

Representative Brad M. Daw proposes the following substitute bill:

MEDICAL CANNABIS POLICY

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Brad M. Daw

Senate Sponsor: Evan J. Vickers

LONG TITLE

General Description:

This bill creates a "right to try" cannabis-based treatment for terminally ill patients.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ provides that an individual who possesses, distributes, or uses cannabis in a medicinal dosage form in compliance with Title 58, Chapter 85, Utah Right to Try Act, is not subject to the penalties described in Title 58, Chapter 37, Utah Controlled Substances Act; and
- ▶ describes the procedure for an eligible patient to receive a recommendation for a cannabis-based treatment from the eligible patient's physician or the eligible patient's advanced practice registered nurse.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:



- 26 [58-37-3.6](#), as enacted by Laws of Utah 2017, Chapter 398
- 27 [58-85-102](#), as enacted by Laws of Utah 2015, Chapter 110
- 28 [58-85-104](#), as last amended by Laws of Utah 2016, Chapter 348
- 29 [58-85-105](#), as enacted by Laws of Utah 2015, Chapter 110

30 ENACTS:

31 [58-85-103.5](#), Utah Code Annotated 1953



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

34 Section 1. Section **58-37-3.6** is amended to read:

35 **58-37-3.6. Exemption for possession or distribution of a cannabinoid product or**
36 **expanded cannabinoid product pursuant to an approved study.**

37 (1) As used in this section:

- 38 (a) "Cannabinoid product" means a product intended for human ingestion that:
 - 39 (i) contains an extract or concentrate that is obtained from cannabis;
 - 40 (ii) is prepared in a medicinal dosage form; and
 - 41 (iii) contains at least 10 units of cannabidiol for every one unit of tetrahydrocannabinol.
- 42 (b) "Cannabis" means any part of the plant cannabis sativa, whether growing or not.
- 43 (c) "Drug paraphernalia" means the same as that term is defined in Section [58-37a-3](#).
- 44 (d) "Expanded cannabinoid product" means a product intended for human ingestion

45 that:

- 46 (i) contains an extract or concentrate that is obtained from cannabis;
- 47 (ii) is prepared in a medicinal dosage form; and
- 48 (iii) contains less than 10 units of cannabidiol for every one unit of
- 49 tetrahydrocannabinol.

50 (e) "Medicinal dosage form" means:

- 51 (i) a tablet;
- 52 (ii) a capsule;
- 53 (iii) a concentrated oil;
- 54 (iv) a liquid suspension;
- 55 (v) a transdermal preparation; or
- 56 (vi) a sublingual preparation.

57 (f) "Tetrahydrocannabinol" means a substance derived from cannabis that meets the
58 description in Subsection [58-37-4\(2\)\(a\)\(iii\)\(AA\)](#).

59 (2) Notwithstanding any other provision of this chapter, an individual who possesses or
60 distributes a cannabinoid product or an expanded cannabinoid product is not subject to the
61 penalties described in this title for the possession or distribution of marijuana or
62 tetrahydrocannabinol to the extent that the individual's possession or distribution of the
63 cannabinoid product or expanded cannabinoid product complies with Title 26, Chapter 61,
64 Cannabinoid Research Act.

65 (3) Notwithstanding any other provision of this chapter, an individual who possesses,
66 distributes, or uses cannabis in a medicinal dosage form is not subject to the penalties described
67 in this title for the possession or distribution of marijuana or tetrahydrocannabinol to the extent
68 that the individual's possession, distribution, or use of the cannabis complies with Title 58,
69 Chapter 85, Utah Right to Try Act.

70 Section 2. Section **58-85-102** is amended to read:

71 **58-85-102. Definitions.**

72 As used in this chapter:

73 (1) "Advanced practice registered nurse" or "APRN" means a person who is licensed as
74 an advanced practice registered nurse under Section [58-31b-301](#).

75 (2) "Cannabis" means cannabis that has been grown by a state-approved grower and
76 processed into a medicinal dosage form.

77 (3) "Cannabis-based treatment" means a course of treatment involving cannabis.

