

SB0259S04 compared with SB0259S02

~~text~~ shows text that was in SB0259S02 but was deleted in SB0259S04.

text shows text that was not in SB0259S02 but was inserted into SB0259S04.

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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 ~~Department of Public Safety~~; 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

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use of a patient, under certain circumstances; and

- ▶ directs the Division of Occupational and Professional Licensing to register an individual to act as an agent of a medical cannabis establishment under certain circumstances.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:

53-17-101, Utah Code Annotated 1953

53-17-102, Utah Code Annotated 1953

53-17-103, Utah Code Annotated 1953

53-17-104, Utah Code Annotated 1953

53-17-105, Utah Code Annotated 1953

53-17-106, Utah Code Annotated 1953

53-17-107, Utah Code Annotated 1953

58-37-3.6, Utah Code Annotated 1953

58-85-101, Utah Code Annotated 1953

58-85-102, Utah Code Annotated 1953

58-85-103, Utah Code Annotated 1953

58-85-104, Utah Code Annotated 1953

58-85-105, Utah Code Annotated 1953

58-85-106, Utah Code Annotated 1953

58-85-107, Utah Code Annotated 1953

58-85-108, Utah Code Annotated 1953

58-85-201, Utah Code Annotated 1953

58-85-202, Utah Code Annotated 1953

58-85-203, Utah Code Annotated 1953

58-85-204, Utah Code Annotated 1953

58-85-301, Utah Code Annotated 1953

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[58-85-302, Utah Code Annotated 1953](#)

[58-85-303, Utah Code Annotated 1953](#)

[58-85-304, Utah Code Annotated 1953](#)

[58-85-305, Utah Code Annotated 1953](#)

REPEALS:

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

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

26-56-103, as enacted by Laws of Utah 2014, Chapter 25

58-37-4.3, as enacted by Laws of Utah 2014, Chapter 25

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

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

CHAPTER 17. MEDICAL CANNABIS REGISTRATION ACT

53-17-101. Title.

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

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

53-17-102. Definitions.

As used in this chapter:

(1) "Cannabis" means marijuana.

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

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

~~(a) is intended for human ingestion; and~~

~~(b) contains cannabis or tetrahydrocannabinol.~~

~~(4) "Designated caregiver" means an individual who a patient with a medical cannabis patient card designates as the patient's caregiver under Section 53-17-103.~~

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

~~(6) "Electronic verification system" means the system described in Section 53-17-104.~~

~~(7) "Marijuana" 58-37-3.6.~~

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

~~(8) 58-37-3.6.~~

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

(4) "Designated caregiver" means an individual whom a patient with a medical cannabis patient card designates as the patient's caregiver under Section 53-17-103.

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

(6) "Participating entity" means:

(a) the department;

(b) the Department of Commerce;

(c) the State Tax Commission; and

(d) the Department of Health.

(7) "Medical cannabis establishment" means the same as that term is defined in Section 58-85-102.

(~~9~~8) "Medical cannabis establishment agent registration card" means a registration card issued under Section 58-85-203.

(~~10~~9) "Medical cannabis patient card" means an official document or card, issued by the ~~department~~; participating entities under Section 53-17-103, that is connected to the electronic verification system described in Section 53-17-104.

(~~11~~10) "Physician" means an individual who:

(a) is licensed to practice:

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

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

Practice Act; and

(b) has completed a residency or fellowship in:

(i) anesthesiology;

(ii) gastroenterology;

(iii) neurology

(iv) oncology;

(v) ophthalmology;

(vi) physiatry; or

(vi) psychiatry.

