

1 **MEDICAL CANNABIS ACT AMENDMENTS**

2 2019 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Luz Escamilla**

5 House Sponsor: Brad M. Daw

6 Cosponsor:

7 Evan J. Vickers

8

9 **LONG TITLE**

10 **General Description:**

11 This bill amends provisions related to the Utah Medical Cannabis Act.

12 **Highlighted Provisions:**

13 This bill:

14 ▶ amends a provision regarding the transportation of cannabis and cannabis products
15 to certain facilities;

16 ▶ provides for testing of cannabis at additional stages of production;

17 ▶ delays a provision during the decriminalization period that requires labeling with a
18 barcode on a blister pack containing unprocessed cannabis flower;

19 ▶ amends the request for proposal requirements for a third-party electronic
20 verification system to ensure that the provider does not have an ownership interest
21 in a cannabis production establishment or a medical cannabis pharmacy;

22 ▶ subjects appointees to the compassionate use board to Senate confirmation;

23 ▶ provides an exception allowing certain medical professionals to recommend
24 medical cannabis before qualified medical provider registration is available;

25 ▶ clarifies an exception to an employment protection regarding a public employee's
26 lawful use of medical cannabis in the context of certain positions related to federal
27 requirements;

28 ▶ requires a state or political subdivision employer to provide a written notice to an

- 29 employee or prospective employee whose assignments or duties under the state's medical
30 cannabis programs may violate federal law;
- 31 ▶ provides that a public employee who signs a notice regarding assignments or duties
32 that may violate federal law may not subsequently rely on state whistleblower
33 protections to refuse to carry out an assignment or duty that may violate federal law;
 - 34 ▶ requires the Department of Human Resource Management to create and publish a
35 form notice for public employees regarding the employees' involvement in the
36 state's medical cannabis programs;
 - 37 ▶ prohibits a court in a custody determination from:
 - 38 • considering a parent's lawful possession or use of medical cannabis any
39 differently than the lawful possession or use of an opioid or opiate;
 - 40 • discriminating against a parent based on the parent's status in relation to the
41 state's medical cannabis programs;
 - 42 ▶ allows a certain insurer to issue workers' compensation insurance coverage for an
43 employer that is a cannabis production establishment or a medical cannabis
44 pharmacy;
 - 45 ▶ allows a certain workers' compensation insurer to issue coverage to a cannabis
46 production establishment or a medical cannabis pharmacy;
 - 47 ▶ amends the decriminalization provision to include protections for parents and legal
48 guardians of certain minor patients;
 - 49 ▶ clarifies quantity limits for possession during the decriminalization period; and
 - 50 ▶ makes technical changes.

51 **Money Appropriated in this Bill:**

52 None

53 **Other Special Clauses:**

54 This bill provides a special effective date.

55 **Utah Code Sections Affected:**

56 AMENDS:

57 4-41a-404, as renumbered and amended by Laws of Utah 2018, Third Special Session,
58 Chapter 1

59 4-41a-701, as renumbered and amended by Laws of Utah 2018, Third Special Session,
60 Chapter 1

61 26-61a-102, as renumbered and amended by Laws of Utah 2018, Third Special Session,
62 Chapter 1

63 26-61a-103, as renumbered and amended by Laws of Utah 2018, Third Special Session,
64 Chapter 1

65 26-61a-105, as renumbered and amended by Laws of Utah 2018, Third Special Session,
66 Chapter 1

67 26-61a-106, as renumbered and amended by Laws of Utah 2018, Third Special Session,
68 Chapter 1

69 26-61a-111, as renumbered and amended by Laws of Utah 2018, Third Special Session,
70 Chapter 1

71 30-3-10, as last amended by Laws of Utah 2018, Third Special Session, Chapter 1

72 31A-15-103, as last amended by Laws of Utah 2018, Chapter 319

73 58-37-3.7, as last amended by Laws of Utah 2018, Third Special Session, Chapter 1

74 ENACTS:

75 4-41a-107, Utah Code Annotated 1953

76 31A-22-1016, Utah Code Annotated 1953



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

79 Section 1. Section 4-41a-107 is enacted to read:

80 **4-41a-107. Notice to prospective and current public employees.**

81 (1) (a) A state employer or a political subdivision employer shall take the action
82 described in Subsection (1)(b) before:

83 (i) giving to a current employee an assignment or duty that arises from or directly
84 relates to an obligation under this chapter; or

85 (ii) hiring a prospective employee whose assignments or duties would include an
86 assignment or duty that arises from or directly relates to an obligation under this chapter.

87 (b) The employer described in Subsection (1)(a) shall give the employee or prospective
88 employee described in Subsection (1)(a) a written notice that notifies the employee or
89 prospective employee:

90 (i) that the employee's or prospective employee's job duties may require the employee
91 or prospective employee to engage in conduct which is in violation of the criminal laws of the
92 United States; and

93 (ii) that in accepting a job or undertaking a duty described in Subsection (1)(a),
94 although the employee or prospective employee is entitled to the protections of Title 67,
95 Chapter 21, Utah Protection of Public Employees Act, the employee may not object or refuse to
96 carry out an assignment or duty that may be a violation of the criminal laws of the United
97 States with respect to the manufacture, sale, or distribution of cannabis.

98 (2) The Department of Human Resource Management shall create, revise, and publish
99 the form of the notice described in Subsection (1).

100 (3) Notwithstanding Subsection 67-21-3(3), an employee who has signed the notice
101 described in Subsection (1) may not:

102 (a) claim in good faith that the employee's actions violate or potentially violate the laws
103 of the United States with respect to the manufacture, sale, or distribution of cannabis; or

104 (b) refuse to carry out a directive that the employee reasonably believes violates the
105 criminal laws of the United States with respect to the manufacture, sale, or distribution of
106 cannabis.

107 (4) An employer of an employee who has signed the notice described in Subsection (1)
108 may not take retaliatory action as defined in Section 67-19a-101 against a current employee
109 who refuses to sign the notice described in Subsection (1).

110 Section 2. Section 4-41a-404 is amended to read:

111 **4-41a-404. Cannabis, cannabis product, or medical cannabis device**
112 **transportation.**

113 (1) (a) Only the following individuals may transport cannabis in a medicinal dosage
114 form, a cannabis product in a medicinal dosage form, or a medical cannabis device under this
115 chapter:

- 116 (i) a registered cannabis production establishment agent; or
- 117 (ii) a medical cannabis cardholder who is transporting a medical cannabis treatment that
118 the cardholder is authorized to possess under this chapter.

119 (b) Only an agent of a cannabis cultivating facility, when the agent is transporting
120 cannabis plants to a cannabis processing facility or an independent cannabis testing laboratory,
121 may transport unprocessed cannabis outside of a medicinal dosage form.

122 (2) Except for an individual with a valid medical cannabis card under Title 26, Chapter
123 61a, Utah Medical Cannabis Act, who is transporting a medical cannabis treatment shall
124 possess a transportation manifest that:

125 (a) includes a unique identifier that links the cannabis, cannabis product, or medical
126 cannabis device to a relevant inventory control system;

127 (b) includes origin and destination information for any cannabis, cannabis product, or
128 medical cannabis device that the individual is transporting; and

129 (c) identifies the departure and arrival times and locations of the individual transporting
130 the cannabis, cannabis product, or medical cannabis device.

131 (3) (a) In addition to the requirements in Subsections (1) and (2), the department may
132 establish by rule, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking
133 Act, requirements for transporting cannabis in a medicinal dosage form, a cannabis product in a
134 medicinal dosage form, or a medical cannabis device to ensure that the cannabis, cannabis
135 product, or medical cannabis device remains safe for human consumption.

136 (b) The transportation described in Subsection (3)(a) is limited to transportation:

137 (i) between a cannabis cultivation facility and:

138 (A) another cannabis cultivation facility; or

139 (B) a cannabis processing facility; and

140 (ii) between a cannabis processing facility and:

- 141 (A) another cannabis processing facility;
- 142 (B) an independent cannabis testing laboratory; [~~or~~]
- 143 (C) a medical cannabis pharmacy[~~;~~]; or
- 144 (D) the state central fill medical cannabis pharmacy.

