
346	medical cannabis patient card or a medical cannabis establishment agent registration card.
347	(10) "Independent testing laboratory" means a facility that:
348	(a) is licensed by the division under Section 58-85-103; and
349	(b) meets the requirements of Section 58-85-108.
350	(11) "Inventory control system" means a connected electronic database and associated
351	tracking devices that monitor the chain of custody of cannabis from the point of the cannabis's
352	first cultivation to the point the cannabis is sold to a medical cannabis patient card holder.
353	(12) "Medical cannabis establishment" means:
354	(a) an independent testing laboratory;
355	(b) a cultivation facility;
356	(c) a cannabis processing facility; or
357	(d) a cannabis dispensary.
358	(13) "Medical cannabis establishment agent" means an owner, officer, board member,
359	employee, or volunteer of a medical cannabis establishment.
360	(14) "Medical cannabis establishment agent registration card" means a registration card
361	that is issued by the division under Section 58-28-203 that authorizes an individual to volunteer
362	or work at a medical cannabis establishment.
363	(15) "Medical cannabis patient card" means an official document or card, issued by the
364	Department of Public Safety under Section 53-17-103, that is connected to an electronic
365	verification system.
366	(16) "Physician" means an individual who:

36/	(a) is licensed to practice:
368	(i) medicine, under Title 58, Chapter 67, Utah Medical Practice Act; or
369	(ii) osteopathic medicine, under Title 58, Chapter 68, Utah Osteopathic Medical
370	Practice Act; and
371	(b) has completed a residency or fellowship in:
372	(i) anesthesiology;
373	(ii) gastroenterology;
374	(iii) neurology
375	(iv) oncology;
376	(v) ophthalmology;
377	(vi) physiatry; or
378	(vi) psychiatry.
379	(17) "Tetrahydrocannabinol" means a substance that meets the description in
380	Subsection 58-37-4(2)(a)(iii)(AA).
381	Section 9. Section 58-85-103 is enacted to read:
382	58-85-103. Medical cannabis establishment License General operating
383	requirements.
384	(1) Subject to Subsection (2), the division shall issue a license to operate a medical
385	cannabis establishment to a person who submits to the division:
386	(a) a proposed name, address, and physical location where the person will operate the
387	medical cannabis establishment;
388	(b) evidence that the person possesses or controls a minimum of \$750,000 in liquid
389	assets;
390	(c) a \$5,000 application fee;
391	(d) evidence that the person meets the eligibility requirements for:
392	(i) a cannabis cultivation facility;
393	(ii) a cannabis processing facility;
394	(iii) a cannabis dispensary; or
395	(iv) an independent cannabis testing laboratory;
396	(e) a security plan for the medical cannabis establishment;
397	(f) evidence that the person will implement an inventory control system at the medical

398	cannabis establishment; and
399	(g) the results of a criminal background check for each owner, principal, or shareholder
400	of the person that will operate the medical cannabis establishment.
401	(2) The division shall, for a medical cannabis establishment to which the division
402	issues a license under Subsection (1), designate whether the license authorizes the medical
403	cannabis establishment to operate as:
404	(a) a cannabis cultivation facility;
405	(b) a cannabis processing facility;
406	(c) a cannabis dispensary; or
407	(d) an independent cannabis testing laboratory.
408	(3) The division may not issue more than the greater of, in each county in the state:
409	(a) one cannabis dispensary license; or
410	(b) one cannabis dispensary license per 200,000 county residents.
411	(4) A medical cannabis establishment licensed by the division under Subsection (1)
412	shall:
413	(a) operate in a facility that houses, for the medical cannabis establishment's business
414	address, only the medical cannabis establishment; and
415	(b) have a single, secure public entrance.
416	(5) A medical cannabis establishment may not allow any person to consume cannabis
417	on the property or premises of the establishment.
418	(6) The division may inspect the records of a medical cannabis establishment in order
419	to determine if the medical cannabis establishment complies with the licensing requirements of
420	this chapter.
421	(7) A medical cannabis establishment may only accept payment for cannabis, a
422	cannabis product, or a cannabis device, in a transaction facilitated by the inventory control
423	system described in Section 58-85-104 and the electronic verification system described in
424	Section 53-17-104.
425	(8) Except as provided in Subsection (9), a medical cannabis establishment may not
426	advertise in any medium.
427	(9) A medical cannabis establishment may have a sign on the outside of the medical
428	cannabis establishment that includes only:

