

Senator Mark B. Madsen proposes the following substitute bill:

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 electronic verification system 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:



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 **53-17-106**, Utah Code Annotated 1953

35 **53-17-107**, Utah Code Annotated 1953

36 **58-37-3.6**, Utah Code Annotated 1953

37 **58-85-101**, Utah Code Annotated 1953

38 **58-85-102**, Utah Code Annotated 1953

39 **58-85-103**, Utah Code Annotated 1953

40 **58-85-104**, Utah Code Annotated 1953

41 **58-85-105**, Utah Code Annotated 1953

42 **58-85-106**, Utah Code Annotated 1953

43 **58-85-107**, Utah Code Annotated 1953

44 **58-85-108**, Utah Code Annotated 1953

45 **58-85-201**, Utah Code Annotated 1953

46 **58-85-202**, Utah Code Annotated 1953

47 **58-85-203**, Utah Code Annotated 1953

48 **58-85-204**, Utah Code Annotated 1953

49 **58-85-301**, Utah Code Annotated 1953

50 **58-85-302**, Utah Code Annotated 1953

51 **58-85-303**, Utah Code Annotated 1953

52 **58-85-304**, Utah Code Annotated 1953

53 **58-85-305**, Utah Code Annotated 1953

54 REPEALS:

55 **26-56-101**, as enacted by Laws of Utah 2014, Chapter 25

56 **26-56-102**, as enacted by Laws of Utah 2014, Chapter 25

57 [26-56-103](#), as enacted by Laws of Utah 2014, Chapter 25

58 [58-37-4.3](#), as enacted by Laws of Utah 2014, Chapter 25



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

61 Section 1. Section **53-17-101** is enacted to read:

62 **CHAPTER 17. MEDICAL CANNABIS REGISTRATION ACT**

63 **53-17-101. Title.**

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

65 Section 2. Section **53-17-102** is enacted to read:

66 **53-17-102. Definitions.**

67 As used in this chapter:

68 (1) "Cannabis" means the same as that term is defined in Section [58-37-3.6](#).

69 (2) "Cannabis device" means the same as that term is defined in Section [58-37-3.6](#).

70 (3) "Cannabis product" means the same as that term is defined in Section [58-37-3.6](#).

71 (4) "Designated caregiver" means an individual whom a patient with a medical

72 cannabis patient card designates as the patient's caregiver under Section [53-17-103](#).

73 (5) "Electronic verification system" means the system described in Section [53-17-104](#).

74 (6) "Participating entity" means:

75 (a) the department;

76 (b) the Department of Commerce;

77 (c) the State Tax Commission; and

78 (d) the Department of Health.

79 (7) "Medical cannabis establishment" means the same as that term is defined in Section

80 [58-85-102](#).

81 (8) "Medical cannabis establishment agent registration card" means a registration card

82 issued under Section [58-85-203](#).

83 (9) "Medical cannabis patient card" means an official document or card, issued by the

84 participating entities under Section [53-17-103](#), that is connected to the electronic verification

85 system described in Section [53-17-104](#).

86 (10) "Physician" means an individual who:

87 (a) is licensed to practice:

- 88 (i) medicine, under Title 58, Chapter 67, Utah Medical Practice Act; or
- 89 (ii) osteopathic medicine, under Title 58, Chapter 68, Utah Osteopathic Medical
- 90 Practice Act; and
- 91 (b) has completed a residency or fellowship in:
- 92 (i) anesthesiology;
- 93 (ii) gastroenterology;
- 94 (iii) neurology
- 95 (iv) oncology;
- 96 (v) ophthalmology;
- 97 (vi) physiatry; or
- 98 (vi) psychiatry.
- 99 (10) "Qualifying illness" means:
- 100 (a) acquired immune deficiency syndrome;
- 101 (b) Alzheimer's disease;
- 102 (c) amyotrophic lateral sclerosis;
- 103 (d) an autoimmune disorder;
- 104 (e) cachexia or physical wasting, nausea, or malnutrition associated with chronic
- 105 disease;
- 106 (f) cancer;
- 107 (g) Crohn's disease;
- 108 (h) epilepsy, or a condition that causes debilitating seizures;
- 109 (i) glaucoma;
- 110 (j) multiple sclerosis or a similar condition that causes persistent and debilitating
- 111 muscle spasms;
- 112 (k) post-traumatic stress disorder; or
- 113 (l) severe, chronic pain:
- 114 (i) that is not responsive to conventional treatment; and
- 115 (ii) for which a physician determines the individual with the severe, chronic pain is at
- 116 risk of becoming chemically dependent on, or overdosing on pain medication.
- 117 Section 3. Section **53-17-103** is enacted to read:
- 118 **53-17-103. Medical cannabis patient card -- Application -- Fees -- Database.**