145 (4) (a) It is unlawful for a registered cannabis production establishment agent to make a
146 transport described in this section with a manifest that does not meet the requirements of this
147 section.

148 (b) Except as provided in Subsection (4)(d), an agent who violates Subsection (4)(a) is:

- 149 (i) guilty of an infraction; and
- 150 (ii) subject to a \$100 fine.

151 (c) An individual who is guilty of a violation described in Subsection (4)(b) is not
152 guilty of a violation of Title 58, Chapter 37, Utah Controlled Substances Act, for the conduct
153 underlying the violation described in Subsection (4)(b).

154 (d) If the agent described in Subsection (4)(a) is transporting more cannabis, cannabis
155 product, or medical cannabis devices than the manifest identifies, except for a de minimis
156 administrative error:

- 157 (i) the penalty described in Subsection (4)(b) does not apply; and
- 158 (ii) the agent is subject to penalties under Title 58, Chapter 37, Utah Controlled
159 Substances Act.

160 (5) Nothing in this section prevents the department from taking administrative
161 enforcement action against a cannabis production establishment or another person for failing to
162 make a transport in compliance with the requirements of this section.

163 Section 3. Section **4-41a-701** is amended to read:

164 **4-41a-701. Cannabis and cannabis product testing.**

165 (1) A cannabis cultivation facility may not offer any cannabis for sale to a cannabis
166 processing facility unless an independent cannabis testing laboratory has tested a representative
167 sample of the cannabis or cannabis product to determine that the presence of contaminants,
168 including mold, fungus, pesticides, microbial contaminants, heavy metals, or foreign material,

169 does not exceed an amount that is safe for human consumption.

170 [~~(1)~~] (2) A cannabis processing facility may not offer any cannabis or cannabis
171 products for sale to a medical cannabis pharmacy or the state central fill medical cannabis
172 pharmacy, and a medical cannabis pharmacy and the state central fill medical cannabis
173 pharmacy may not offer any cannabis or cannabis product for sale unless an independent
174 cannabis testing laboratory has tested a representative sample of the cannabis or cannabis
175 product to determine:

176 (a) (i) the amount of total composite tetrahydrocannabinol and cannabidiol in the
177 cannabis or cannabis product; and

178 (ii) the amount of any other cannabinoid in the cannabis or cannabis product that the
179 label claims the cannabis or cannabis product contains;

180 (b) that the presence of contaminants, including mold, fungus, pesticides, microbial
181 contaminants, heavy metals, or foreign material, does not exceed an amount that is safe for
182 human consumption; and

183 (c) for a cannabis product that is manufactured using a process that involves extraction
184 using hydrocarbons, that the cannabis product does not contain a level of a residual solvent that
185 is not safe for human consumption.

186 [~~(2)~~] (3) By rule, in accordance with Title 63G, Chapter 3, Utah Administrative
187 Rulemaking Act, the department:

188 (a) may determine the amount of any substance described in Subsections [~~(1)~~] (2)(b)
189 and (c) that is safe for human consumption; and

190 (b) shall establish protocols for a recall of cannabis or a cannabis product by a cannabis
191 production establishment.

192 [~~(3)~~] (4) The department may require testing for a toxin if:

193 (a) the department receives information indicating the potential presence of a toxin; or

194 (b) the department's inspector has reason to believe a toxin may be present based on the
195 inspection of a facility.

196 [~~(4)~~] (5) The department shall establish by rule, in accordance with Title 63G, Chapter

197 3, Utah Administrative Rulemaking Act, the standards, methods, practices, and procedures for
198 the testing of cannabis and cannabis products by independent cannabis testing laboratories.

199 ~~[(5)]~~ (6) The department may require an independent cannabis testing laboratory to
200 participate in a proficiency evaluation that the department conducts or that an organization that
201 the department approves conducts.

202 Section 4. Section **26-61a-102** is amended to read:

203 **26-61a-102. Definitions.**

204 As used in this chapter:

205 (1) "Blister" means a plastic cavity or pocket used to contain no more than a single
206 dose of cannabis or a cannabis product in a blister pack.

207 (2) "Blister pack" means a plastic, paper, or foil package with multiple blisters each
208 containing no more than a single dose of cannabis or a cannabis product.

209 (3) "Cannabis" means marijuana.

210 (4) "Cannabis cultivation facility" means the same as that term is defined in Section
211 [4-41a-102](#).

212 (5) "Cannabis processing facility" means the same as that term is defined in Section
213 [4-41a-102](#).

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

215 (a) is intended for human use; and

216 (b) contains cannabis or tetrahydrocannabinol.

217 (7) "Cannabis production establishment agent" means the same as that term is defined
218 in Section [4-41a-102](#).

219 (8) "Cannabis production establishment agent registration card" means the same as that
220 term is defined in Section [4-41a-102](#).

221 (9) "Community location" means a public or private school, a church, a public library,
222 a public playground, or a public park.

223 (10) "Department" means the Department of Health.

224 (11) "Designated caregiver" means an individual:

225 (a) whom an individual with a medical cannabis patient card or a medical cannabis
226 guardian card designates as the patient's caregiver; and

227 (b) who registers with the department under Section 26-61a-202.

228 (12) "Dosing parameters" means quantity, routes, and frequency of administration for a
229 recommended treatment of cannabis in a medicinal dosage form or a cannabis product in a
230 medicinal dosage form.

231 (13) "Independent cannabis testing laboratory" means the same as that term is defined
232 in Section 4-41a-102.

233 (14) "Inventory control system" means the system described in Section 4-41a-103.

234 (15) "Local health department" means the same as that term is defined in Section
235 26A-1-102.

236 (16) "Local health department distribution agent" means an agent designated and
237 registered to distribute state central fill shipments under Sections 26-61a-606 and 26-61a-607.

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

239 (18) "Medical cannabis" means cannabis in a medicinal dosage form or a cannabis
240 product in a medicinal dosage form.

241 (19) "Medical cannabis card" means a medical cannabis patient card, a medical
242 cannabis guardian card, or a medical cannabis caregiver card.

243 (20) "Medical cannabis cardholder" means a holder of a medical cannabis card.

244 (21) "Medical cannabis caregiver card" means an official card that:

245 (a) the department issues to an individual whom a medical cannabis patient cardholder
246 or a medical cannabis guardian cardholder designates as a designated caregiver; and

247 (b) is connected to the electronic verification system.

248 (22) (a) "Medical cannabis device" means a device that an individual uses to ingest
249 cannabis in a medicinal dosage form or a cannabis product in a medicinal dosage form.

250 (b) "Medical cannabis device" does not include a device that:

251 (i) facilitates cannabis combustion; or

252 (ii) an individual uses to ingest substances other than cannabis.

- 253 (23) "Medical cannabis guardian card" means an official card that:
- 254 (a) the department issues to the parent or legal guardian of a minor with a qualifying
- 255 condition; and
- 256 (b) is connected to the electronic verification system.
- 257 (24) "Medical cannabis patient card" means an official card that:
- 258 (a) the department issues to an individual with a qualifying condition; and
- 259 (b) is connected to the electronic verification system.
- 260 (25) "Medical cannabis pharmacy" means a person that:
- 261 (a) (i) acquires or intends to acquire:
- 262 (A) cannabis in a medicinal dosage form or a cannabis product in a medicinal dosage
- 263 form from a cannabis processing facility; or
- 264 (B) a medical cannabis device; or
- 265 (ii) possesses cannabis in a medicinal dosage form, a cannabis product in a medicinal
- 266 dosage form, or a medical cannabis device; and
- 267 (b) sells or intends to sell cannabis in a medicinal dosage form, a cannabis product in a
- 268 medicinal dosage form, or a medical cannabis device to a medical cannabis cardholder.
- 269 (26) "Medical cannabis pharmacy agent" means an individual who:
- 270 (a) is an employee of a medical cannabis pharmacy; and
- 271 (b) who holds a valid medical cannabis pharmacy agent registration card.
- 272 (27) "Medical cannabis pharmacy agent registration card" means a registration card
- 273 issued by the department that authorizes an individual to act as a medical cannabis pharmacy
- 274 agent.
- 275 (28) "Medical cannabis treatment" means cannabis in a medicinal dosage form, a
- 276 cannabis product in a medicinal dosage form, or a medical cannabis device.
- 277 (29) (a) "Medicinal dosage form" means:
- 278 (i) for processed medical cannabis or a medical cannabis product, the following [~~in~~
- 279 ~~single dosage form~~] with a specific and consistent cannabinoid content:
- 280 (A) a tablet;