78 [(+) (4) "Eligible patient" means an individual who has been diagnosed with a
79 terminal illness by a physician.

80 (5) "Health care facility" means the same as that term is defined in Section [26-55-102](#).

81 [(2) (6) "Insurer" means the same as that term is defined in Section [31A-1-301](#).

82 [(3) (7) "Investigational device" means a device that:

83 (a) meets the definition of "investigational device" in 21 C.F.R. Sec. 812.3; and

84 (b) has successfully completed the United States Food and Drug Administration Phase
85 1 testing for an investigational device described in 21 C.F.R. Part 812.

86 [(4) (8) "Investigational drug" means a drug that:

87 (a) meets the definition of "investigational new drug" in 21 C.F.R. Sec. 312.3; and

88 (b) has successfully completed the United States Food and Drug Administration Phase
89 1 testing for an investigational new drug described in 21 C.F.R. Part 312.

90 (9) "Medicinal dosage form" means the same as that term is defined in Section
91 [58-37-3.6](#).

92 [~~5~~] (10) "Physician" means an individual who is licensed under:

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

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

95 (11) "State-approved grower and processor" means a person who grows cannabis
96 pursuant to state law and processes the cannabis into a medicinal dosage form.

97 [~~6~~] (12) "Terminal illness" means a condition of a patient that:

98 (a) as determined by a physician:

99 (i) is likely to pose a greater risk to the patient than the risk posed to the patient by
100 treatment with an investigational drug or investigational device; and

101 (ii) will inevitably lead to the patient's death; and

102 (b) presents the patient, after the patient has explored conventional therapy options,
103 with no treatment option that is satisfactory or comparable to treatment with an investigational
104 drug or device.

105 Section 3. Section **58-85-103.5** is enacted to read:

106 **58-85-103.5. Right to request a recommendation for a cannabis-based treatment.**

107 (1) An eligible patient may ask the eligible patient's physician or the eligible patient's
108 APRN for a recommendation to try a cannabis-based treatment.

109 (2) An eligible patient's physician or APRN may give the eligible patient a
110 recommendation to try a cannabis-based treatment if:

111 (a) the physician or APRN believes, in the physician's or APRN's professional
112 judgment, that the cannabis-based treatment may provide some benefit to the eligible patient;
113 and

114 (b) the physician or APRN recommends a cannabis-based treatment to no more than 15
115 eligible patients at any given time.

116 (3) An eligible patient may possess and use cannabis as described in this section.

117 (4) An eligible patient may obtain cannabis through an agreement between the eligible
118 patient, the eligible patient's physician or the eligible patient's APRN, and a state-approved

119 grower and processor that provides:

120 (a) for the transfer of the cannabis from the state-approved grower and processor to the
121 physician or APRN;

122 (b) that the physician or APRN will distribute the cannabis to the eligible patient; and

123 (c) that the eligible patient has made arrangements for any excess cannabis in the
124 eligible patient's possession to be returned to the physician or APRN for destruction in the
125 event of the eligible patient's death.

126 (5) (a) After recommending a cannabis-based treatment to an eligible patient, as
127 described in Subsection (2), and receiving cannabis from a state-approved grower and
128 processor as described in Subsection (4)(a), a physician or APRN may distribute up to a
129 one-month supply of cannabis to the eligible patient.

130 (b) Once an eligible patient has exhausted a one-month supply of cannabis, the eligible
131 patient's physician or APRN may distribute up to another one-month supply to the eligible
132 patient, so long as the eligible patient's physician or APRN continues to believe, in the
133 physician's or APRN's professional judgment, that the cannabis-based treatment may provide
134 some benefit to the eligible patient.

135 (6) The physician or APRN shall provide an eligible patient who seeks a
136 recommendation to use a cannabis-based treatment with an informed consent document that,
137 based on the physician's or APRN's knowledge of the cannabis-based treatment:

138 (a) describes the possible positive and negative outcomes the eligible patient could
139 experience;

140 (b) states that an insurer is not required to cover the cost of providing cannabis to the
141 patient; and

142 (c) states that, subject to Section [58-85-105](#), an insurer may deny coverage for the
143 eligible patient.