119 (1) The participating entities shall, no earlier than December 1, 2016, jointly issue a
120 medical cannabis patient card, via the electronic verification system described in Section
121 53-17-104, to an individual if the individual:

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

123 (b) is a Utah resident;

124 (c) provides the participating entities, via the electronic verification system, with a
125 statement signed by a physician that indicates that the individual:

126 (i) suffers from a qualifying illness; and

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

128 (d) pays the participating entities a combined \$25 fee; and

129 (e) submits an application to the participating entities, using the electronic verification
130 system described in Section 53-17-104, that contains:

131 (i) the individual's name and address; and

132 (ii) a copy of the individual's valid photo identification.

133 (2) The participating entities shall, no earlier than December 1, 2016, issue a medical
134 cannabis patient card, via the electronic verification system described in Section 53-17-104, to
135 an individual who is the parent or legal guardian of a minor if the individual:

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

137 (b) is a Utah resident;

138 (c) provides the participating entities, via the electronic verification system, with a
139 statement signed by a physician that indicates that the minor:

140 (i) suffers from a qualifying illness; and

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

142 (d) pays the participating entities a combined \$25 fee; and

143 (e) submits an application to the participating entities, using the electronic verification
144 system described in Section 53-17-104, that contains:

145 (i) the parent's or legal guardian's name and address;

146 (ii) the minor's name; and

147 (iii) a copy of the parent's or legal guardian's valid photo identification.

148 (3) An individual who applies for a medical cannabis patient card under Subsection (1)
149 or (2) shall fill out and submit the application described in Subsection (1) or (2):

150 (a) online, in connection with the electronic verification system described in Section
151 53-17-104; and

152 (b) with a physician, during an office visit with the physician.

153 (4) An individual who holds a valid medical cannabis patient card under Subsection (1)
154 who a physician determines is unable to obtain cannabis or a cannabis product from a cannabis
155 dispensary may register with the participating entities, via the electronic verification system, up
156 to two individuals to serve as designated caregivers of the individual in accordance with
157 Section 53-17-107.

158 (5) A medical cannabis patient card the department issues under Subsection (1) or (2)
159 is:

160 (a) valid for the lesser of:

161 (i) an amount of time determined by the physician who recommends treatment with
162 cannabis or a cannabis product under Subsection (1) or (2); or

163 (ii) two years; and

164 (b) renewable, if, at the time of renewal, the individual with the medical cannabis
165 patient card meets the requirements of either Subsection (1) or (2).

166 (6) The participating entities may revoke an individual's medical cannabis patient card
167 if the individual violates this chapter.

168 Section 4. Section **53-17-104** is enacted to read:

169 **53-17-104. Electronic verification system.**

170 (1) The participating entities shall collaborate on, and shall jointly contract, on or
171 before July 15, 2015, in accordance with Title 63G, Chapter 6a, Utah Procurement Code, with
172 a private person to implement and maintain an electronic verification system that:

173 (a) allows an individual, under Subsection 53-17-103(1), or an individual who is the
174 parent or legal guardian of a minor under Subsection 53-17-103(2), to apply, in the presence of
175 a physician, to the department for a medical cannabis patient card;

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

178 (c) issues to an individual, if the individual meets the requirements in Section
179 53-17-103, a medical cannabis patient card;

180 (d) accepts and holds funds from an individual with a medical cannabis patient card;

181 (e) allows an individual with a medical cannabis patient card to use the funds described
182 in Subsection (1)(d) to purchase cannabis, a cannabis product, or a cannabis device from a
183 cannabis dispensary;

184 (f) transmits the funds described in Subsection (1)(d) to a cannabis dispensary for the
185 purchase of cannabis, a cannabis product, or a cannabis device;

186 (g) remits to the State Tax Commission the state sales tax due for a purchase of
187 cannabis, a cannabis product, or a cannabis device;

188 (h) connects with an inventory control system used by a cannabis dispensary, described
189 in Section 58-85-104, to track, in real time, for the purchase of cannabis or a cannabis product
190 by a medical cannabis patient card holder:

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

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

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

194 (iv) any medical cannabis establishment associated with the cannabis or cannabis
195 product;

196 (i) is accessible by the participating entities; and

197 (j) is accessible by state or local law enforcement during a traffic stop.

198 (2) The department may release, in a format that makes it impossible to determine the
199 identity of an individual medical cannabis patient card holder, the data collected by the system
200 under Subsection (1) for the purpose of conducting medical research.

201 (3) The participating entities shall, on or before May 12, 2015, issue a request for
202 proposals in accordance with Title 63G, Chapter 6a, Utah Procurement Code, for the contract
203 described in Subsection (1).