(~~12~~10) "Qualifying illness" means:

(a) acquired immune deficiency syndrome;

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- (b) Alzheimer's disease;
- (c) amyotrophic lateral sclerosis;
- (d) an autoimmune disorder;
- (e) cachexia or physical wasting, nausea, ~~and~~ or malnutrition associated with chronic disease;
- (f) cancer;
- (g) Crohn's disease;
- (h) epilepsy, or a condition that causes debilitating seizures;
- (i) glaucoma;
- (j) multiple sclerosis or a similar condition that causes persistent and debilitating muscle spasms;
- (k) post-traumatic stress disorder; or
- (l) severe, chronic pain:
 - (i) that is not responsive to conventional treatment; and
 - (ii) for which a physician determines the individual with the severe, chronic pain is at risk of ~~abusing,~~ becoming chemically dependent on, or overdosing on pain medication.

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

‡ Section 3. Section **53-17-103** is enacted to read:

53-17-103. Medical cannabis patient card -- Application -- Fees -- Database.

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

- (a) is at least 18 years of age;
- (b) is a Utah resident;
- (c) provides the ~~{department}~~ participating entities, via the electronic verification system, with a statement signed by a physician that indicates that the individual:
 - (i) suffers from a qualifying illness; and
 - (ii) may benefit from treatment with cannabis or a cannabis product;
- (d) pays the ~~{department}~~ participating entities a combined \$25 fee; and
- (e) submits an application to the ~~{department}~~ participating entities, using the

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electronic verification system described in Section 53-17-104, that contains:

- (i) the individual's name and address; and
- (ii) a copy of the individual's valid photo identification.

(2) The ~~{department}~~ ~~participating entities~~ shall, ~~no earlier than December 1, 2016,~~

issue a medical cannabis patient card, via the electronic verification system described in Section 53-17-104, to an individual who is the parent or legal guardian of a minor if the individual:

- (a) is at least 18 years of age;
- (b) is a Utah resident;
- (c) provides the ~~{department}~~ ~~participating entities~~, ~~via the electronic verification~~

system, with a statement signed by ~~{the}~~ a physician that indicates that the minor:

- (i) suffers from a qualifying illness; and
- (ii) may benefit from treatment with cannabis or a cannabis product;
- (d) pays the ~~{department}~~ ~~participating entities~~ a ~~combined~~ \$25 fee; and
- (e) submits an application to the ~~{department}~~ ~~participating entities~~, using the

electronic verification system described in Section 53-17-104, that contains:

- (i) the parent's or legal guardian's name and address;
- (ii) the minor's name; and
- (iii) a copy of the parent's or legal guardian's valid photo identification.

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

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

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

(4) An individual who holds a valid medical cannabis patient card under Subsection (1) who a physician determines is unable to obtain cannabis or a cannabis product from a cannabis dispensary may register with the ~~{department}~~ ~~participating entities~~, ~~via the electronic~~
verification system, up to two individuals to serve as designated caregivers of the individual ~~{~~

~~(5) A designated caregiver registered with the department under Subsection (3) may carry an individual's valid medical cannabis patient card and purchase and possess,} in accordance with ~~{this chapter, cannabis, a cannabis product, or a cannabis device on behalf of~~~~

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the individual.

~~(6)~~ Section 53-17-107.

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

(a) valid for the lesser of:

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

(ii) two years; and

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

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

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

53-17-104. Electronic verification system.

(1) The ~~department shall contract~~ participating entities shall collaborate on, and shall jointly contract, on or before July 15, 2015, in accordance with Title 63G, Chapter ~~3~~ 6a, Utah ~~Administrative Rulemaking Act~~ Procurement Code, with a private person to implement and maintain an electronic verification system that:

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

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

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

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

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

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

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

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

(i) the time and date of the purchase;

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

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

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

(i) is accessible by the ~~{department}~~ participating entities; and

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

~~{~~ (2) An individual with a medical cannabis patient card may only purchase cannabis, a cannabis product, or a cannabis device using funds transmitted in advance to the individual's account with the provider of the electronic verification system described in Subsection (1).

~~{~~ (~~3~~)² The department may release, in a format ~~{such}~~ that makes it ~~{is}~~ impossible to determine the identity of an individual medical cannabis patient card holder, the data collected by the system under Subsection (1) for the purpose of conducting medical research.

