

**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

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**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 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 a terminally ill patient to receive a recommendation for a cannabis-based treatment from the terminally ill patient's physician.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**58-37-3.6**, as enacted by Laws of Utah 2017, Chapter 398



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

29 ENACTS:

30 [58-85-103.5](#), Utah Code Annotated 1953

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

33 Section 1. Section [58-37-3.6](#) is amended to read:

34 **58-37-3.6. Exemption for possession or distribution of a cannabinoid product or**  
35 **expanded cannabinoid product pursuant to an approved study.**

36 (1) As used in this section:

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

44 that:

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

49 (e) "Medicinal dosage form" means:

- 50 (i) a tablet;
- 51 (ii) a capsule;
- 52 (iii) a concentrated oil;
- 53 (iv) a liquid suspension;
- 54 (v) a transdermal preparation; or
- 55 (vi) a sublingual preparation.
- 56 (f) "Tetrahydrocannabinol" means a substance derived from cannabis that meets the

57 description in Subsection [58-37-4\(2\)\(a\)\(iii\)\(AA\)](#).

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

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

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

69 **58-85-102. Definitions.**

70 As used in this chapter:

71 (1) "Cannabis" means cannabis that has been grown by a state-approved grower and  
72 processed into a medicinal dosage form.

73 (2) "Cannabis-based treatment" means a course of treatment involving cannabis.

74 ~~(1)~~ (3) "Eligible patient" means an individual who has been diagnosed with a  
75 terminal illness by a physician.

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

77 ~~(2)~~ (5) "Insurer" means the same as that term is defined in Section [31A-1-301](#).

78 ~~(3)~~ (6) "Investigational device" means a device that:

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

80 (b) has successfully completed the United States Food and Drug Administration Phase

81 1 testing for an investigational device described in 21 C.F.R. Part 812.

82 ~~(4)~~ (7) "Investigational drug" means a drug that:

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

84 (b) has successfully completed the United States Food and Drug Administration Phase

85 1 testing for an investigational new drug described in 21 C.F.R. Part 312.

86 (8) "Medicinal dosage form" means the same as that term is defined in Section

87 [58-37-3.6](#).

88 [~~5~~] (9) "Physician" means an individual who is licensed under:

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

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

91 (10) "State-approved grower and processor" means a person who grows cannabis

92 pursuant to state law and processes the cannabis into a medicinal dosage form.

93 [~~6~~] (11) "Terminal illness" means a condition of a patient that:

94 (a) as determined by a physician:

95 (i) is likely to pose a greater risk to the patient than the risk posed to the patient by

96 treatment with an investigational drug or investigational device; and

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

98 (b) presents the patient, after the patient has explored conventional therapy options,

99 with no treatment option that is satisfactory or comparable to treatment with an investigational

100 drug or device.

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

102 **58-85-103.5. Right to request a recommendation for a cannabis-based treatment.**

103 (1) As used in this section, "terminally ill patient" means a patient who has an

104 incurable and irreversible disease that has been medically confirmed and will, within

105 reasonable medical judgment, produce death within six months.

106 (2) A terminally ill patient's physician may give the eligible patient a recommendation

107 to try a cannabis-based treatment if:

108 (a) the physician believes, in the physician's professional judgment, that the

109 cannabis-based treatment may provide some benefit to the terminally ill patient; and

110 (b) the physician recommends a cannabis-based treatment to no more than 25

111 terminally ill patients at any given time.

112 (3) (a) A recommendation may be for up to a one-month supply of cannabis.

113 (b) Once a terminally ill patient has exhausted a one-month supply of cannabis, the

114 terminally ill patient's physician may renew the original recommendation for an additional

115 one-month supply of cannabis, so long as the terminally ill patient's physician continues to

116 believe, in the physician's professional judgment, that the cannabis-based treatment may

117 provide some benefit to the terminally ill patient.

118 (4) A terminally ill patient may possess and use cannabis if the terminally ill patient:

119           (a) has a recommendation from the terminally ill patient's physician as described in this  
120 section; and

121           (b) procures cannabis from a state-approved source.

122           (5) The physician shall provide a terminally ill patient with a recommendation to use a  
123 cannabis-based treatment with an informed consent document that, based on the physician's  
124 knowledge of the cannabis-based treatment:

125           (a) describes the possible positive and negative outcomes the terminally ill patient  
126 could experience;

127           (b) states that an insurer is not required to cover the cost of providing cannabis to the  
128 terminally ill patient; and

129           (c) states that, subject to Section 58-85-105, an insurer may deny coverage for the  
130 terminally ill patient.

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

132           **58-85-104. Standard of care -- Medical practitioners not liable -- No private right**  
133 **of action.**

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

137           (b) It is not a breach of the applicable standard of care for a physician to recommend a  
138 cannabis-based treatment to a terminally ill patient under this chapter, or a health care facility  
139 to aid or assist in any way a terminally ill patient's use of cannabis.

140           (2) A physician, other licensed health care provider, or hospital that treats an eligible  
141 patient with an investigational drug or investigational device under this chapter, or a physician  
142 who recommends a cannabis-based treatment to a terminally ill patient or a health care facility  
143 that facilitates a terminally ill patient's recommended use of a cannabis-based treatment under  
144 this chapter, may not, for any harm done to the eligible patient by the investigational drug or  
145 device, or for any harm done to the terminally ill patient by the cannabis-based treatment, be  
146 subject to:

147           (a) civil liability;

148           (b) criminal liability; or

149           (c) licensure sanctions under:

- 150 (i) for a physician:
- 151 (A) Title 58, Chapter 67, Utah Medical Practice Act; or
- 152 (B) Title 58, Chapter 68, Utah Osteopathic Medical Practice Act;
- 153 (ii) for the other licensed health care provider, the act governing the other licensed
- 154 health care provider's license; or
- 155 (iii) for the hospital or health care facility, Title 26, Chapter 21, Health Care Facility
- 156 Licensing and Inspection Act.
- 157 (3) This chapter does not:
- 158 (a) require a manufacturer of an investigational drug or investigational device to agree
- 159 to make an investigational drug or investigational device available to an eligible patient or an
- 160 eligible patient's physician;
- 161 (b) require a physician to agree to:
- 162 (i) administer an investigational drug to an eligible patient under this chapter; [or]
- 163 (ii) treat an eligible patient with an investigational device under this chapter; or
- 164 (iii) recommend a cannabis-based treatment to a terminally ill patient; or
- 165 (c) create a private right of action for an eligible patient:
- 166 (i) against a physician or hospital, for the physician's or hospital's refusal to:
- 167 (A) administer an investigational drug to an eligible patient under this chapter; [or]
- 168 (B) treat an eligible patient with an investigational device under this chapter; or
- 169 (C) recommend a cannabis-based treatment to the terminally ill patient; or
- 170 (ii) against a manufacturer, for the manufacturer's refusal to provide an eligible patient
- 171 with an investigational drug or an investigational device under this chapter.

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

173 **58-85-105. Insurance coverage.**

- 174 (1) This chapter does not:
- 175 (a) require an insurer to cover the cost of:
- 176 (i) administering an investigational drug under this chapter; [or]
- 177 (ii) treating a patient with an investigational device under this chapter; or
- 178 (iii) a cannabis-based treatment; or
- 179 (b) prohibit an insurer from covering the cost of:
- 180 (i) administering an investigational drug under this chapter; [or]

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

182 (iii) a cannabis-based treatment.

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

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

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

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

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