204 Section 5. Section **53-17-105** is enacted to read:

205 **53-17-105. Standard of care -- Medical practitioners not liable -- No private right**
206 **of action.**

207 (1) It is not a breach of the applicable standard of care for a physician to recommend
208 treatment with cannabis or a cannabis product to an individual under this chapter.

209 (2) A physician that recommends treatment with cannabis or a cannabis product to an
210 individual under this chapter may not, solely based on that recommendation, be subject to:

211 (a) civil liability;

- 212 (b) criminal liability; or
- 213 (c) licensure sanctions under:
- 214 (i) Title 58, Chapter 67, Utah Medical Practice Act; or
- 215 (ii) Title 58, Chapter 68, Utah Osteopathic Medical Practice Act.

216 Section 6. Section **53-17-106** is enacted to read:

217 **53-17-106. Medical cannabis patient card -- Patient requirements -- Rebuttable**
218 **presumption.**

219 (1) An individual who has a medical cannabis patient card issued by the department
220 under Section [53-17-103](#) that possesses cannabis or a cannabis product outside of the
221 individual's residence shall:

- 222 (a) carry, with the individual at all times, the individual's medical cannabis patient
223 card;
- 224 (b) carry, with the cannabis or cannabis product, the packaging in which the cannabis
225 or cannabis product was originally sold from a dispensary licensed under Section [58-85-103](#),
226 including the bar code or identification number that links the cannabis or cannabis product to
227 the dispensary's inventory control system; and
- 228 (c) possess no more than a 60-day supply of cannabis or cannabis products, as
229 established by the recommendation of a physician for the individual's treatment.

230 (2) If an individual possesses cannabis or a cannabis product in compliance with
231 Subsection (1):

- 232 (a) there is a rebuttable presumption that the individual possesses the cannabis or
233 cannabis product legally; and
- 234 (b) a law enforcement officer does not have probable cause, solely on the basis of the
235 individual's possession of the cannabis or cannabis product in compliance with Subsection (1),
236 that the individual is engaging in illegal activity.

237 Section 7. Section **53-17-107** is enacted to read:

238 **53-17-107. Designated caregiver -- Criminal background check.**

- 239 (1) An individual registered as a designated caregiver under Subsection [53-17-103](#)(4):
- 240 (a) may carry an individual's valid medical cannabis patient card and purchase and
241 possess, in accordance with this chapter, cannabis, a cannabis product, or a cannabis device on
242 behalf of the medical cannabis patient cardholder; and

243 (b) shall submit to a criminal background check in accordance with Subsection (2).

244 (2) Each designated caregiver shall:

245 (a) submit a fingerprint card in a form acceptable by the department; and

246 (b) consent to a fingerprint background check by:

247 (i) the Utah Bureau of Criminal Identification; and

248 (ii) the Federal Bureau of Investigation.

249 (3) The department shall complete a Federal Bureau of Investigation Criminal

250 Background Check for each designated caregiver under Subsection (2).

251 (4) The department may refuse to issue or revoke the registration of a designated
252 caregiver if the designated caregiver has committed an excluded felony.

253 Section 8. Section **58-37-3.6** is enacted to read:

254 **58-37-3.6. Exemption for possession or use of cannabis to treat a qualifying**
255 **illness.**

256 (1) As used in this section:

257 (a) "Cannabis" means marijuana.

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

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

261 (i) is intended for human ingestion; and

262 (ii) contains cannabis or tetrahydrocannabinol.

263 (d) "Designated caregiver" means the same as that term is defined in Section
264 [53-17-102](#).

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

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

267 (g) "Medical cannabis establishment" means the same as that term is defined in Section
268 [58-85-102](#).

269 (h) "Medical cannabis patient card" means an official document or card, issued by the
270 Department of Public Safety under Section [53-17-103](#), that is connected to the electronic
271 verification system described in Section [53-17-104](#).

272 (i) "Qualifying illness" means the same as that term is defined in Section [53-17-102](#).

273 (j) "Tetrahydrocannabinol" means a substance derived from cannabis that meets the

274 description in Subsection 58-37-4(2)(a)(iii)(AA).

275 (2) Notwithstanding any other provision of this chapter, except as described in
276 Subsection (7), an individual who possesses or uses cannabis, a cannabis product, or a cannabis
277 device is not subject to, for the possession or use of the cannabis, cannabis product, or cannabis
278 device, the penalties described in this title for possession or use of marijuana,
279 tetrahydrocannabinol, or drug paraphernalia, if the individual holds a valid medical cannabis
280 patient card.