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

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

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

(1) It is not a breach of the applicable standard of care for a physician ~~{, other licensed}~~ to recommend treatment with cannabis or a cannabis product to an individual under this chapter.

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

(a) civil liability;

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(b) criminal liability; or

(c) licensure sanctions under:

(i) Title 58, Chapter 67, Utah Medical Practice Act; or

(ii) Title 58, Chapter 68, Utah Osteopathic Medical Practice Act.

Section 6. Section ~~{58-37-3.6}~~ 53-17-106 is enacted to read:

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

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

(a) carry, with the individual at all times, the individual's medical cannabis patient card;

(b) carry, with the cannabis or cannabis product, the packaging in which the cannabis or cannabis product was originally sold from a dispensary licensed under Section 58-85-103, including the bar code or identification number that links the cannabis or cannabis product to the dispensary's inventory control system; and

(c) possess no more than a 60-day supply of cannabis or cannabis products, as established by the recommendation of a physician for the individual's treatment.

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

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

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

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

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

(1) An individual registered as a designated caregiver under Subsection 53-17-103(4):

(a) may carry an individual's valid medical cannabis patient card and purchase and possess, in accordance with this chapter, cannabis, a cannabis product, or a cannabis device on behalf of the medical cannabis patient cardholder; and

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

(2) Each designated caregiver shall:

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

(b) consent to a fingerprint background check by:

(i) the Utah Bureau of Criminal Identification; and

(ii) the Federal Bureau of Investigation.

(3) The department shall complete a Federal Bureau of Investigation Criminal Background Check for each designated caregiver under Subsection (2).

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

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

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

(1) As used in this section:

(a) "Cannabis" means marijuana.

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

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

(i) is intended for human ingestion; and

(ii) contains cannabis or tetrahydrocannabinol.

(d) "Designated caregiver" means ~~an individual who a patient with a medical cannabis patient card designates, with~~ the ~~Department of Public Safety,~~ same as ~~the patient's caregiver under~~ that term is defined in Section ~~53-17-103~~ 53-17-102.

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

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

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

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

(i) "Qualifying illness" means ~~f~~

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- ~~— (i) acquired immune deficiency syndrome;~~
- ~~— (ii) Alzheimer's disease;~~
- ~~— (iii) amyotrophic lateral sclerosis;~~
- ~~— (iv) an autoimmune disorder;~~
- ~~— (v) cachexia or physical wasting, nausea, and malnutrition associated with chronic disease;~~
- ~~— (vi) cancer;~~
- ~~— (vii) Crohn's disease;~~
- ~~— (viii) epilepsy, or a condition that causes debilitating seizures;~~
- ~~— (ix) glaucoma;~~
- ~~— (x) multiple sclerosis or a similar condition that causes persistent and debilitating muscle spasms;~~
- ~~— (xi) post-traumatic stress disorder; or~~
- ~~— (xii) severe, chronic pain;~~
- ~~— (A) that is not responsive to conventional treatment; and~~
- ~~— (B) for which a physician determines the individual with the severe, chronic pain is at risk of abusing, becoming chemically dependent on, or overdosing on pain medication; the same as that term is defined in Section 53-17-102.~~

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

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

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

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tetrahydrocannabinol, or drug paraphernalia, if the individual:

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

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

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

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

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

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

(5) Notwithstanding any other provision of this chapter, a person who grows, sells, or offers to sell cannabis is not subject to, for the growth or sale of the cannabis, the penalties described in this chapter for the growth or sale of marijuana, if the person:

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

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

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

(6) Notwithstanding any other provision of this chapter, except as described in Subsection (7), an individual who grows cannabis, or possesses, sells, or offers to sell cannabis, a cannabis product, or a cannabis device is not subject to, for the growth of cannabis, or for the

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possession, sale, or offer for sale of cannabis, the cannabis product, or the cannabis device, the penalties described in this chapter for the growth, possession, sale, or offering for sale of marijuana, tetrahydrocannabinol, or drug paraphernalia if the individual:

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

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

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

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

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

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

Section ~~{7}~~9. Section **58-85-101** is enacted to read:

CHAPTER 85. MEDICAL CANNABIS ESTABLISHMENT LICENSING ACT

Part 1. Medical Cannabis Establishments

58-85-101. Title.