- 281 (B) a capsule;
- 282 (C) a concentrated oil;
- 283 (D) a liquid suspension;
- 284 (E) a topical preparation;
- 285 (F) a transdermal preparation;
- 286 (G) a sublingual preparation;
- 287 (H) a gelatinous cube, gelatinous rectangular cuboid, or lozenge in a cube or
- 288 rectangular cuboid shape; or
- 289 (I) for use only after the individual's qualifying condition has failed to substantially
- 290 respond to at least two other forms described in this Subsection (29)(a)(i), a resin or wax;
- 291 (ii) for unprocessed cannabis flower, a blister pack, with each individual blister:
- 292 (A) containing a specific and consistent weight that does not exceed one gram and that
- 293 varies by no more than 10% from the stated weight; and
- 294 (B) after December 31, 2020, labeled with a barcode that provides information
- 295 connected to an inventory control system and the individual blister's content and weight; and
- 296 (iii) a form measured in grams, milligrams, or milliliters.
- 297 (b) "Medicinal dosage form" includes a portion of unprocessed cannabis flower that:
- 298 (i) the medical cannabis cardholder has recently removed from the blister pack
- 299 described in Subsection (29)(a)(ii) for use; and
- 300 (ii) does not exceed the quantity described in Subsection (29)(a)(ii).
- 301 (c) "Medicinal dosage form" does not include:
- 302 (i) any unprocessed cannabis flower outside of the blister pack, except as provided in
- 303 Subsection (29)(b); or
- 304 (ii) a process of vaporizing and inhaling concentrated cannabis by placing the cannabis
- 305 on a nail or other metal object that is heated by a flame, including a blowtorch.
- 306 (30) "Pharmacy medical provider" means the medical provider required to be on site at
- 307 a medical cannabis pharmacy under Section [26-61a-403](#).
- 308 (31) "Provisional patient card" means a card that:

- 309 (a) the department issues to a minor with a qualifying condition for whom:
310 (i) a qualified medical provider has recommended a medical cannabis treatment; and
311 (ii) the department issues a medical cannabis guardian card to the minor's parent or
312 legal guardian; and
313 (b) is connected to the electronic verification system.
- 314 (32) "Qualified medical provider" means an individual who is qualified to recommend
315 treatment with cannabis in a medicinal dosage form under Section 26-61a-106.
- 316 (33) "Qualified Distribution Enterprise Fund" means the enterprise fund created in
317 Section 26-61a-110.
- 318 (34) "Qualified Patient Enterprise Fund" means the enterprise fund created in Section
319 26-61a-109.
- 320 (35) "Qualifying condition" means a condition described in Section 26-61a-104.
- 321 (36) "State central fill agent" means an employee of the state central fill medical
322 cannabis pharmacy that the department registers in accordance with Section 26-61a-602.
- 323 (37) "State central fill medical cannabis pharmacy" means the central fill pharmacy that
324 the department creates in accordance with Section 26-61a-601.
- 325 (38) "State central fill medical provider" means a physician or pharmacist that the state
326 central fill medical cannabis pharmacy employs to consult with medical cannabis cardholders
327 in accordance with Section 26-61a-601.
- 328 (39) "State central fill shipment" means a shipment of cannabis in a medicinal dosage
329 form, cannabis product in a medicinal dosage form, or a medical cannabis device that the state
330 central fill medical cannabis pharmacy prepares and ships for distribution to a medical cannabis
331 cardholder in a local health department.
- 332 (40) "State electronic verification system" means the system described in Section
333 26-61a-103.
- 334 Section 5. Section 26-61a-103 is amended to read:
335 **26-61a-103. Electronic verification system.**
336 (1) The Department of Agriculture and Food, the department, the Department of Public

337 Safety, and the Department of Technology Services shall:

338 (a) enter into a memorandum of understanding in order to determine the function and
339 operation of the state electronic verification system in accordance with Subsection (2);

340 (b) coordinate with the Division of Purchasing, under Title 63G, Chapter 6a, Utah
341 Procurement Code, to develop a request for proposals for a third-party provider to develop and
342 maintain the state electronic verification system in coordination with the Department of
343 Technology Services; and

344 (c) select a third-party provider who:

345 (i) meets the requirements contained in the request for proposals issued under
346 Subsection (1)(b)~~[-]~~; and

347 (ii) may not have any commercial or ownership interest in a cannabis production
348 establishment or a medical cannabis pharmacy.

349 (2) The Department of Agriculture and Food, the department, the Department of Public
350 Safety, and the Department of Technology Services shall ensure that, on or before March 1,
351 2020, the state electronic verification system described in Subsection (1):

352 (a) allows an individual, with the individual's qualified medical provider in the qualified
353 medical provider's office, to apply for a medical cannabis patient card or, if applicable, a
354 medical cannabis guardian card;

355 (b) allows an individual to apply to renew a medical cannabis patient card or a medical
356 cannabis guardian card in accordance with Section [26-61a-201](#);

357 (c) allows a qualified medical provider to:

358 (i) access dispensing and card status information regarding a patient:

359 (A) with whom the qualified medical provider has a provider-patient relationship; and

360 (B) for whom the qualified medical provider has recommended or is considering
361 recommending a medical cannabis card;

362 (ii) electronically recommend, during a visit with a patient, treatment with cannabis in a
363 medicinal dosage form or a cannabis product in a medicinal dosage form and optionally
364 recommend dosing parameters;

365 (iii) electronically renew a recommendation to a medical cannabis patient cardholder or
366 medical cannabis guardian cardholder:

367 (A) for the qualified medical provider who originally recommended a medical cannabis
368 treatment, as that term is defined in Section 26-61a-102, using telehealth services; or

369 (B) for a qualified medical provider who did not originally recommend the medical
370 cannabis treatment, during a face-to-face visit with a patient; and

371 (iv) at the request of a medical cannabis cardholder, initiate a state central fill shipment
372 in accordance with Section 26-61a-603;

373 (d) connects with:

374 (i) an inventory control system that a medical cannabis pharmacy and the state central
375 fill medical cannabis pharmacy use to track in real time and archive purchases of any cannabis
376 in a medicinal dosage form, cannabis product in a medicinal dosage form, or medical cannabis
377 device, including:

378 (A) the time and date of each purchase;

379 (B) the quantity and type of cannabis, cannabis product, or medical cannabis device
380 purchased;

381 (C) any cannabis production establishment, any medical cannabis pharmacy, or the
382 state central fill medical cannabis pharmacy associated with the cannabis, cannabis product, or
383 medical cannabis device; and

384 (D) the personally identifiable information of the medical cannabis cardholder who
385 made the purchase; and

386 (ii) any commercially available inventory control system that a cannabis production
387 establishment utilizes in accordance with Section 4-41a-103 to use data that the Department of
388 Agriculture and Food requires by rule, in accordance with Title 63G, Chapter 3, Utah
389 Administrative Rulemaking Act, from the inventory tracking system that a licensee uses to
390 track and confirm compliance;

391 (e) provides access to:

392 (i) the department to the extent necessary to carry out the department's functions and

393 responsibilities under this chapter;

394 (ii) the Department of Agriculture and Food to the extent necessary to carry out the
395 functions and responsibilities of the Department of Agriculture and Food under Title 4, Chapter
396 41a, Cannabis Production Establishments; and

397 (iii) the Division of Occupational and Professional Licensing to the extent necessary to
398 carry functions and responsibilities related to the participation of the following in the
399 recommendation and dispensing of medical cannabis:

400 (A) a pharmacist licensed under Title 58, Chapter 17b, Pharmacy Practice Act;

401 (B) an advanced practice registered nurse licensed under Title 58, Chapter 31b, Nurse
402 Practice Act;

403 (C) a physician licensed under Title 58, Chapter 67, Utah Medical Practice Act, or
404 Title 58, Chapter 68, Utah Osteopathic Medical Practice Act; or

405 (D) a physician assistant licensed under Title 58, Chapter 70a, Physician Assistant Act;

406 (f) provides access to and interaction with the state central fill medical cannabis
407 pharmacy, state central fill agents, and local health department distribution agents, to facilitate
408 the state central fill shipment process;

409 (g) provides access to state or local law enforcement:

410 (i) during a traffic stop for the purpose of determining if the individual subject to the
411 traffic stop is in compliance with state medical cannabis law; or

412 (ii) after obtaining a warrant; and

413 (h) creates a record each time a person accesses the database that identifies the person
414 who accesses the database and the individual whose records the person accesses.