281 (3) Notwithstanding any other provision of this chapter, except as described in
282 Subsection (7), an individual who possesses cannabis, a cannabis product, or a cannabis device, or
283 who distributes cannabis, a cannabis product, or a cannabis device to a patient is not subject
284 to, for the possession or distribution of the cannabis, cannabis product, or cannabis device, the
285 penalties described in this title for possession or distribution of marijuana,
286 tetrahydrocannabinol, or drug paraphernalia, if the individual:

287 (a) for a patient that is a minor, is the patient's parent or guardian and holds a valid
288 medical cannabis patient card; or

289 (b) for a patient that is 18 years of age or older and holds a medical cannabis patient
290 card, is the patient's designated caregiver.

291 (4) Notwithstanding any other provision of this chapter, except as described in
292 Subsection (7), a person who possesses, sells, or offers to sell cannabis, a cannabis product, or
293 a cannabis device is not subject to, for the possession, sale, or offer for sale of cannabis, the
294 cannabis product, or the cannabis device, the penalties described in this chapter for the
295 possession, sale, or offering for sale of marijuana, tetrahydrocannabinol, or drug paraphernalia
296 if the person:

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

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

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

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

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

307 (a) grows, sells, or offers to sell the cannabis only for the purpose of selling the
308 cannabis to a licensed medical cannabis establishment, for the end purpose of providing the
309 cannabis to a patient with a qualifying illness;

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

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

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

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

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

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

326 (7) An individual is not exempt from the penalties described in Subsections (2) through
327 (6) if the individual:

328 (a) uses cannabis through a means involving cannabis combustion; or

329 (b) uses or possesses a cannabis device that facilitates the use of cannabis through
330 cannabis combustion.

331 Section 9. Section **58-85-101** is enacted to read:

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

333 **Part 1. Medical Cannabis Establishments**

334 **58-85-101. Title.**

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

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

337 Section 10. Section **58-85-102** is enacted to read:

338 **58-85-102. Definitions.**

339 As used in this chapter:

340 (1) "Cannabis" means the same as that term is defined in Section [58-37-3.6](#).

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

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

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

344 (i) a cannabis dispensary;

345 (ii) a cannabis processing facility; or

346 (iii) another cannabis cultivation facility.

347 (3) "Cannabis device" means the same as that term is defined in Section [58-37-3.6](#).

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

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

350 and

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

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

353 (a) is licensed by the division to act as a cannabis processing facility under Section

354 [58-85-103](#);

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

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

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

358 (6) "Cannabis product" means the same as that term is defined in Section [58-37-3.6](#).

359 (7) "Crime of violence" means any felony involving the use or threatened use of force

360 or violence against the person or property of another.

361 (8) "Electronic verification system" means the system described in Section [53-17-104](#).

362 (9) "Excluded felony offense" means, for an individual:

363 (a) a crime of violence; or

364 (b) a felony conviction of a state or federal law pertaining to controlled substances.

365 (10) "Independent testing laboratory" means a facility that:

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

367 (b) meets the requirements of Section 58-85-108.

368 (11) "Inventory control system" means a connected electronic database and associated
369 tracking devices that monitor the chain of custody of cannabis from the point of the cannabis's
370 first cultivation to the point the cannabis is sold to a medical cannabis patient card holder.

371 (12) "Medical cannabis establishment" means:

372 (a) an independent testing laboratory;

373 (b) a cultivation facility;

374 (c) a cannabis processing facility; or

375 (d) a cannabis dispensary.

376 (13) "Medical cannabis establishment agent" means an owner, officer, board member,
377 employee, or volunteer of a medical cannabis establishment.

378 (14) "Medical cannabis establishment agent registration card" means a registration card
379 that is issued by the division under Section 58-28-203 that authorizes an individual to volunteer
380 or work at a medical cannabis establishment.

381 (15) "Medical cannabis patient card" means an official document or card, issued by the
382 Department of Public Safety under Section 53-17-103, that is connected to an electronic
383 verification system.

384 (16) "Physician" means the same as that term is defined in Section 53-17-102.

