

By: Eltife, et al. S.B. No. 339
(Klick, Zerwas, Zedler, Coleman, Sheffield, et al.)

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the medical use of low-THC cannabis and the regulation
3 of related organizations and individuals; requiring a dispensing
4 organization to obtain a license to dispense low-THC cannabis and
5 any employee of a dispensing organization to obtain a registration;
6 authorizing fees.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

8 SECTION 1. Subtitle C, Title 6, Health and Safety Code, is
9 amended by adding Chapter 487 to read as follows:

10 CHAPTER 487. TEXAS COMPASSIONATE-USE ACT

11 SUBCHAPTER A. GENERAL PROVISIONS

12 Sec. 487.001. DEFINITIONS. In this chapter:

13 (1) "Department" means the Department of Public
14 Safety.

15 (2) "Director" means the public safety director of the
16 department.

17 (3) "Dispensing organization" means an organization
18 licensed by the department to cultivate, process, and dispense
19 low-THC cannabis to a patient for whom low-THC cannabis is
20 prescribed under Chapter 169, Occupations Code.

21 (4) "Low-THC cannabis" has the meaning assigned by
22 Section 169.001, Occupations Code.

23 SUBCHAPTER B. DUTIES OF DEPARTMENT

24 Sec. 487.051. DUTIES OF DEPARTMENT. The department shall

1 administer this chapter.

2 Sec. 487.052. RULES. The director shall adopt any rules
3 necessary for the administration and enforcement of this chapter,
4 including rules imposing fees under this chapter in amounts
5 sufficient to cover the cost of administering this chapter.

6 Sec. 487.053. LICENSING OF DISPENSING ORGANIZATIONS AND
7 REGISTRATION OF CERTAIN ASSOCIATED INDIVIDUALS. (a) The
8 department shall:

9 (1) issue or renew a license to operate as a dispensing
10 organization to each applicant who satisfies the requirements
11 established under this chapter; and

12 (2) register directors, managers, and employees of
13 each dispensing organization.

14 (b) The department shall enforce compliance of licensees
15 and registrants and shall adopt procedures for suspending or
16 revoking a license or registration issued under this chapter and
17 for renewing a license or registration issued under this chapter.

18 Sec. 487.054. COMPASSIONATE-USE REGISTRY. (a) The
19 department shall establish and maintain a secure online
20 compassionate-use registry that contains:

21 (1) the name of each physician who registers as the
22 prescriber for a patient under Section 169.004, Occupations Code,
23 the name and date of birth of the patient, the dosage prescribed,
24 the means of administration ordered, and the total amount of
25 low-THC cannabis required to fill the patient's prescription; and

26 (2) a record of each amount of low-THC cannabis
27 dispensed by a dispensing organization to a patient under a

1 prescription.

2 (b) The department shall ensure the registry:

3 (1) is designed to prevent more than one qualified
4 physician from registering as the prescriber for a single patient;

5 (2) is accessible to law enforcement agencies and
6 dispensing organizations for the purpose of verifying whether a
7 patient is one for whom low-THC cannabis is prescribed and whether
8 the patient's prescriptions have been filled; and

9 (3) allows a physician qualified to prescribe low-THC
10 cannabis under Section 169.002, Occupations Code, to input safety
11 and efficacy data derived from the treatment of patients for whom
12 low-THC cannabis is prescribed under Chapter 169, Occupations Code.

13 SUBCHAPTER C. LICENSE TO OPERATE AS DISPENSING ORGANIZATION

14 Sec. 487.101. LICENSE REQUIRED. A license issued by the
15 department under this chapter is required to operate a dispensing
16 organization.