(a) the medical cannabis establishment's name; and
(b) a green cross.
(10) A municipality or local government may not enact a zoning ordinance that
prohibits a medical cannabis establishment from operating in a location within the
municipality's or local government's jurisdiction, on the basis that the medical cannabis
establishment is a medical cannabis establishment.
(11) A municipality or local government shall allow a medical cannabis establishment
to operate in:
(a) if the medical cannabis establishment is a cannabis dispensary, as a permitted use,
in an agricultural, industrial, or commercial zone; and
(b) if the medical cannabis establishment is a cannabis cultivation facility, a cannabis
processing facility, or an independent testing laboratory:
(i) as a permitted use, in an agricultural or industrial zone; and
(ii) as a conditional use, in a commercial zone.
(12) A physician may not serve as an owner, principal, or shareholder of a medical
cannabis establishment.
(13) The division may revoke the license of a medical cannabis establishment under
this section if the medical cannabis establishment violates the requirements of this chapter.
Section 10. Section 58-85-104 is enacted to read:
58-85-104. Inventory control system.
Each medical cannabis establishment licensed under Section 58-85-103 shall maintain
an inventory control system that:
(1) is capable of tracking, in real time, cannabis from the first point the cannabis is
planted as a seed, a clone, or a cutting, until the cannabis is sold, in the form of unprocessed
cannabis or a cannabis product, to a medical cannabis patient card holder;
(2) stores, in real time, a record of the amount of cannabis or cannabis products in a
medical cannabis establishment's possession;
(3) keeps a record of the medical cannabis establishment's sales to medical cannabis
patient card holders and other medical cannabis establishments;
(4) is capable of interfacing with the electronic verification system maintained by the
Department of Public Safety under Section 53-17-104 in order for an individual with a medical

460	cannabis patient card who purchases cannabis, a cannabis product, or a cannabis device to:
461	(a) identify the origin of the cannabis or cannabis product the individual purchased;
462	<u>and</u>
463	(b) identify each medical cannabis establishment that had contact with the cannabis the
464	individual purchased;
465	(5) transmits, for each medical cannabis purchase by an individual with a medical
466	cannabis patient card, a 25 cents transaction fee to the Department of Public Safety;
467	(6) transfers funds used for cannabis or a cannabis product between medical cannabis
468	establishments;
469	(7) includes a video recording system that monitors all activity related to handling
470	cannabis or a cannabis product that is tamper proof and capable of storing a video record for a
471	minimum of 90 days; and
472	(8) is accessible by the Department of Public Safety.
473	Section 11. Section 58-85-105 is enacted to read:
474	58-85-105. Cannabis cultivation facility Operating requirements.
475	(1) A cannabis cultivation facility shall cultivate cannabis only:
476	(a) indoors, in an enclosed, locked facility that is accessible only by an individual with
477	a valid medical cannabis agent registration card under Section 58-85-202; and
478	(b) at the physical address provided to the division under Section 58-85-103.
479	(2) A cannabis cultivation facility shall ensure that any cannabis growing inside the
480	facility is not visible from outside the building.
481	(3) A cannabis cultivation facility shall use a unique batch identifier for each batch of
482	cannabis transferred to a cannabis dispensary or cannabis processing facility.
483	Section 12. Section 58-85-106 is enacted to read:
484	58-85-106. Cannabis processing facility Eligibility requirements Operating
485	requirements.
486	(1) A cannabis processing facility shall ensure that a cannabis product that the cannabis
487	processing facility sells or provides to a cannabis dispensary:
488	(a) has a label that:
489	(i) clearly and unambiguously states that the cannabis product contains cannabis;
490	(ii) clearly displays the full cannabinoid profile of the cannabis product; and