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

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

Section ~~{8}~~10. Section **58-85-102** is enacted to read:

58-85-102. Definitions.

As used in this chapter:

(1) "Cannabis" means the same as that term is defined in Section ~~{58-37-2}~~58-37-3.6.

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

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

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

(i) a cannabis dispensary;

(ii) a cannabis processing facility; or

(iii) another cannabis cultivation facility.

(3) "Cannabis device" means ~~{a device, except for a device that facilitates cannabis~~

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~~combustion, that is used to aid an individual in ingesting cannabis or a cannabis product} the same as that term is defined in Section 58-37-3.6.~~

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

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

and

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

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

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

(b) purchases cannabis from a cannabis cultivation facility;

(c) possesses cannabis or a cannabis product; and

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

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

~~(a) is intended for human ingestion; and~~

~~(b) contains cannabis or tetrahydrocannabinol} the same as that term is defined in Section 58-37-3.6.~~

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

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

(9) ~~{(a)}~~ "Excluded felony offense" means, for an individual:

~~{(i)}~~ (a) a crime of violence; or

~~{(ii)}~~ (b) a felony conviction of a state or federal law pertaining to controlled substances.

~~{ (b) "Excluded felony offense" does not include a criminal offense for which the individual completed the individual's sentence, including any term of probation, incarceration, or supervised release, more than 10 years before the day on which the individual applies for a medical cannabis patient card or a medical cannabis establishment agent registration card.~~

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

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

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

(11) "Inventory control system" means a connected electronic database and associated tracking devices that monitor the chain of custody of cannabis from the point of the cannabis's

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first cultivation to the point the cannabis is sold to a medical cannabis patient card holder.

(12) "Medical cannabis establishment" means:

(a) an independent testing laboratory;

(b) a cultivation facility;

(c) a cannabis processing facility; or

(d) a cannabis dispensary.

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

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

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

(16) "Physician" means ~~an individual who:~~

~~(a) is licensed to practice:~~

~~(i) medicine, under Title 58, Chapter 67, Utah Medical Practice Act; or~~

~~(ii) osteopathic medicine, under Title 58, Chapter 68, Utah Osteopathic Medical Practice Act; and~~

~~(b) has completed a residency or fellowship in:~~

~~(i) anesthesiology;~~

~~(ii) gastroenterology;~~

~~(iii) neurology~~

~~(iv) oncology;~~

~~(v) ophthalmology;~~

~~(vi) physiatry; or~~

~~(vi) psychiatry.~~

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

~~Section 9}the same as that term is defined in Section 53-17-102.~~

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

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

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

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

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

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

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

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

(i) a cannabis cultivation facility;

(ii) a cannabis processing facility;

(iii) a cannabis dispensary; or

(iv) an independent cannabis testing laboratory;

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

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

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

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

(a) a cannabis cultivation facility;

(b) a cannabis processing facility;

(c) a cannabis dispensary; or

(d) an independent cannabis testing laboratory.

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

(~~a~~) one cannabis dispensary license; or

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

(b) The division shall determine by random selection which eligible applicants may receive a license to operate a cannabis dispensary.

(4) The division may review a person's license under this chapter every two years if, at the time of renewal, the person meets the requirements of Subsection (1).

~~(4)~~5 A medical cannabis establishment licensed by the division under Subsection (1) shall:

(a) operate in a facility that houses, for the medical cannabis establishment's business address, only the medical cannabis establishment; and

(b) have a single, secure public entrance.