17 Sec. 487.102. ELIGIBILITY FOR LICENSE. An applicant for a
18 license to operate as a dispensing organization is eligible for the
19 license if:

20 (1) as determined by the department, the applicant
21 possesses:

22 (A) the technical and technological ability to
23 cultivate and produce low-THC cannabis;

24 (B) the ability to secure:

25 (i) the resources and personnel necessary
26 to operate as a dispensing organization; and

27 (ii) premises reasonably located to allow

1 patients listed on the compassionate-use registry access to the
2 organization through existing infrastructure;

3 (C) the ability to maintain accountability for
4 the raw materials, the finished product, and any by-products used
5 or produced in the cultivation or production of low-THC cannabis to
6 prevent unlawful access to or unlawful diversion or possession of
7 those materials, products, or by-products; and

8 (D) the financial ability to maintain operations
9 for not less than two years from the date of application;

10 (2) each director, manager, or employee of the
11 applicant is registered under Subchapter D; and

12 (3) the applicant satisfies any additional criteria
13 determined by the director to be necessary to safely implement this
14 chapter.

15 Sec. 487.103. APPLICATION. (a) A person may apply for an
16 initial or renewal license to operate as a dispensing organization
17 by submitting a form prescribed by the department along with the
18 application fee in an amount set by the director.

19 (b) The application must include the name and address of the
20 applicant, the name and address of each of the applicant's
21 directors, managers, and employees, and any other information
22 considered necessary by the department to determine the applicant's
23 eligibility for the license.

24 Sec. 487.104. ISSUANCE, RENEWAL, OR DENIAL OF LICENSE.

25 (a) The department shall issue or renew a license to operate as a
26 dispensing organization only if:

27 (1) the department determines the applicant meets the

1 eligibility requirements described by Section 487.102; and

2 (2) issuance or renewal of the license is necessary to
3 ensure reasonable statewide access to, and the availability of,
4 low-THC cannabis for patients registered in the compassionate-use
5 registry and for whom low-THC cannabis is prescribed under Chapter
6 169, Occupations Code.

7 (b) If the department denies the issuance or renewal of a
8 license under Subsection (a), the applicant is entitled to a
9 hearing. The department shall give written notice of the grounds
10 for denial to the applicant at least 30 days before the date of the
11 hearing.

12 (c) A license issued or renewed under this section expires
13 on the second anniversary of the date of issuance or renewal, as
14 applicable.

15 Sec. 487.105. CRIMINAL HISTORY BACKGROUND CHECK. (a) An
16 applicant for the issuance or renewal of a license to operate as a
17 dispensing organization shall provide the department with the
18 applicant's name and the name of each of the applicant's directors,
19 managers, and employees.

20 (b) Before a dispensing organization licensee hires a
21 manager or employee for the organization, the licensee must provide
22 the department with the name of the prospective manager or
23 employee. The licensee may not transfer the license to another
24 person before that prospective applicant and the applicant's
25 directors, managers, and employees pass a criminal history
26 background check and are registered as required by Subchapter D.

27 (c) The department shall conduct a criminal history

1 background check on each individual whose name is provided to the
2 department under Subsection (a) or (b). The director by rule shall:

3 (1) determine the manner by which an individual is
4 required to submit a complete set of fingerprints to the department
5 for purposes of a criminal history background check under this
6 section; and

7 (2) establish criteria for determining whether an
8 individual passes the criminal history background check for the
9 purposes of this section.

10 (d) After conducting a criminal history background check
11 under this section, the department shall notify the relevant
12 applicant or organization and the individual who is the subject of
13 the criminal history background check as to whether the individual
14 passed the criminal history background check.

15 Sec. 487.106. DUTY TO MAINTAIN ELIGIBILITY. A dispensing
16 organization must maintain compliance at all times with the
17 eligibility requirements described by Section 487.102.

18 Sec. 487.107. DUTIES RELATING TO DISPENSING PRESCRIPTION.

19 (a) Before dispensing low-THC cannabis to a person for whom the
20 low-THC cannabis is prescribed under Chapter 169, Occupations Code,
21 the dispensing organization must verify that the prescription
22 presented:

23 (1) is for a person listed as a patient in the
24 compassionate-use registry;

25 (2) matches the entry in the compassionate-use
26 registry with respect to the total amount of low-THC cannabis
27 required to fill the prescription; and

1 (3) has not previously been filled by a dispensing
2 organization as indicated by an entry in the compassionate-use
3 registry.