144 Section 4. Section **58-85-104** is amended to read:

145 **58-85-104. Standard of care -- Medical practitioners not liable -- No private right**
146 **of action.**

147 (1) (a) It is not a breach of the applicable standard of care for a physician, other
148 licensed health care provider, or hospital to treat an eligible patient with an investigational drug
149 or investigational device under this chapter.

150 (b) It is not a breach of the applicable standard of care for a physician or advanced
151 practice registered nurse to recommend a cannabis-based treatment to an eligible patient under
152 this chapter, or a health care facility to aid or assist in any way an eligible patient's use of
153 cannabis.

154 (2) A physician, other licensed health care provider, or hospital that treats an eligible
155 patient with an investigational drug or investigational device under this chapter, or a physician
156 or advanced practice registered nurse who recommends a cannabis-based treatment to an
157 eligible patient or a health care facility that facilitates an eligible patient's recommended use of
158 a cannabis-based treatment under this chapter, may not, for any harm done to the eligible
159 patient by the investigational drug [or], device, or cannabis-based treatment, be subject to:

- 160 (a) civil liability;
- 161 (b) criminal liability; or
- 162 (c) licensure sanctions under:
 - 163 (i) for a physician:
 - 164 (A) Title 58, Chapter 67, Utah Medical Practice Act; or
 - 165 (B) Title 58, Chapter 68, Utah Osteopathic Medical Practice Act;
 - 166 (ii) for the other licensed health care provider, the act governing the other licensed
167 health care provider's license; or
 - 168 (iii) for the hospital or health care facility, Title 26, Chapter 21, Health Care Facility
169 Licensing and Inspection Act.

170 (3) This chapter does not:
171 (a) require a manufacturer of an investigational drug or investigational device to agree
172 to make an investigational drug or investigational device available to an eligible patient or an
173 eligible patient's physician;

- 174 (b) require a physician or advanced practice registered nurse to agree to:
 - 175 (i) administer an investigational drug to an eligible patient under this chapter; [or]
 - 176 (ii) treat an eligible patient with an investigational device under this chapter; or
 - 177 (iii) recommend a cannabis-based treatment to an eligible patient; or
- 178 (c) create a private right of action for an eligible patient:
 - 179 (i) against a physician, advanced practice registered nurse, or hospital, for the
180 physician's or hospital's refusal to:

- 181 (A) administer an investigational drug to an eligible patient under this chapter; [or]
- 182 (B) treat an eligible patient with an investigational device under this chapter; or
- 183 (C) recommend a cannabis-based treatment to the eligible patient; or
- 184 (ii) against a manufacturer, for the manufacturer's refusal to provide an eligible patient
- 185 with an investigational drug or an investigational device under this chapter.

186 Section 5. Section **58-85-105** is amended to read:

187 **58-85-105. Insurance coverage.**

188 (1) This chapter does not:

189 (a) require an insurer to cover the cost of:

190 (i) administering an investigational drug under this chapter; [or]

191 (ii) treating a patient with an investigational device under this chapter; or

192 (iii) a cannabis-based treatment; or

193 (b) prohibit an insurer from covering the cost of:

194 (i) administering an investigational drug under this chapter; [or]

195 (ii) treating a patient with an investigational device under this chapter[-]; or

196 (iii) a cannabis-based treatment.

197 (2) Except as described in Subsection (3), an insurer may deny coverage to an eligible
198 patient who is treated with an investigational drug or investigational device, for harm to the
199 eligible patient caused by the investigational drug or investigational device.

200 (3) An insurer may not deny coverage to an eligible patient under Subsection (2) for:

201 (a) the eligible patient's preexisting condition;

202 (b) benefits that commenced before the day on which the eligible patient is treated with
203 the investigational drug or investigational device; or

204 (c) palliative or hospice care for an eligible patient that has been treated with an
205 investigational drug or device, but is no longer receiving curative treatment with the
206 investigational drug or device.