415 (3) The department may release de-identified data that the system collects for the
416 purpose of:

417 (a) conducting medical research; and

418 (b) providing the report required by Section [26-61a-703](#).

419 (4) The department shall make rules, in accordance with Title 63G, Chapter 3, Utah
420 Administrative Rulemaking Act, to establish:

421 (a) the limitations on access to the data in the state electronic verification system as
422 described in this section; and

423 (b) standards and procedures to ensure accurate identification of an individual
424 requesting information or receiving information in this section.

425 (5) (a) Any person who knowingly and intentionally releases any information in the
426 state electronic verification system in violation of this section is guilty of a third degree felony.

427 (b) Any person who negligently or recklessly releases any information in the state
428 electronic verification system in violation of this section is guilty of a class C misdemeanor.

429 (6) (a) Any person who obtains or attempts to obtain information from the state
430 electronic verification system by misrepresentation or fraud is guilty of a third degree felony.

431 (b) Any person who obtains or attempts to obtain information from the state electronic
432 verification system for a purpose other than a purpose this chapter authorizes is guilty of a third
433 degree felony.

434 (7) (a) Except as provided in Subsection (7)(e), a person may not knowingly and
435 intentionally use, release, publish, or otherwise make available to any other person information
436 obtained from the state electronic verification system for any purpose other than a purpose
437 specified in this section.

438 (b) Each separate violation of this Subsection (7) is:

439 (i) a third degree felony; and

440 (ii) subject to a civil penalty not to exceed \$5,000.

441 (c) The department shall determine a civil violation of this Subsection (7) in
442 accordance with Title 63G, Chapter 4, Administrative Procedures Act.

443 (d) Civil penalties assessed under this Subsection (7) shall be deposited into the
444 General Fund.

445 (e) This Subsection (7) does not prohibit a person who obtains information from the
446 state electronic verification system under Subsection (2)(a), (c), or (f) from:

447 (i) including the information in the person's medical chart or file for access by a person
448 authorized to review the medical chart or file;

449 (ii) providing the information to a person in accordance with the requirements of the
450 Health Insurance Portability and Accountability Act of 1996; or

451 (iii) discussing or sharing that information on the patient with the patient.

452 Section 6. Section **26-61a-105** is amended to read:

453 **26-61a-105. Compassionate use board.**

454 (1) (a) The department shall establish a compassionate use board consisting of:

455 (i) seven qualified medical providers that the executive director appoints and the
456 Senate confirms:

457 (A) who are knowledgeable about the medicinal use of cannabis;

458 (B) who are physicians licensed under Title 58, Chapter 67, Utah Medical Practice Act,
459 or Title 58, Chapter 68, Utah Osteopathic Medical Practice Act; and

460 (C) whom the appropriate board certifies in the specialty of neurology, pain medicine
461 and pain management, medical oncology, psychiatry, infectious disease, internal medicine,
462 pediatrics, or gastroenterology; and

463 (ii) as a nonvoting member and the chair of the board, the executive director or the
464 director's designee.

465 (b) In appointing the seven qualified medical providers described in Subsection (1)(a),
466 the executive director shall ensure that at least two have a board certification in pediatrics.

467 (2) (a) Of the members of the board that the executive director first appoints:

468 (i) three shall serve an initial term of two years; and

469 (ii) the remaining members shall serve an initial term of four years.

470 (b) After an initial term described in Subsection (2)(a) expires:

471 (i) each term is four years; and

472 (ii) each board member is eligible for reappointment.

473 (c) A member of the board may serve until a successor is appointed.

474 (3) Four members constitute a quorum of the compassionate use board.

475 (4) A member of the board may receive:

476 (a) compensation or benefits for the member's service; and

477 (b) per diem and travel expenses in accordance with Section 63A-3-106, Section
478 63A-3-107, and rules made by the Division of Finance pursuant to Sections 63A-3-106 and
479 63A-3-107.

480 (5) The compassionate use board shall:

481 (a) review and recommend for department approval an individual described in
482 Subsection 26-61a-201(2)(a), a minor described in Subsection 26-61a-201(2)(c), or an
483 individual who is not otherwise qualified to receive a medical cannabis card to obtain a
484 medical cannabis card for compassionate use if:

485 (i) for an individual who is not otherwise qualified to receive a medical cannabis card,
486 the individual's qualified medical provider is actively treating the individual for an intractable
487 condition that:

488 (A) substantially impairs the individual's quality of life; and

489 (B) has not, in the qualified medical provider's professional opinion, adequately
490 responded to conventional treatments;

491 (ii) the qualified medical provider:

492 (A) recommends that the individual or minor be allowed to use medical cannabis; and

493 (B) provides a letter, relevant treatment history, and notes or copies of progress notes
494 describing relevant treatment history including rationale for considering the use of medical
495 cannabis; and

496 (iii) the board determines that:

497 (A) the recommendation of the individual's qualified medical provider is justified; and

498 (B) based on available information, it may be in the best interests of the individual to
499 allow the use of medical cannabis;

500 (b) unless no petitions are pending:

501 (i) meet to receive or review compassionate use petitions at least quarterly; and

502 (ii) if there are more petitions than the board can receive or review during the board's
503 regular schedule, as often as necessary;

504 (c) complete a review of each petition and recommend to the department approval or

505 denial of the applicant for qualification for a medical cannabis card within 90 days after the day
506 on which the board received the petition; and

507 (d) report, before November 1 of each year, to the Health and Human Services Interim
508 Committee:

509 (i) the number of compassionate use recommendations the board issued during the past
510 year; and

511 (ii) the types of conditions for which the board approved compassionate use.

512 (6) (a) (i) The department shall review any compassionate use for which the board
513 recommends approval under Subsection (5)(c) to determine whether the board properly
514 exercised the board's discretion under this section.

515 (ii) If the department determines that the board properly exercised the board's
516 discretion in recommending approval under Subsection (5)(c), the department shall:

517 (A) issue the relevant medical cannabis card; and

518 (B) provide for the renewal of the medical cannabis card in accordance with the
519 recommendation of the qualified medical provider described in Subsection (5)(a).

520 (b) (i) If the board recommends denial under Subsection (5)(c), the individual seeking
521 to obtain a medical cannabis card may petition the department to review the board's decision.

522 (ii) If the department determines that the board's recommendation for denial under
523 Subsection (5)(c) was arbitrary or capricious:

524 (A) the department shall notify the board of the department's determination; and

525 (B) the board shall reconsider the board's refusal to recommend approval under this
526 section.

527 (c) In reviewing the board's recommendation for approval or denial under Subsection
528 (5)(c) in accordance with this Subsection (6), the department shall presume the board properly
529 exercised the board's discretion unless the department determines that the board's
530 recommendation was arbitrary or capricious.

531 (7) Any individually identifiable health information contained in a petition that the
532 board or department receives under this section is a protected record in accordance with Title

533 63G, Chapter 2, Government Records Access and Management Act.

534 (8) The compassionate use board shall annually report the board's activity to the
535 Cannabinoid Product Board created in Section [26-61-201](#).

536 Section 7. Section **26-61a-106** is amended to read:

537 **26-61a-106. Qualified medical provider registration -- Continuing education --**
538 **Treatment recommendation.**

539 (1) (a) ~~[An]~~ Except as provided in Subsection (1)(b), an individual may not recommend
540 a medical cannabis treatment unless the department registers the individual as a qualified
541 medical provider in accordance with this section.