385 Section 11. Section **58-85-103** is enacted to read:

386 **58-85-103. Medical cannabis establishment -- License -- General operating**
387 **requirements.**

388 (1) Subject to Subsections (2) and (3), the division shall, no earlier than October 1,
389 2015, issue a license to operate a medical cannabis establishment to a person who submits to
390 the division:

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

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

395 (c) (i) before July 1, 2016, a \$5,000 application fee; or

396 (ii) on or after July 1, 2016, an amount determined by the division in accordance with
397 Section 63J-1-504, that is necessary to cover the division's cost to implement this chapter;

398 (d) evidence that the person meets the eligibility requirements for:
399 (i) a cannabis cultivation facility;
400 (ii) a cannabis processing facility;
401 (iii) a cannabis dispensary; or
402 (iv) an independent cannabis testing laboratory;
403 (e) a security plan for the medical cannabis establishment;
404 (f) evidence that the person will implement an inventory control system at the medical
405 cannabis establishment; and
406 (g) the results of a criminal background check for each owner, principal, shareholder,
407 or agent of the person that will operate the medical cannabis establishment.
408 (2) The division shall, for a medical cannabis establishment to which the division
409 issues a license under Subsection (1), designate whether the license authorizes the medical
410 cannabis establishment to operate as:
411 (a) a cannabis cultivation facility;
412 (b) a cannabis processing facility;
413 (c) a cannabis dispensary; or
414 (d) an independent cannabis testing laboratory.
415 (3) (a) The division may not issue more than the greater of, in each county in the state:
416 (i) one cannabis dispensary license; or
417 (ii) one cannabis dispensary license per 200,000 county residents.
418 (b) The division shall determine by random selection which eligible applicants may
419 receive a license to operate a cannabis dispensary.
420 (4) The division may review a person's license under this chapter every two years if, at
421 the time of renewal, the person meets the requirements of Subsection (1).
422 (5) A medical cannabis establishment licensed by the division under Subsection (1)
423 shall:
424 (a) operate in a facility that houses, for the medical cannabis establishment's business
425 address, only the medical cannabis establishment; and
426 (b) have a single, secure public entrance.
427 (6) A medical cannabis establishment may not allow any person to consume cannabis
428 on the property or premises of the establishment.

429 (7) The division may inspect the records of a medical cannabis establishment in order
430 to determine if the medical cannabis establishment complies with the licensing requirements of
431 this chapter.

432 (8) A medical cannabis establishment may only accept payment for cannabis, a
433 cannabis product, or a cannabis device, in a transaction facilitated by the inventory control
434 system described in Section 58-85-104 and the electronic verification system described in
435 Section 53-17-104.

436 (9) A medical cannabis establishment may not operate without a video recording
437 system that monitors all activity related to handling cannabis or a cannabis product that is
438 tamper proof and capable of storing a video record for a minimum of 90 days.

439 (10) Except as provided in Subsection (11), a medical cannabis establishment may not
440 advertise in any medium.

441 (11) A medical cannabis establishment may have a sign on the outside of the medical
442 cannabis establishment that includes only:

443 (a) the medical cannabis establishment's name; and

444 (b) a green cross.

445 (12) A municipality or local government may not enact a zoning ordinance that
446 prohibits a medical cannabis establishment from operating in a location within the
447 municipality's or local government's jurisdiction, on the basis that the medical cannabis
448 establishment is a medical cannabis establishment.

449 (13) A municipality or local government shall allow a medical cannabis establishment
450 to operate:

451 (a) if the medical cannabis establishment is a cannabis dispensary, as a permitted use,
452 in an agricultural, industrial, or commercial zone; or

453 (b) if the medical cannabis establishment is a cannabis cultivation facility, a cannabis
454 processing facility, or an independent testing laboratory:

455 (i) as a permitted use, in an agricultural or industrial zone; or

456 (ii) as a conditional use, in a commercial zone.

457 (14) A physician may not:

458 (a) serve as an owner, principal, or shareholder of a medical cannabis establishment; or

459 (b) advertise that the physician may or will recommend cannabis or a cannabis product.

460 Section 12. Section **58-85-104** is enacted to read:

461 **58-85-104. Inventory control system.**

462 Each medical cannabis establishment licensed under Section [58-85-103](#) shall maintain
463 an inventory control system that:

464 (1) is capable of tracking, in real time, cannabis from the first point the cannabis is
465 planted as a seed, a clone, or a cutting, until the cannabis is sold, in the form of unprocessed
466 cannabis or a cannabis product, to a medical cannabis patient cardholder;

467 (2) stores, in real time, a record of the amount of cannabis or cannabis products in a
468 medical cannabis establishment's possession;

469 (3) keeps a record of the medical cannabis establishment's sales to medical cannabis
470 patient card holders and other medical cannabis establishments;

471 (4) is capable of interfacing with the electronic verification system described in Section
472 [53-17-104](#) in order for an individual with a medical cannabis patient card who purchases
473 cannabis, a cannabis product, or a cannabis device to:

474 (a) identify the origin of the cannabis or cannabis product the individual purchased;
475 and

476 (b) identify each medical cannabis establishment that had contact with the cannabis the
477 individual purchased;

478 (5) transmits, for each medical cannabis purchase by an individual with a medical
479 cannabis patient card, a 25 cent transaction fee equally to the participating entities, as defined
480 in Section [53-17-102](#);

481 (6) transfers funds used for cannabis or a cannabis product between medical cannabis
482 establishments;

483 (7) is accessible by the participating entities, as defined in Section [53-17-102](#).