4 (b) After dispensing low-THC cannabis to a patient for whom
5 the low-THC cannabis is prescribed under Chapter 169, Occupations
6 Code, the dispensing organization shall record in the
7 compassionate-use registry the form and quantity of low-THC
8 cannabis dispensed and the date and time of dispensation.

9 Sec. 487.108. LICENSE SUSPENSION OR REVOCATION. (a) The
10 department may at any time suspend or revoke a license issued under
11 this chapter if the department determines that the licensee has not
12 maintained the eligibility requirements described by Section
13 487.102 or has failed to comply with a duty imposed under this
14 chapter.

15 (b) The director shall give written notice to the dispensing
16 organization of a license suspension or revocation under this
17 section and the grounds for the suspension or revocation. The
18 notice must be sent by certified mail, return receipt requested.

19 (c) After suspending or revoking a license issued under this
20 chapter, the director may seize or place under seal all low-THC
21 cannabis and drug paraphernalia owned or possessed by the
22 dispensing organization. If the director orders the revocation of
23 the license, a disposition may not be made of the seized or sealed
24 low-THC cannabis or drug paraphernalia until the time for
25 administrative appeal of the order has elapsed or until all appeals
26 have been concluded. When a revocation order becomes final, all
27 low-THC cannabis and drug paraphernalia may be forfeited to the

1 state as provided under Subchapter E, Chapter 481.

2 (d) Chapter 2001, Government Code, applies to a proceeding
3 under this section.

4 SUBCHAPTER D. REGISTRATION OF CERTAIN INDIVIDUALS

5 Sec. 487.151. REGISTRATION REQUIRED. (a) An individual
6 who is a director, manager, or employee of a dispensing
7 organization must apply for and obtain a registration under this
8 section.

9 (b) An applicant for a registration under this section must:

10 (1) be at least 18 years of age;

11 (2) submit a complete set of fingerprints to the
12 department in the manner required by department rule; and

13 (3) pass a fingerprint-based criminal history
14 background check as required by Section 487.105.

15 (c) A registration expires on the second anniversary of the
16 date of the registration's issuance, unless suspended or revoked
17 under rules adopted under this chapter.

18 SUBCHAPTER E. DUTIES OF COUNTIES AND MUNICIPALITIES

19 Sec. 487.201. COUNTIES AND MUNICIPALITIES MAY NOT PROHIBIT
20 LOW-THC CANNABIS. A municipality, county, or other political
21 subdivision may not enact, adopt, or enforce a rule, ordinance,
22 order, resolution, or other regulation that prohibits the
23 cultivation, production, dispensing, or possession of low-THC
24 cannabis, as authorized by this chapter.

25 SECTION 2. Section 481.062(a), Health and Safety Code, as
26 amended by S.B. 219, Acts of the 84th Legislature, Regular Session,
27 2015, is amended to read as follows:

1 (a) The following persons are not required to register and
2 may possess a controlled substance under this chapter:

3 (1) an agent or employee of a registered manufacturer,
4 distributor, analyzer, or dispenser of the controlled substance
5 acting in the usual course of business or employment;

6 (2) a common or contract carrier, a warehouseman, or
7 an employee of a carrier or warehouseman whose possession of the
8 controlled substance is in the usual course of business or
9 employment;

10 (3) an ultimate user or a person in possession of the
11 controlled substance under a lawful order of a practitioner or in
12 lawful possession of the controlled substance if it is listed in
13 Schedule V;

14 (4) an officer or employee of this state, another
15 state, a political subdivision of this state or another state, or
16 the United States who is lawfully engaged in the enforcement of a
17 law relating to a controlled substance or drug or to a customs law
18 and authorized to possess the controlled substance in the discharge
19 of the person's official duties; ~~or~~

20 (5) if the substance is tetrahydrocannabinol or one of
21 its derivatives:

22 (A) a Department of State Health Services
23 official, a medical school researcher, or a research program
24 participant possessing the substance as authorized under
25 Subchapter G; or

26 (B) a practitioner or an ultimate user possessing
27 the substance as a participant in a federally approved therapeutic

1 research program that the commissioner has reviewed and found, in
2 writing, to contain a medically responsible research protocol; or
3 (6) a dispensing organization licensed under Chapter
4 487 that possesses low-THC cannabis.