542 (b) An individual who meets the qualifications in Subsections [26-61a-106\(2\)\(a\)\(iii\)](#)
543 and (iv) may recommend a medical cannabis treatment without registering under Subsection
544 (1)(a) until January 1, 2021.

545 (2) (a) The department shall, within 15 days after the day on which the department
546 receives an application from an individual, register and issue a qualified medical provider
547 registration card to the individual if the individual:

548 (i) provides to the department the individual's name and address;

549 (ii) provides to the department a report detailing the individual's completion of the
550 applicable continuing education requirement described in Subsection (3);

551 (iii) provides to the department evidence that the individual:

552 (A) has the authority to write a prescription;

553 (B) is licensed to prescribe a controlled substance under Title 58, Chapter 37, Utah
554 Controlled Substances Act; and

555 (C) possesses the authority, in accordance with the individual's scope of practice, to
556 prescribe a Schedule II controlled substance;

557 (iv) provides to the department evidence that the individual is:

558 (A) an advanced practice registered nurse licensed under Title 58, Chapter 31b, Nurse
559 Practice Act;

560 (B) a physician licensed under Title 58, Chapter 67, Utah Medical Practice Act, or

561 Title 58, Chapter 68, Utah Osteopathic Medical Practice Act; or
562 (C) a physician assistant licensed under Title 58, Chapter 70a, Physician Assistant Act,
563 whose declaration of services agreement, as that term is defined in Section 58-70a-102,
564 includes the recommending of medical cannabis, and whose supervising physician is a
565 qualified medical provider; and
566 (v) pays the department a fee in an amount that:
567 (A) the department sets, in accordance with Section 63J-1-504; and
568 (B) does not exceed \$300 for an initial registration.
569 (b) The department may not register an individual as a qualified medical provider if the
570 individual is:
571 (i) a pharmacy medical provider or a state central fill medical provider; or
572 (ii) an owner, officer, director, board member, employee, or agent of a cannabis
573 production establishment or a medical cannabis pharmacy.
574 (3) (a) An individual shall complete the continuing education described in this
575 Subsection (3) in the following amounts:
576 (i) for an individual as a condition precedent to registration, four hours; and
577 (ii) for a qualified medical provider as a condition precedent to renewal, four hours
578 every two years.
579 (b) In accordance with Subsection (3)(a), a qualified medical provider shall:
580 (i) complete continuing education:
581 (A) regarding the topics described in Subsection (3)(d); and
582 (B) offered by the department under Subsection (3)(c) or an accredited or approved
583 continuing education provider that the department recognizes as offering continuing education
584 appropriate for the recommendation of cannabis to patients; and
585 (ii) make a continuing education report to the department in accordance with a process
586 that the department establishes by rule, in accordance with Title 63G, Chapter 3, Utah
587 Administrative Rulemaking Act, and in collaboration with the Division of Occupational and
588 Professional Licensing and:

589 (A) for an advanced practice registered nurse licensed under Title 58, Chapter 31b,
590 Nurse Practice Act, the Board of Nursing;

591 (B) for a qualified medical provider licensed under Title 58, Chapter 67, Utah Medical
592 Practice Act, the Physicians Licensing Board;

593 (C) for a qualified medical provider licensed under Title 58, Chapter 68, Utah
594 Osteopathic Medical Practice Act, the Osteopathic Physician and Surgeon's Licensing Board;
595 and

596 (D) for a physician assistant licensed under Title 58, Chapter 70a, Physician Assistant
597 Act, the Physician Assistant Licensing Board.

598 (c) The department may, in consultation with the Division of Occupational and
599 Professional Licensing, develop the continuing education described in this Subsection (3).

600 (d) The continuing education described in this Subsection (3) may discuss:

601 (i) the provisions of this chapter;

602 (ii) general information about medical cannabis under federal and state law;

603 (iii) the latest scientific research on the endocannabinoid system and medical cannabis,
604 including risks and benefits;

605 (iv) recommendations for medical cannabis as it relates to the continuing care of a
606 patient in pain management, risk management, potential addiction, or palliative care; and

607 (v) best practices for recommending the form and dosage of medical cannabis products
608 based on the qualifying condition underlying a medical cannabis recommendation.

609 (4) (a) Except as provided in Subsection (4)(b) or (c), a qualified medical provider may
610 not recommend a medical cannabis treatment to more than 175 of the qualified medical
611 provider's patients at the same time, as determined by the number of medical cannabis cards
612 under the qualified medical provider's name in the state electronic verification system.

613 (b) Except as provided in Subsection (4)(c), a qualified medical provider may
614 recommend a medical cannabis treatment to up to 300 of the qualified medical provider's
615 patients at any given time, as determined by the number of medical cannabis cards under the
616 qualified medical provider's name in the state electronic verification system, if:

617 (i) the appropriate American medical board has certified the qualified medical provider
618 in the specialty of anesthesiology, gastroenterology, neurology, oncology, pain, hospice and
619 palliative medicine, physical medicine and rehabilitation, rheumatology, or psychiatry; or

620 (ii) a licensed business employs or contracts the qualified medical provider for the
621 specific purpose of providing hospice and palliative care.

622 (c) (i) Notwithstanding Subsection (4)(b), a qualified medical provider described in
623 Subsection (4)(b) may petition the Division of Occupational and Professional Licensing for
624 authorization to exceed the limit described in Subsection (4)(b) by graduating increments of
625 100 patients per authorization, not to exceed three authorizations.

626 (ii) The Division of Occupational and Professional Licensing shall grant the
627 authorization described in Subsection (4)(c)(i) if:

628 (A) the petitioning qualified medical provider pays a \$100 fee;

629 (B) the division performs a review that includes the qualified medical provider's
630 medical cannabis recommendation activity in the state electronic verification system, relevant
631 information related to patient demand, and any patient medical records that the division
632 determines would assist in the division's review; and

633 (C) after the review described in this Subsection (4)(c)(ii), the division determines that
634 granting the authorization would not adversely affect public safety, adversely concentrate the
635 overall patient population among too few qualified medical providers, or adversely concentrate
636 the use of medical cannabis among the provider's patients.

637 (5) A qualified medical provider may recommend medical cannabis to an individual
638 under this chapter only in the course of a qualified medical provider-patient relationship after
639 the qualifying medical provider has completed and documented in the patient's medical record
640 a thorough assessment of the patient's condition and medical history based on the appropriate
641 standard of care for the patient's condition.

642 (6) (a) Except as provided in Subsection (6)(b), a qualified medical provider may not
643 advertise that the qualified medical provider recommends medical cannabis treatment.

644 (b) For purposes of Subsection (6)(a), the communication of the following, through a

645 website does not constitute advertising:

646 (i) a green cross;

647 (ii) a qualifying condition that the qualified medical provider treats; or

648 (iii) a scientific study regarding medical cannabis use.

649 (7) (a) A qualified medical provider registration card expires two years after the day on
650 which the department issues the card.

651 (b) The department shall renew a qualified medical provider's registration card if the
652 provider:

653 (i) applies for renewal;

654 (ii) is eligible for a qualified medical provider registration card under this section,
655 including maintaining an unrestricted license as described in Subsection (2)(a)(iii);

656 (iii) certifies to the department in a renewal application that the information in
657 Subsection (2)(a) is accurate or updates the information;

658 (iv) submits a report detailing the completion of the continuing education requirement
659 described in Subsection (3); and

660 (v) pays the department a fee in an amount that:

661 (A) the department sets, in accordance with Section [63J-1-504](#); and

662 (B) does not exceed \$50 for a registration renewal.

663 (8) The department may revoke the registration of a qualified medical provider who
664 fails to maintain compliance with the requirements of this section.

665 (9) A qualified medical provider may not receive any compensation or benefit for the
666 qualified medical provider's medical cannabis treatment recommendation from:

667 (a) a cannabis production establishment or an owner, officer, director, board member,
668 employee, or agent of a cannabis production establishment;

669 (b) a medical cannabis pharmacy or an owner, officer, director, board member,
670 employee, or agent of a medical cannabis pharmacy; or

671 (c) a qualified medical provider or pharmacy medical provider.