491	(iii) has a unique batch identifier;
492	(b) is sold in packaging that:
493	(i) is not appealing to children;
494	(ii) is opaque;
495	(iii) makes a physician's instructions easy to follow; and
496	(iv) allows the cannabis product to be tracked by an inventory control system; and
497	(c) is not configured or colored to resemble candy.
498	(2) A cannabis processing facility shall produce a cannabis product only:
499	(a) in an enclosed, locked facility that is accessible only by an individual with a valid
500	medical cannabis agent registration card under Section 58-85-202; and
501	(b) at the physical address provided to the division under Section 58-85-103.
502	Section 13. Section 58-85-107 is enacted to read:
503	58-85-107. Cannabis dispensary Eligibility requirements Operating
504	requirements.
505	(1) A cannabis dispensary shall ensure that:
506	(a) the cannabinoid profile in cannabis or a cannabis product that the dispensary sells
507	or offers for sale is clearly and accurately stated on the cannabis or cannabis product
508	packaging;
509	(b) the cannabis dispensary does not sell to an individual, in any one 14-day period:
510	(i) an amount of cannabis that exceeds two ounces by weight; or
511	(ii) an amount of cannabis products that exceeds the amount recommended by the
512	individual's physician; and
513	(c) the legal limit on the purchase of cannabis is posted clearly and conspicuously
514	within the public area of the cannabis dispensary.
515	(2) A cannabis dispensary may only sell cannabis or a cannabis product that has been
516	inspected by an independent testing laboratory to determine the concentration, in the cannabis
517	or cannabis product, of:
518	(a) cannabinoids;
519	(b) organic and non-organic substances in the cannabis or cannabis product;
520	(c) mold and fungus;
521	(d) pesticides and fertilizers; and

522	(e) nutrients.
523	(3) A cannabis dispensary may only sell:
524	(a) cannabis;
525	(b) a cannabis product; or
526	(c) a cannabis device.
527	(4) A cannabis dispensary may not sell a cannabis device that is constructed or
528	produced such that, when an individual uses the cannabis device, the use imitates smoking.
529	(5) A cannabis dispensary may only sell cannabis, a cannabis product, or a cannabis
530	device in a separate and defined area where only an individual with a medical cannabis patient
531	card, or a designated caregiver authorized to use a medical cannabis patient card, may enter.
532	Section 14. Section 58-85-108 is enacted to read:
533	58-85-108. Independent cannabis testing laboratory Eligibility requirements
534	Operating requirements.
535	(1) In addition to the requirements described in Section 58-85-104, the division shall
536	license a private laboratory as an independent cannabis testing laboratory if the laboratory is
537	able to determine accurately, for cannabis or a cannabis product that a cannabis dispensary sells
538	or offers to sell:
539	(a) the concentration of cannabinoids in the cannabis or cannabis product;
540	(b) whether the cannabis or cannabis product is or contains organic or nonorganic
541	material;
542	(c) whether the cannabis or cannabis product contains mold or fungus;
543	(d) the concentration of pesticides and fertilizers in the cannabis or cannabis product;
544	<u>and</u>
545	(e) the concentration of nutrients in the cannabis or cannabis product.
546	(2) An independent cannabis testing laboratory may not have an owner, principal, or
547	shareholder who is an owner, principal, or shareholder, of another medical cannabis
548	establishment.
549	Section 15. Section 58-85-201 is enacted to read:
550	Part 2. Medical Cannabis Establishment Agents
551	<u>58-85-201.</u> Title.
552	This part is known as "Medical Cannabis Establishment Agents."

553	Section 16. Section 58-85-202 is enacted to read:
554	58-85-202. Medical cannabis establishment agent Registration.
555	(1) An individual may not act as an owner, shareholder, employee, or agent of a
556	medical cannabis establishment unless the individual is registered by the division as a medical
557	cannabis establishment agent.
558	(2) The division shall register and issue a medical cannabis establishment agent
559	registration card to an individual who:
560	(a) has not been convicted of an excluded felony offense;
561	(b) provides to the division:
562	(i) the individual's name and address; and
563	(ii) the name and location of licensed medical cannabis establishments where the
564	individual seeks to act as the medical cannabis establishment's agent; and
565	(c) authorizes the division to conduct a criminal background check on the individual.
566	(3) The division shall designate, for a medical cannabis establishment agent
567	registration card the division issues under Subsection (2), whether the medical cannabis
568	establishment agent registration card holder is authorized to act as an agent for:
569	(a) a cannabis cultivation facility;
570	(b) a cannabis processing facility;
571	(c) a cannabis dispensary; or
572	(d) an independent cannabis testing laboratory.
573	(4) The division may revoke the medical cannabis agent registration card of an
574	individual who:
575	(a) violates the requirements of this chapter; or
576	(b) commits an excluded felony offense.
577	Section 17. Repealer.
578	This bill repeals:
579	Section 26-56-101, Title.
580	Section 26-56-102, Definitions.
581	Section 26-56-103, Hemp extract registration card Application Fees
582	Database.
583	Section 58-37-4.3, Exemption for use or possession of hemp extract.

Legislative Review Note as of 3-3-15 5:27 PM

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