~~(5)~~6 A medical cannabis establishment may not allow any person to consume cannabis on the property or premises of the establishment.

~~(6)~~7 The division may inspect the records of a medical cannabis establishment in order to determine if the medical cannabis establishment complies with the licensing requirements of this chapter.

~~(7)~~8 A medical cannabis establishment may only accept payment for cannabis, a cannabis product, or a cannabis device, in a transaction facilitated by the inventory control system described in Section 58-85-104 and the electronic verification system described in Section 53-17-104.

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

~~(8)~~10 Except as provided in Subsection ~~(9)~~11, a medical cannabis establishment may not advertise in any medium.

~~(9)~~11 A medical cannabis establishment may have a sign on the outside of the medical cannabis establishment that includes only:

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

(b) a green cross.

~~(10)~~12 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

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establishment is a medical cannabis establishment.

~~(11)13~~ 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~~ or

(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~~ or

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

~~(12)14~~ A physician may not:

(a) serve as an owner, principal, or shareholder of a medical cannabis establishment ~~or~~:

or

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

Section 12. 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~~ cardholder;

(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~~ described in Section 53-17-104 in order for an individual with a medical cannabis patient card who purchases cannabis, a cannabis product, or a cannabis device to:

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

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

(5) transmits, for each medical cannabis purchase by an individual with a medical cannabis patient card, a 25 ~~{cents}~~cent transaction fee equally to the ~~{Department of Public Safety}~~participating entities, as defined in Section 53-17-102;

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

(7) ~~{includes a video recording system that monitors all activity related to handling cannabis or a cannabis product that is tamper proof and capable of storing a video record for a minimum of 90 days; and~~

~~_____ (8) } is accessible by the {Department of Public Safety};~~ participating entities, as defined in Section 53-17-102.

Section ~~{11}~~13. Section **58-85-105** is enacted to read:

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

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

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

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

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

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

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

Section ~~{12}~~14. Section **58-85-106** is enacted to read:

58-85-106. Cannabis processing facility -- Eligibility requirements -- Operating requirements.

(1) A cannabis processing facility shall ensure that a cannabis product that the cannabis

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processing facility sells or provides to a cannabis dispensary:

(a) has a label that:

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

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

(iii) has a unique batch identifier;

(b) is sold in packaging that:

(i) is not appealing to children;

(ii) is opaque;

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

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

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

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

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

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

~~{Section 13}~~ (3) A cannabis processing facility shall comply with operating requirements established by the division by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

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

58-85-107. Cannabis dispensary -- Eligibility requirements -- Operating requirements.

(1) A ~~cannabis dispensary shall ensure that:~~

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

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

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

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

~~(c) the legal limit on the purchase of cannabis is posted clearly and conspicuously~~

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~~within the public area of;~~ 2) A cannabis dispensary may not sell or offer to sell cannabis or a cannabis product unless:

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

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

(3) A cannabis dispensary may only sell:

(a) cannabis;

(b) a cannabis product; or

(c) a cannabis device.

~~{2}~~ 4) A cannabis dispensary may only sell cannabis or a cannabis product that has been inspected by an independent testing laboratory to determine the concentration, in the cannabis or cannabis product, of:

(a) cannabinoids;

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

(c) mold and fungus;

(d) pesticides and fertilizers; and

(e) nutrients.

~~{~~ (3) A cannabis dispensary may only sell:

~~—~~ (a) cannabis;

~~—~~ (b) a cannabis product; or

~~—~~ (c) a cannabis device.

~~{~~ (4) ~~5) A cannabis dispensary may not sell a cannabis device that is constructed or produced ~~{such}~~ in a manner that, when an individual uses the cannabis device, the use imitates smoking.~~

(5) ~~6) A cannabis dispensary may only sell cannabis, a cannabis product, or a cannabis device in a physically separate ~~{and defined}~~ area where only an individual with a medical cannabis patient card, or a designated caregiver authorized to use a medical cannabis patient card, may enter.~~

(7) A cannabis dispensary shall post the legal limit on the purchase of cannabis clearly

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and conspicuously in the cannabis dispensary.