672 Section 8. Section **26-61a-111** is amended to read:

673 **26-61a-111. Nondiscrimination for medical care or government employment --**
674 **Notice to prospective and current public employees.**

675 (1) For purposes of medical care, including an organ or tissue transplant, a patient's
676 use, in accordance with this chapter, of cannabis in a medicinal dosage form or a cannabis
677 product in a medicinal dosage form:

678 (a) is considered the equivalent of the authorized use of any other medication used at
679 the discretion of a physician; and

680 (b) does not constitute the use of an illicit substance or otherwise disqualify an
681 individual from needed medical care.

682 (2) (a) Notwithstanding any other provision of law and except as provided in
683 Subsection (2)(b), the state or any political subdivision shall treat an employee's use of medical
684 cannabis in accordance with this chapter or Section 58-37-3.7 in the same way the state or
685 political subdivision treats employee use of opioids and opiates.

686 (b) Subsection (2)(a) does not apply where the application of Subsection (2)(a) would
687 jeopardize federal funding, a federal security clearance, or any other federal background
688 determination required for the employee's position.

689 (3) (a) (i) A state employer or a political subdivision employer shall take the action
690 described in Subsection (3)(a)(ii) before:

691 (A) giving to a current employee an assignment or duty that arises from or directly
692 relates to an obligation under this chapter; or

693 (B) hiring a prospective employee whose assignments or duties would include an
694 assignment or duty that arises from or directly relates to an obligation under this chapter.

695 (ii) The employer described in Subsection (3)(a)(i) shall give the employee or
696 prospective employee described in Subsection (3)(a)(i) a written notice that notifies the
697 employee or prospective employee:

698 (A) that the employee's or prospective employee's job duties may require the employee
699 or prospective employee to engage in conduct which is in violation of the criminal laws of the
700 United States; and

701 (B) that in accepting a job or undertaking a duty described in Subsection (3)(a)(i),
702 although the employee or prospective employee is entitled to the protections of Title 67,
703 Chapter 21, Utah Protection of Public Employees Act, the employee may not object or refuse to
704 carry out an assignment or duty that may be a violation of the criminal laws of the United
705 States with respect to the manufacture, sale, or distribution of cannabis.

706 (b) The Department of Human Resource Management shall create, revise, and publish
707 the form of the notice described in Subsection (3)(a).

708 (c) Notwithstanding Subsection 67-21-3(3), an employee who has signed the notice
709 described in Subsection (3)(a) may not:

710 (i) claim in good faith that the employee's actions violate or potentially violate the laws
711 of the United States with respect to the manufacture, sale, or distribution of cannabis; or

712 (ii) refuse to carry out a directive that the employee reasonably believes violates the
713 criminal laws of the United States with respect to the manufacture, sale, or distribution of
714 cannabis.

715 (d) An employer of an employee who has signed the notice described in Subsection
716 (3)(a) may not take retaliatory action as defined in Section 67-19a-101 against a current
717 employee who refuses to sign the notice described in Subsection (3)(a).

718 Section 9. Section **30-3-10** is amended to read:

719 **30-3-10. Custody of children in case of separation or divorce -- Custody**
720 **consideration.**

721 (1) If a married couple having one or more minor children are separated, or their
722 marriage is declared void or dissolved, the court shall make an order for the future care and
723 custody of the minor children as it considers appropriate.

724 (a) In determining any form of custody, including a change in custody, the court shall
725 consider the best interests of the child without preference for either parent solely because of the
726 biological sex of the parent and, among other factors the court finds relevant, the following:

727 (i) in accordance with Subsection (7), the past conduct and demonstrated moral
728 standards of each of the parties;

- 729 (ii) which parent is most likely to act in the best interest of the child, including
730 allowing the child frequent and continuing contact with the noncustodial parent;
- 731 (iii) the extent of bonding between the parent and child, meaning the depth, quality,
732 and nature of the relationship between a parent and child;
- 733 (iv) whether the parent has intentionally exposed the child to pornography or material
734 harmful to a minor, as defined in Section 76-10-1201; and
- 735 (v) those factors outlined in Section 30-3-10.2.
- 736 (b) There is a rebuttable presumption that joint legal custody, as defined in Section
737 30-3-10.1, is in the best interest of the child, except in cases where there is:
- 738 (i) domestic violence in the home or in the presence of the child;
- 739 (ii) special physical or mental needs of a parent or child, making joint legal custody
740 unreasonable;
- 741 (iii) physical distance between the residences of the parents, making joint decision
742 making impractical in certain circumstances; or
- 743 (iv) any other factor the court considers relevant including those listed in this section
744 and Section 30-3-10.2.
- 745 (c) (i) The person who desires joint legal custody shall file a proposed parenting plan in
746 accordance with Sections 30-3-10.8 and 30-3-10.9.
- 747 (ii) A presumption for joint legal custody may be rebutted by a showing by a
748 preponderance of the evidence that it is not in the best interest of the child.
- 749 (d) A child may not be required by either party to testify unless the trier of fact
750 determines that extenuating circumstances exist that would necessitate the testimony of the
751 child be heard and there is no other reasonable method to present the child's testimony.
- 752 (e) (i) The court may inquire of the child's and take into consideration the ~~the~~ child's
753 desires regarding future custody or parent-time schedules, but the expressed desires are not
754 controlling and the court may determine the children's custody or parent-time otherwise.
- 755 (ii) The desires of a child 14 years of age or older shall be given added weight, but is
756 not the single controlling factor.

757 (f) (i) If an interview with a child is conducted by the court pursuant to Subsection
758 (1)(e), the interview shall be conducted by the judge in camera.

759 (ii) The prior consent of the parties may be obtained but is not necessary if the court
760 finds that an interview with a child is the only method to ascertain the child's desires regarding
761 custody.

762 (2) In awarding custody, the court shall consider, among other factors the court finds
763 relevant, which parent is most likely to act in the best interests of the child, including allowing
764 the child frequent and continuing contact with the noncustodial parent as the court finds
765 appropriate.

766 (3) If the court finds that one parent does not desire custody of the child, the court shall
767 take that evidence into consideration in determining whether to award custody to the other
768 parent.

769 (4) (a) Except as provided in Subsection (4)(b), a court may not discriminate against a
770 parent due to a disability, as defined in Section 57-21-2, in awarding custody or determining
771 whether a substantial change has occurred for the purpose of modifying an award of custody.

772 (b) The court may not consider the disability of a parent as a factor in awarding custody
773 or modifying an award of custody based on a determination of a substantial change in
774 circumstances, unless the court makes specific findings that:

775 (i) the disability significantly or substantially inhibits the parent's ability to provide for
776 the physical and emotional needs of the child at issue; and

777 (ii) the parent with a disability lacks sufficient human, monetary, or other resources
778 available to supplement the parent's ability to provide for the physical and emotional needs of
779 the child at issue.

780 (c) Nothing in this section may be construed to apply to adoption proceedings under
781 Title 78B, Chapter 6, Part 1, Utah Adoption Act.

782 (5) This section establishes neither a preference nor a presumption for or against joint
783 physical custody or sole physical custody, but allows the court and the family the widest
784 discretion to choose a parenting plan that is in the best interest of the child.

785 (6) When an issue before the court involves custodial responsibility in the event of a
786 deployment of one or both parents who are servicemembers, and the servicemember has not yet
787 been notified of deployment, the court shall resolve the issue based on the standards in Sections
788 [78B-20-306](#) through [78B-20-309](#).

789 (7) In considering the past conduct and demonstrated moral standards of each party
790 under Subsection (1)(a)(i) or any other factor a court finds relevant, the court may not
791 [~~discriminate against a parent because of or otherwise consider the parent's~~]:

792 (a) consider or treat a parent's lawful possession or use of cannabis in a medicinal
793 dosage form, a cannabis product in a medicinal dosage form, or a medical cannabis device, in
794 accordance with Title 26, Chapter 61a, Utah Medical Cannabis Act, [~~except as it relates to that~~
795 parent's ability to care for a child] any differently than the court would consider or treat the
796 lawful possession or use of an opioid or opiate; or

797 (b) discriminate against a parent because of the parent's status as a:

798 (i) cannabis production establishment agent, as that term is defined in Section
799 4-41a-102;

800 (ii) medical cannabis pharmacy agent, as that term is defined in Section [26-61a-102](#);

801 (iii) state central fill agent, as that term is defined in Section [26-61a-102](#); or

802 (iv) medical cannabis cardholder in accordance with Title 26, Chapter 61a, Utah
803 Medical Cannabis Act.