5 SECTION 3. Section 481.111, Health and Safety Code, is
6 amended by adding Subsections (e) and (f) to read as follows:

7 (e) Sections 481.120, 481.121, 481.122, and 481.125 do not
8 apply to a person who engages in the acquisition, possession,
9 production, cultivation, delivery, or disposal of a raw material
10 used in or by-product created by the production or cultivation of
11 low-THC cannabis if the person:

12 (1) for an offense involving possession only of
13 marihuana or drug paraphernalia, is a patient for whom low-THC
14 cannabis is prescribed under Chapter 169, Occupations Code, or the
15 patient's legal guardian, and the person possesses low-THC cannabis
16 obtained under a valid prescription from a dispensing organization;
17 or

18 (2) is a director, manager, or employee of a
19 dispensing organization and the person, solely in performing the
20 person's regular duties at the organization, acquires, possesses,
21 produces, cultivates, dispenses, or disposes of:

22 (A) in reasonable quantities, any low-THC
23 cannabis or raw materials used in or by-products created by the
24 production or cultivation of low-THC cannabis; or

25 (B) any drug paraphernalia used in the
26 acquisition, possession, production, cultivation, delivery, or
27 disposal of low-THC cannabis.

1 (f) For purposes of Subsection (e):

2 (1) "Dispensing organization" has the meaning
3 assigned by Section 487.001.

4 (2) "Low-THC cannabis" has the meaning assigned by
5 Section 169.001, Occupations Code.

6 SECTION 4. Subtitle B, Title 3, Occupations Code, is
7 amended by adding Chapter 169 to read as follows:

8 CHAPTER 169. AUTHORITY TO PRESCRIBE LOW-THC CANNABIS TO CERTAIN
9 PATIENTS FOR COMPASSIONATE USE

10 Sec. 169.001. DEFINITIONS. In this chapter:

11 (1) "Department" means the Department of Public
12 Safety.

13 (2) "Intractable epilepsy" means a seizure disorder in
14 which the patient's seizures have been treated by two or more
15 appropriately chosen and maximally titrated antiepileptic drugs
16 that have failed to control the seizures.

17 (3) "Low-THC cannabis" means the plant Cannabis sativa
18 L., and any part of that plant or any compound, manufacture, salt,
19 derivative, mixture, preparation, resin, or oil of that plant that
20 contains:

21 (A) not more than 0.5 percent by weight of
22 tetrahydrocannabinols; and

23 (B) not less than 10 percent by weight of
24 cannabidiol.

25 (4) "Medical use" means the ingestion by a means of
26 administration other than by smoking of a prescribed amount of
27 low-THC cannabis by a person for whom low-THC cannabis is

1 prescribed under this chapter.

2 (5) "Smoking" means burning or igniting a substance
3 and inhaling the smoke.

4 Sec. 169.002. PHYSICIAN QUALIFIED TO PRESCRIBE LOW-THC
5 CANNABIS. (a) Only a physician qualified as provided by this
6 section may prescribe low-THC cannabis in accordance with this
7 chapter.

8 (b) A physician is qualified to prescribe low-THC cannabis
9 to a patient with intractable epilepsy if the physician:

10 (1) is licensed under this subtitle;

11 (2) dedicates a significant portion of clinical
12 practice to the evaluation and treatment of epilepsy; and

13 (3) is certified:

14 (A) by the American Board of Psychiatry and
15 Neurology in:

16 (i) epilepsy; or

17 (ii) neurology or neurology with special
18 qualification in child neurology and is otherwise qualified for the
19 examination for certification in epilepsy; or

20 (B) in neurophysiology by:

21 (i) the American Board of Psychiatry and
22 Neurology; or

23 (ii) the American Board of Clinical
24 Neurophysiology.