484 Section 13. Section **58-85-105** is enacted to read:

485 **58-85-105. Cannabis cultivation facility -- Operating requirements.**

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

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

489 (b) at the physical address provided to the division under Section [58-85-103](#).

490 (2) A cannabis cultivation facility shall ensure that any cannabis growing inside the

491 facility is not visible from outside the building.

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

494 (4) A cannabis cultivation facility shall comply with operating requirements
495 established by the division by rule made in accordance with Title 63G, Chapter 3, Utah
496 Administrative Rulemaking Act.

497 Section 14. Section **58-85-106** is enacted to read:

498 **58-85-106. Cannabis processing facility -- Eligibility requirements -- Operating**
499 **requirements.**

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

502 (a) has a label that:

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

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

505 (iii) has a unique batch identifier;

506 (b) is sold in packaging that:

507 (i) is not appealing to children;

508 (ii) is opaque;

509 (iii) makes a physician's instructions easy to follow; and

510 (iv) allows the cannabis product to be tracked by an inventory control system; and

511 (c) is not configured or colored to resemble candy.

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

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

515 (b) at the physical address provided to the division under Section [58-85-103](#).

516 (3) A cannabis processing facility shall comply with operating requirements
517 established by the division by rule made in accordance with Title 63G, Chapter 3, Utah
518 Administrative Rulemaking Act.

519 Section 15. Section **58-85-107** is enacted to read:

520 **58-85-107. Cannabis dispensary -- Eligibility requirements -- Operating**
521 **requirements.**

522 (1) A cannabis dispensary may not sell to an individual, in any one 14-day period:

523 (a) an amount of cannabis that exceeds two ounces by weight; or

524 (b) an amount of cannabis products that exceeds the amount recommended by the
525 individual's physician.

526 (2) A cannabis dispensary may not sell or offer to sell cannabis or a cannabis product
527 unless:

528 (a) the cannabinoid profile in the cannabis or cannabis product is clearly and accurately
529 stated on the cannabis or cannabis product packaging; and

530 (b) the cannabis or cannabis product is sealed in a resealable container with a label that
531 includes a bar code or identification number that links the cannabis or cannabis product to the
532 cannabis dispensary's inventory control system.

533 (3) A cannabis dispensary may only sell:

534 (a) cannabis;

535 (b) a cannabis product; or

536 (c) a cannabis device.

537 (4) A cannabis dispensary may only sell cannabis or a cannabis product that has been
538 inspected by an independent testing laboratory to determine the concentration, in the cannabis
539 or cannabis product, of:

540 (a) cannabinoids;

541 (b) organic and non-organic substances in the cannabis or cannabis product;

542 (c) mold and fungus;

543 (d) pesticides and fertilizers; and

544 (e) nutrients.

545 (5) A cannabis dispensary may not sell a cannabis device that is constructed or
546 produced in a manner that, when an individual uses the cannabis device, the use imitates
547 smoking.

548 (6) A cannabis dispensary may only sell cannabis, a cannabis product, or a cannabis
549 device in a physically separate area where only an individual with a medical cannabis patient
550 card, or a designated caregiver authorized to use a medical cannabis patient card, may enter.

551 (7) A cannabis dispensary shall post the legal limit on the purchase of cannabis clearly
552 and conspicuously in the cannabis dispensary.

553 (8) A cannabis dispensary shall comply with operating standards established by the
554 division by rule made in accordance with Title 63G, Chapter 3, Utah Administrative
555 Rulemaking Act.

556 (9) A cannabis dispensary may not sell cannabis, a cannabis product, or a cannabis
557 device before January 1, 2016.

558 Section 16. Section **58-85-108** is enacted to read:

559 **58-85-108. Independent cannabis testing laboratory -- Eligibility requirements --**
560 **Operating requirements.**

561 (1) The division shall license a private laboratory as an independent cannabis testing
562 laboratory if, in addition to the requirements described in Section [58-85-104](#), the laboratory is
563 able to determine accurately, for cannabis or a cannabis product that a cannabis dispensary sells
564 or offers to sell:

565 (a) the concentration of cannabinoids in the cannabis or cannabis product;

566 (b) whether the cannabis or cannabis product is or contains organic or nonorganic
567 material;

568 (c) whether the cannabis or cannabis product contains mold or fungus;

569 (d) the concentration of pesticides and fertilizers in the cannabis or cannabis product;

570 and

571 (e) the concentration of nutrients in the cannabis or cannabis product.