804 Section 10. Section **31A-15-103** is amended to read:

805 **31A-15-103. Surplus lines insurance -- Unauthorized insurers.**

806 (1) Notwithstanding Section [31A-15-102](#), when this state is the home state as defined
807 in Section [31A-3-305](#), a nonadmitted insurer may make an insurance contract for coverage of a
808 person in this state and on a risk located in this state, subject to the limitations and
809 requirements of this section.

810 (2) (a) For a contract made under this section, the insurer may, in this state:

811 (i) inspect the risks to be insured;

812 (ii) collect premiums;

- 813 (iii) adjust losses; and
- 814 (iv) do another act reasonably incidental to the contract.
- 815 (b) An act described in Subsection (2)(a) may be done through:
- 816 (i) an employee; or
- 817 (ii) an independent contractor.
- 818 (3) (a) Subsections (1) and (2) do not permit a person to solicit business in this state on
- 819 behalf of an insurer that has no certificate of authority.
- 820 (b) Insurance placed with a nonadmitted insurer shall be placed by a surplus lines
- 821 producer licensed under Chapter 23a, Insurance Marketing - Licensing Producers, Consultants,
- 822 and Reinsurance Intermediaries.
- 823 (c) The commissioner may by rule prescribe how a surplus lines producer may:
- 824 (i) pay or permit the payment, commission, or other remuneration on insurance placed
- 825 by the surplus lines producer under authority of the surplus lines producer's license to one
- 826 holding a license to act as an insurance producer; and
- 827 (ii) advertise the availability of the surplus lines producer's services in procuring, on
- 828 behalf of a person seeking insurance, a contract with a nonadmitted insurer.
- 829 (4) For a contract made under this section, a nonadmitted insurer is subject to Sections
- 830 [31A-23a-402](#), [31A-23a-402.5](#), and [31A-23a-403](#) and the rules adopted under those sections.
- 831 (5) A nonadmitted insurer may not issue workers' compensation insurance coverage to
- 832 an employer located in this state, except:
- 833 (a) for stop loss coverage issued to an employer securing workers' compensation under
- 834 Subsection [34A-2-201\(2\)](#)[~~7~~];
- 835 (b) a cannabis production establishment as defined in Section [4-41a-102](#); or
- 836 (c) a medical cannabis pharmacy as defined in Section [26-61a-102](#).
- 837 (6) (a) The commissioner may by rule prohibit making a contract under Subsection (1)
- 838 for a specified class of insurance if authorized insurers provide an established market for the
- 839 class in this state that is adequate and reasonably competitive.
- 840 (b) The commissioner may by rule place a restriction or a limitation on and create

841 special procedures for making a contract under Subsection (1) for a specified class of insurance
842 if:

- 843 (i) there have been abuses of placements in the class; or
- 844 (ii) the policyholders in the class, because of limited financial resources, business
845 experience, or knowledge, cannot protect their own interests adequately.

846 (c) The commissioner may prohibit an individual insurer from making a contract under
847 Subsection (1) and all insurance producers from dealing with the insurer if:

- 848 (i) the insurer willfully violates:
 - 849 (A) this section;
 - 850 (B) Section 31A-4-102, 31A-23a-402, 31A-23a-402.5, or 31A-26-303; or
 - 851 (C) a rule adopted under a section listed in Subsection (6)(c)(i)(A) or (B);
- 852 (ii) the insurer fails to pay the fees and taxes specified under Section 31A-3-301; or
- 853 (iii) the commissioner has reason to believe that the insurer is:
 - 854 (A) in an unsound condition;
 - 855 (B) operated in a fraudulent, dishonest, or incompetent manner; or
 - 856 (C) in violation of the law of its domicile.

857 (d) (i) The commissioner may issue one or more lists of nonadmitted foreign insurers
858 whose:

- 859 (A) solidity the commissioner doubts; or
 - 860 (B) practices the commissioner considers objectionable.
- 861 (ii) The commissioner shall issue one or more lists of nonadmitted foreign insurers the
862 commissioner considers to be reliable and solid.

863 (iii) In addition to the lists described in Subsections (6)(d)(i) and (ii), the commissioner
864 may issue other relevant evaluations of nonadmitted insurers.

865 (iv) An action may not lie against the commissioner or an employee of the department
866 for a written or oral communication made in, or in connection with the issuance of, a list or
867 evaluation described in this Subsection (6)(d).

868 (e) A foreign nonadmitted insurer shall be listed on the commissioner's "reliable" list

869 only if the nonadmitted insurer:

870 (i) delivers a request to the commissioner to be on the list;

871 (ii) establishes satisfactory evidence of good reputation and financial integrity;

872 (iii) (A) delivers to the commissioner a copy of the nonadmitted insurer's current

873 annual statement certified by the insurer and, each subsequent year, delivers to the

874 commissioner a copy of the nonadmitted insurer's annual statement within 60 days after the day

875 on which the nonadmitted insurer files the annual statement with the insurance regulatory

876 authority where the nonadmitted insurer is domiciled; or

877 (B) files the nonadmitted insurer's annual statements with the National Association of

878 Insurance Commissioners and the nonadmitted insurer's annual statements are available

879 electronically from the National Association of Insurance Commissioners;

880 (iv) (A) is in substantial compliance with the solvency standards in Chapter 17, Part 6,

881 Risk-Based Capital, or maintains capital and surplus of at least \$15,000,000, whichever is

882 greater; or

883 (B) in the case of any "Lloyd's" or other similar incorporated or unincorporated group

884 of alien individual insurers, maintains a trust fund that:

885 (I) shall be in an amount not less than \$50,000,000 as security to its full amount for all

886 policyholders and creditors in the United States of each member of the group;

887 (II) may consist of cash, securities, or investments of substantially the same character

888 and quality as those which are "qualified assets" under Section [31A-17-201](#); and

889 (III) may include as part of this trust arrangement a letter of credit that qualifies as

890 acceptable security under Section [31A-17-404.1](#); and

891 (v) for an alien insurer not domiciled in the United States or a territory of the United

892 States, is listed on the Quarterly Listing of Alien Insurers maintained by the National

893 Association of Insurance Commissioners International Insurers Department.

894 (7) (a) Subject to Subsection (7)(b), a surplus lines producer may not, either knowingly

895 or without reasonable investigation of the financial condition and general reputation of the

896 insurer, place insurance under this section with:

897 (i) a financially unsound insurer;
898 (ii) an insurer engaging in unfair practices; or
899 (iii) an otherwise substandard insurer.

900 (b) A surplus line producer may place insurance under this section with an insurer
901 described in Subsection (7)(a) if the surplus line producer:

902 (i) gives the applicant notice in writing of the known deficiencies of the insurer or the
903 limitations on the surplus line producer's investigation; and
904 (ii) explains the need to place the business with that insurer.

905 (c) A copy of the notice described in Subsection (7)(b) shall be kept in the office of the
906 surplus line producer for at least five years.

907 (d) To be financially sound, an insurer shall satisfy standards that are comparable to
908 those applied under the laws of this state to an authorized insurer.

909 (e) An insurer on the "doubtful or objectionable" list under Subsection (6)(d) or an
910 insurer not on the commissioner's "reliable" list under Subsection (6)(e) is presumed
911 substandard.

912 (8) (a) A policy issued under this section shall:

913 (i) include a description of the subject of the insurance; and
914 (ii) indicate:

915 (A) the coverage, conditions, and term of the insurance;
916 (B) the premium charged the policyholder;
917 (C) the premium taxes to be collected from the policyholder; and
918 (D) the name and address of the policyholder and insurer.

919 (b) If the direct risk is assumed by more than one insurer, the policy shall state:

920 (i) the names and addresses of all insurers; and
921 (ii) the portion of the entire direct risk each assumes.

922 (c) A policy issued under this section shall have attached or affixed to the policy the
923 following statement: "The insurer issuing this policy does not hold a certificate of authority to
924 do business in this state and thus is not fully subject to regulation by the Utah insurance

925 commissioner. This policy receives no protection from any of the guaranty associations created
926 under Title 31A, Chapter 28, Guaranty Associations."