25 Sec. 169.003. PRESCRIPTION OF LOW-THC CANNABIS. A
26 physician described by Section 169.002 may prescribe low-THC
27 cannabis to alleviate a patient's seizures if:

1 (1) the patient is a permanent resident of the state;

2 (2) the physician complies with the registration
3 requirements of Section 169.004; and

4 (3) the physician certifies to the department that:

5 (A) the patient is diagnosed with intractable
6 epilepsy;

7 (B) the physician determines the risk of the
8 medical use of low-THC cannabis by the patient is reasonable in
9 light of the potential benefit for the patient; and

10 (C) a second physician qualified to prescribe
11 low-THC cannabis under Section 169.002 has concurred with the
12 determination under Paragraph (B), and the second physician's
13 concurrence is recorded in the patient's medical record.

14 Sec. 169.004. LOW-THC CANNABIS PRESCRIBER REGISTRATION.

15 Before a physician qualified to prescribe low-THC cannabis under
16 Section 169.002 may prescribe or renew a prescription for low-THC
17 cannabis for a patient under this chapter, the physician must
18 register as the prescriber for that patient in the
19 compassionate-use registry maintained by the department under
20 Section 487.054, Health and Safety Code. The physician's
21 registration must indicate:

22 (1) the physician's name;

23 (2) the patient's name and date of birth;

24 (3) the dosage prescribed to the patient;

25 (4) the means of administration ordered for the
26 patient; and

27 (5) the total amount of low-THC cannabis required to

1 fill the patient's prescription.

2 Sec. 169.005. PATIENT TREATMENT PLAN. A physician
3 described by Section 169.002 who prescribes low-THC cannabis for a
4 patient's medical use under this chapter must maintain a patient
5 treatment plan that indicates:

6 (1) the dosage, means of administration, and planned
7 duration of treatment for the low-THC cannabis;

8 (2) a plan for monitoring the patient's symptoms; and

9 (3) a plan for monitoring indicators of tolerance or
10 reaction to low-THC cannabis.

11 SECTION 5. Section 551.004(a), Occupations Code, is amended
12 to read as follows:

13 (a) This subtitle does not apply to:

14 (1) a practitioner licensed by the appropriate state
15 board who supplies a patient of the practitioner with a drug in a
16 manner authorized by state or federal law and who does not operate a
17 pharmacy for the retailing of prescription drugs;

18 (2) a member of the faculty of a college of pharmacy
19 recognized by the board who is a pharmacist and who performs the
20 pharmacist's services only for the benefit of the college;

21 (3) a person who procures prescription drugs for
22 lawful research, teaching, or testing and not for resale; ~~or~~

23 (4) a home and community support services agency that
24 possesses a dangerous drug as authorized by Section 142.0061,
25 142.0062, or 142.0063, Health and Safety Code; or

26 (5) a dispensing organization, as defined by Section
27 487.001, Health and Safety Code, that cultivates, processes, and

1 dispenses low-THC cannabis, as authorized by Chapter 487, Health
2 and Safety Code, to a patient listed in the compassionate-use
3 registry established under that chapter.

4 SECTION 6. (a) Not later than December 1, 2015, the public
5 safety director of the Department of Public Safety shall adopt
6 rules as required to implement, administer, and enforce Chapter
7 487, Health and Safety Code, as added by this Act, including rules
8 to establish the compassionate-use registry required by that
9 chapter.

10 (b) Not later than September 1, 2017, the Department of
11 Public Safety shall license at least three dispensing organizations
12 in accordance with Section 487.053, Health and Safety Code, as
13 added by this Act, provided at least three applicants for a license
14 to operate as a dispensing organization have met the requirements
15 for approval provided by Subchapter C, Chapter 487, Health and
16 Safety Code, as added by this Act.

17 SECTION 7. This Act takes effect immediately if it receives
18 a vote of two-thirds of all the members elected to each house, as
19 provided by Section 39, Article III, Texas Constitution. If this
20 Act does not receive the vote necessary for immediate effect, this
21 Act takes effect September 1, 2015.