572 (2) An independent cannabis testing laboratory may not have an owner, principal,
573 shareholder, or agent who is an owner, principal, or shareholder, of another medical cannabis
574 establishment.

575 (3) An independent cannabis testing laboratory shall comply with operating
576 requirements established by the division by rule made in accordance with Title 63G, Chapter 3,
577 Utah Administrative Rulemaking Act.

578 Section 17. Section **58-85-201** is enacted to read:

579 **Part 2. Medical Cannabis Establishment Agents**

580 **58-85-201. Title.**

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

582 Section 18. Section **58-85-202** is enacted to read:

583 **58-85-202. Medical cannabis establishment agent -- Registration.**

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

587 (2) The division shall, no earlier than October 1, 2015, register and issue a medical
588 cannabis establishment agent registration card to an individual who:

589 (a) has not been convicted of an excluded felony offense;

590 (b) provides to the division:

591 (i) the individual's name and address; and

592 (ii) the name and location of licensed medical cannabis establishments where the
593 individual seeks to act as the medical cannabis establishment's agent; and

594 (c) complies with the requirement for, and passes, a background check described in
595 Section [58-85-203](#).

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

599 (a) a cannabis cultivation facility;

600 (b) a cannabis processing facility;

601 (c) a cannabis dispensary; or

602 (d) an independent cannabis testing laboratory.

603 (4) A medical cannabis establishment agent shall comply with training requirements
604 established by the division by rule made in accordance with Title 63G, Chapter 3, Utah
605 Administrative Rulemaking Act.

606 (5) The division may revoke the medical cannabis establishment agent registration card
607 of an individual who:

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

609 (b) commits an excluded felony offense.

610 Section 19. Section **58-85-203** is enacted to read:

611 **58-85-203. Medical cannabis establishment agents -- Criminal background**
612 **checks.**

613 (1) An individual applying for a medical cannabis establishment agent registration card
614 under this chapter shall:

615 (a) submit, at the time of application, a fingerprint card in a form acceptable to the
616 division; and

617 (b) consent to a fingerprint background check by:

618 (i) the Utah Bureau of Criminal Identification; and

619 (ii) the Federal Bureau of Investigation.

620 (2) The division shall request that the Department of Public Safety complete a Federal
621 Bureau of Investigation criminal background check for each medical cannabis establishment
622 agent card applicant.

623 (3) The division may revoke or refuse to issue an individual's medical cannabis
624 establishment agent registration card if the individual has committed an excluded felony.

625 Section 20. Section **58-85-204** is enacted to read:

626 **58-85-204. Medical establishment agent registration card -- Rebuttable**
627 **presumption.**

628 (1) An individual who has a medical cannabis establishment agent registration card
629 shall, while transporting cannabis or a cannabis product between two medical cannabis
630 establishments:

631 (a) carry with the individual, the individual's medical cannabis establishment agent
632 registration card; and

633 (b) carry the cannabis or cannabis product in packaging that includes the bar code or
634 identification number that links the cannabis or cannabis product to the medical cannabis
635 establishment's inventory control system.

636 (2) If an individual possesses cannabis or a cannabis product in compliance with
637 Subsection (1):

638 (a) there is a rebuttable presumption that the individual possesses the cannabis or
639 cannabis product legally; and

640 (b) a law enforcement officer does not have probable cause, solely on the basis of the
641 individual's possession of the cannabis or cannabis product in compliance with Subsection (1),
642 that the individual is engaging in illegal activity.

643 Section 21. Section **58-85-301** is enacted to read:

644 **Part 3. Administration**

645 **58-85-301. Title.**

646 This part is known as "Administration."

647 Section 22. Section **58-85-302** is enacted to read:

648 **58-85-302. Board -- Membership -- Qualifications -- Terms.**

649 (1) There is created the Utah Medical Cannabis Establishment Board consisting of:

650 (a) one medical cannabis agent from a cannabis cultivation facility;

651 (b) one medical cannabis agent from a cannabis processing facility;

652 (c) one medical cannabis agent from a cannabis dispensary;

653 (d) one medical cannabis agent from an independent testing laboratory;

654 (e) two physicians;

655 (f) one individual appointed by the Department of Public Safety; and

656 (e) two members of the public who:

657 (i) is a Utah resident;

658 (ii) is 21 years old or older;

659 (iii) has a medical cannabis patient card; and

660 (iv) has never held any material financial interest in a medical cannabis establishment.

661 (2) The board shall be appointed and serve in accordance with Section [58-1-201](#).

662 (3) The board shall have the duties and responsibilities described in Sections [58-1-202](#)
663 and [58-1-203](#).