927 (9) Upon placing a new or renewal coverage under this section, a surplus lines
928 producer shall promptly deliver to the policyholder or the policyholder's agent evidence of the
929 insurance consisting either of:

930 (a) the policy as issued by the insurer; or

931 (b) if the policy is not available upon placing the coverage, a certificate, cover note, or
932 other confirmation of insurance complying with Subsection (8).

933 (10) If the commissioner finds it necessary to protect the interests of insureds and the
934 public in this state, the commissioner may by rule subject a policy issued under this section to
935 as much of the regulation provided by this title as is required for a comparable policy written
936 by an authorized foreign insurer.

937 (11) (a) A surplus lines transaction in this state shall be examined to determine whether
938 it complies with:

939 (i) the surplus lines tax levied under Chapter 3, Department Funding, Fees, and Taxes;

940 (ii) the solicitation limitations of Subsection (3);

941 (iii) the requirement of Subsection (3) that placement be through a surplus lines
942 producer;

943 (iv) placement limitations imposed under Subsections (6)(a), (b), and (c); and

944 (v) the policy form requirements of Subsections (8) and (10).

945 (b) The examination described in Subsection (11)(a) shall take place as soon as
946 practicable after the transaction. The surplus lines producer shall submit to the examiner
947 information necessary to conduct the examination within a period specified by rule.

948 (c) (i) The examination described in Subsection (11)(a) may be conducted by the
949 commissioner or by an advisory organization created under Section [31A-15-111](#) and authorized
950 by the commissioner to conduct these examinations. The commissioner is not required to
951 authorize an additional advisory organization to conduct an examination under this Subsection
952 (11)(c).

953 (ii) The commissioner's authorization of one or more advisory organizations to act as
954 examiners under this Subsection (11)(c) shall be:

955 (A) by rule; and

956 (B) evidenced by a contract, on a form provided by the commissioner, between the
957 authorized advisory organization and the department.

958 (d) (i) (A) A person conducting the examination described in Subsection (11)(a) shall
959 collect a stamping fee of an amount not to exceed 1% of the policy premium payable in
960 connection with the transaction.

961 (B) A stamping fee collected by the commissioner shall be deposited in the General
962 Fund.

963 (C) The commissioner shall establish a stamping fee by rule.

964 (ii) A stamping fee collected by an advisory organization is the property of the advisory
965 organization to be used in paying the expenses of the advisory organization.

966 (iii) Liability for paying a stamping fee is as required under Subsection [31A-3-303](#)(1)
967 for taxes imposed under Section [31A-3-301](#).

968 (iv) The commissioner shall adopt a rule dealing with the payment of stamping fees. If
969 a stamping fee is not paid when due, the commissioner or advisory organization may impose a
970 penalty of 25% of the stamping fee due, plus 1-1/2% per month from the time of default until
971 full payment of the stamping fee.

972 (e) The commissioner, representatives of the department, advisory organizations,
973 representatives and members of advisory organizations, authorized insurers, and surplus lines
974 insurers are not liable for damages on account of statements, comments, or recommendations
975 made in good faith in connection with their duties under this Subsection (11)(e) or under
976 Section [31A-15-111](#).

977 (f) An examination conducted under this Subsection (11) and a document or materials
978 related to the examination are confidential.

979 (12) (a) For a surplus lines insurance transaction in the state entered into on or after
980 May 13, 2014, if an audit is required by the surplus lines insurance policy, a surplus lines

981 insurer:

982 (i) shall exercise due diligence to initiate an audit of an insured, to determine whether
983 additional premium is owed by the insured, by no later than six months after the expiration of
984 the term for which premium is paid; and

985 (ii) may not audit an insured more than three years after the surplus lines insurance
986 policy expires.

987 (b) A surplus lines insurer that does not comply with this Subsection (12) may not
988 charge or collect additional premium in excess of the premium agreed to under the surplus
989 lines insurance policy.

990 Section 11. Section **31A-22-1016** is enacted to read:

991 **31A-22-1016. Workers' compensation coverage for medical cannabis operations.**

992 A licensed and admitted workers' compensation insurer may issue coverage to:

993 (1) a cannabis production establishment as defined in Section [4-41a-102](#); or

994 (2) a medical cannabis pharmacy as defined in Section [26-61a-102](#).

995 Section 12. Section **58-37-3.7** is amended to read:

996 **58-37-3.7. Medical cannabis decriminalization.**

997 (1) As used in this section:

998 (a) "Cannabis" means the same as that term is defined in Section [26-61a-102](#).

999 (b) "Cannabis product" means the same as that term is defined in Section [26-61a-102](#).

1000 (c) "Medical cannabis card" means the same as that term is defined in Section
1001 [26-61a-102](#).

1002 (d) "Medical cannabis device" means the same as that term is defined in Section
1003 [26-61a-102](#).

1004 (e) "Medical cannabis pharmacy" means the same as that term is defined in Section
1005 [26-61a-102](#).

1006 (f) "Medicinal dosage form" means the same as that term is defined in Section
1007 [26-61a-102](#).

1008 (g) "Qualified medical provider" means the same as that term is defined in Section

1009 26-61a-102.

1010 (h) "Qualifying condition" means the same as that term is defined in Section
1011 26-61a-102.

1012 (i) "Tetrahydrocannabinol" means the same as that term is defined in Section
1013 58-37-3.9.

1014 (2) Before January 1, 2021, an individual is not guilty under this chapter for the use or
1015 possession of marijuana, tetrahydrocannabinol, or marijuana drug paraphernalia if:

1016 (a) at the time of the arrest or citation, the individual:

1017 (i) (A) had been diagnosed with a qualifying condition; and

1018 (B) had a pre-existing provider-patient relationship with an advanced practice
1019 registered nurse licensed under Title 58, Chapter 31b, Nurse Practice Act, a physician licensed
1020 under Title 58, Chapter 67, Utah Medical Practice Act, a physician licensed under Title 58,
1021 Chapter 68, Utah Osteopathic Medical Practice Act, or a physician assistant licensed under
1022 Title 58, Chapter 70a, Physician Assistant Act, who believed that the individual's illness
1023 described in Subsection (2)(a)(i)(A) could benefit from the use in question; ~~or~~

1024 (ii) for possession, was:

1025 (A) the parent or legal guardian of an individual described in Subsection (2)(a)(i) who
1026 is a minor; or

1027 (B) the spouse of an individual described in Subsection (2)(a)(i); or

1028 ~~[(ii)]~~ (iii) (A) for possession, was a medical cannabis cardholder; or

1029 (B) for use, was a medical cannabis patient cardholder or a minor with a qualifying
1030 condition under the supervision of a medical cannabis guardian cardholder; and

1031 (b) the marijuana or tetrahydrocannabinol was in a medicinal dosage form in ~~a~~
1032 ~~quantity described in Subsection 26-61a-502(2).~~ one of the following amounts:

1033 (i) no more than 56 grams by weight of unprocessed cannabis; or

1034 (ii) an amount of cannabis products that contains, in total, no more than 10 grams of
1035 total composite tetrahydrocannabinol.

1036 (3) An individual is not guilty under this chapter for the use or possession of marijuana,

1037 tetrahydrocannabinol, or marijuana drug paraphernalia under this chapter if:

1038 (a) at the time of the arrest or citation, the individual:

1039 (i) was not a resident of Utah or has been a resident of Utah for less than 45 days;

1040 (ii) had a currently valid medical cannabis card or the equivalent of a medical cannabis
1041 card under the laws of another state, district, territory, commonwealth, or insular possession of
1042 the United States; and

1043 (iii) had been diagnosed with a qualifying condition as described in Section
1044 [26-61a-104](#); and

1045 (b) the marijuana or tetrahydrocannabinol is in a medicinal dosage form in a quantity
1046 described in Subsection [26-61a-502](#)(2).

1047 Section 13. **Effective date.**

1048 If approved by two-thirds of all the members elected to each house, this bill takes effect
1049 upon approval by the governor, or the day following the constitutional time limit of Utah
1050 Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto,
1051 the date of veto override.