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

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

Section ~~{14}~~16. Section **58-85-108** is enacted to read:

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

(1) ~~{In addition to the requirements described in Section 58-85-104, the}~~ The division shall license a private laboratory as an independent cannabis testing laboratory if, in addition to the requirements described in Section 58-85-104, the laboratory is able to determine accurately, for cannabis or a cannabis product that a cannabis dispensary sells or offers to sell:

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

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

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

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

and

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

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

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

Section ~~{15}~~17. Section **58-85-201** is enacted to read:

Part 2. Medical Cannabis Establishment Agents

58-85-201. Title.

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

Section ~~{16}~~18. Section **58-85-202** is enacted to read:

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

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

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

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

(b) provides to the division:

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

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

(c) ~~authorizes~~ ~~complies with~~ the ~~division to conduct~~ ~~requirement for, and passes, a~~ ~~criminal~~ background check ~~on the individual~~ ~~described in Section 58-85-203.~~

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

(a) a cannabis cultivation facility;

(b) a cannabis processing facility;

(c) a cannabis dispensary; or

(d) an independent cannabis testing laboratory.

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

(~~4~~)5) The division may revoke the medical cannabis ~~establishment~~ agent registration card of an individual who:

(a) violates the requirements of this chapter; or

(b) commits an excluded felony offense.

Section ~~(17)~~19. Section 58-85-203 is enacted to read:

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

(1) An individual applying for a medical cannabis establishment agent registration card

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under this chapter shall:

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

(b) consent to a fingerprint background check by:

(i) the Utah Bureau of Criminal Identification; and

(ii) the Federal Bureau of Investigation.

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

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

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

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

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

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

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

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

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

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

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

Part 3. Administration

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58-85-301. Title.

This part is known as "Administration."

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

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

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

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

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

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

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

(e) two physicians;

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

(e) two members of the public who:

(i) is a Utah resident;

(ii) is 21 years old or older;

(iii) has a medical cannabis patient card; and

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

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

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

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

(a) assist the division in reviewing complaints concerning the unlawful or unprofessional conduct of a licensee; and

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

(5) A board member who has, under Subsection (4), reviewed a complaint or advised in the board's investigation may be disqualified from participating with the board when the board serves as a presiding officer in an adjudicative proceeding concerning the complaint.

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

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

(b) misuses the board member's appointment to obtain personal, pecuniary, or material

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gain or advantage for the board member; or

(c) violates of this chapter.

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

58-85-303. Unprofessional conduct.

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

(a) Section 58-85-103;

(b) for a cannabis cultivation facility, Section 58-85-105;

(c) for a cannabis production facility, Section 58-85-106

(d) for a cannabis dispensary, Section 58-85-107; and

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

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

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

58-85-304. Unlawful conduct.

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

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

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

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

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

(b) as provided in Subsection (7).

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

(i) assess administrative penalties; and

(ii) take any other appropriate administrative action.

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

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(3) If the division concludes, upon inspection or investigation, that a person has violated the provisions of this chapter or a rule made or order issued under this chapter, the division shall:

(a) issue the person a citation in writing;

(b) attempt to negotiate a stipulated settlement; or

(c) direct the person to appear before an adjudicative proceeding conducted under Title 63G, Chapter 4, Administrative Procedures Act.

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

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

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

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

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

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

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

Section 26. Repealer.

This bill repeals:

Section 26-56-101, Title.

Section 26-56-102, Definitions.

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

Database.

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

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Legislative Review Note

as of ~~3-3-15 5:27~~3-9-15 2:51 PM

The Utah Legislature's Joint Rule ~~{4-2-402}~~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 ~~{the}~~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 ~~{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 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 ~~{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.*

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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