664 (4) The board shall designate one member on a permanent or rotating basis to:

665 (a) assist the division in reviewing complaints concerning the unlawful or

666 unprofessional conduct of a licensee; and

667 (b) advise the division in the division's investigation of these complaints.

668 (5) A board member who has, under Subsection (4), reviewed a complaint or advised

669 in the board's investigation may be disqualified from participating with the board when the

670 board serves as a presiding officer in an adjudicative proceeding concerning the complaint.

671 (6) A board member may be removed in accordance with Subsection [58-1-201](#)(2)(e) or
672 if the board member:

673 (a) refuses or is unable, for any reason, to perform the board member's duties in an
674 efficient, responsible, and professional manner;

675 (b) misuses the board member's appointment to obtain personal, pecuniary, or material
676 gain or advantage for the board member; or

677 (c) violates of this chapter.

678 Section 23. Section **58-85-303** is enacted to read:

679 **58-85-303. Unprofessional conduct.**

680 (1) It is unprofessional conduct for a medical cannabis establishment to violate the
681 operating standards for a medical cannabis establishment described in:

682 (a) Section [58-85-103](#);

683 (b) for a cannabis cultivation facility, Section [58-85-105](#);

684 (c) for a cannabis production facility, Section [58-85-106](#)

685 (d) for a cannabis dispensary, Section [58-85-107](#); and

686 (e) for an independent cannabis testing laboratory, Section [58-85-108](#); or

687 (2) It is unprofessional conduct for a medical cannabis establishment agent to violate
688 the training standards described in Section [58-85-202](#).

689 Section 24. Section **58-85-304** is enacted to read:

690 **58-85-304. Unlawful conduct.**

691 It is unlawful conduct for a medical cannabis establishment agent or a medical cannabis
692 establishment agent to violate the licensing requirements described in this chapter.

693 Section 25. Section **58-85-305** is enacted to read:

694 **58-85-305. Penalty for unlawful or unprofessional conduct -- Fines -- Citations.**

695 (1) The division may revoke a person's medical cannabis establishment license or an
696 individual's medical cannabis establishment agent card:

697 (a) if the person or the individual commits unlawful conduct as defined in Section
698 [58-85-304](#); or

699 (b) as provided in Subsection (7).

700 (2) The division may, for acts of unprofessional or unlawful conduct by a medical
701 cannabis establishment or a medical cannabis establishment agent:

702 (i) assess administrative penalties; and

703 (ii) take any other appropriate administrative action.

704 (b) The division shall deposit an administrative penalty imposed under this section in
705 the General Fund as a dedicated credit to be used by the division for medical cannabis
706 establishment licensee and medical cannabis establishment agent education and enforcement.

707 (3) If the division concludes, upon inspection or investigation, that a person has

708 violated the provisions of this chapter or a rule made or order issued under this chapter, the
709 division shall:

- 710 (a) issue the person a citation in writing;
- 711 (b) attempt to negotiate a stipulated settlement; or
- 712 (c) direct the person to appear before an adjudicative proceeding conducted under Title
713 63G, Chapter 4, Administrative Procedures Act.

714 (4) The division may, for a person subject to an uncontested citation, a stipulated
715 settlement, or a finding of a violation in an adjudicative proceeding:

- 716 (a) assess the person a fine established in accordance with Section 63J-1-504 of up to
717 \$10,000 per single violation or up to \$2,000 per day of ongoing violation, in accordance with a
718 fine schedule established by rule; or

719 (b) order the person to cease and desist from violating the provisions of this chapter or
720 a rule made or order issued under this chapter.

721 (5) The division may not revoke a medical cannabis establishment's license via a
722 citation.

723 (6) If within 20 calendar days after the day on which the division serves a citation, the
724 person to whom the citation is issued fails to request a hearing to contest the citation, the
725 citation becomes the final order of the division.

726 (7) The division may refuse to issue or renew a license or medical cannabis agent
727 registration card, or may suspend, revoke, or place on probation the license of a licensee or
728 medical cannabis establishment agent registration card holder who fails to comply with the
729 citation after it becomes final.

730 (8) The failure of an applicant for licensure to comply with a citation after it becomes
731 final is a ground for denial of a license.

732 **Section 26. Repealer.**

733 This bill repeals:

734 Section 26-56-101, Title.

735 Section 26-56-102, Definitions.

736 Section 26-56-103, Hemp extract registration card -- Application -- Fees --
737 **Database.**

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

Legislative Review Note
as of 3-9-15 2:51 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 Department of Public Safety, the Department of Health, the Department of Commerce, and the State Tax Commission joint 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 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 a third party that contracts with the Department of Public Safety, the Department of Health, the Department of Commerce, and the State Tax Commission to transfer funds from cannabis and cannabis product transactions 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