

By: Lucio III

H.B. No. 85

A BILL TO BE ENTITLED

1 AN ACT
2 relating to authorizing the possession, use, cultivation,
3 distribution, transportation, and delivery of medical cannabis for
4 medical use by patients with certain debilitating medical
5 conditions and the licensing of dispensing organizations and
6 cannabis testing facilities; authorizing fees.

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

8 SECTION 1. Section [481.062\(a\)](#), Health and Safety Code, is
9 amended to read as follows:

10 (a) The following persons may possess a controlled
11 substance under this chapter without registering with the Federal
12 Drug Enforcement Administration:

13 (1) an agent or employee of a manufacturer,
14 distributor, analyzer, or dispenser of the controlled substance who
15 is registered with the Federal Drug Enforcement Administration and
16 acting in the usual course of business or employment;

17 (2) a common or contract carrier, a warehouseman, or
18 an employee of a carrier or warehouseman whose possession of the
19 controlled substance is in the usual course of business or
20 employment;

21 (3) an ultimate user or a person in possession of the
22 controlled substance under a lawful order of a practitioner or in
23 lawful possession of the controlled substance if it is listed in
24 Schedule V;

1 (4) an officer or employee of this state, another
2 state, a political subdivision of this state or another state, or
3 the United States who is lawfully engaged in the enforcement of a
4 law relating to a controlled substance or drug or to a customs law
5 and authorized to possess the controlled substance in the discharge
6 of the person's official duties;

7 (5) if the substance is tetrahydrocannabinol or one of
8 its derivatives:

9 (A) a Department of State Health Services
10 official, a medical school researcher, or a research program
11 participant possessing the substance as authorized under
12 Subchapter G; or

13 (B) a practitioner or an ultimate user possessing
14 the substance as a participant in a federally approved therapeutic
15 research program that the commissioner has reviewed and found, in
16 writing, to contain a medically responsible research protocol; ~~or~~

17 (6) a dispensing organization licensed under Chapter
18 [487](#) that possesses low-THC cannabis; or

19 (7) a dispensing organization or cannabis testing
20 facility licensed under Chapter 488 that possesses medical
21 cannabis.

22 SECTION 2. Sections [481.111](#)(e) and (f), Health and Safety
23 Code, are amended to read as follows:

24 (e) Sections [481.120](#), [481.121](#), [481.122](#), and [481.125](#) do not
25 apply to a person who engages in the acquisition, possession,
26 production, cultivation, delivery, or disposal of a raw material
27 used in or by-product created by the production or cultivation of

1 low-THC cannabis or medical cannabis if the person:

2 (1) for an offense involving possession only of
3 marihuana or drug paraphernalia, is a patient for whom low-THC
4 cannabis is prescribed under Chapter 169, Occupations Code, or the
5 patient's legal guardian, and the person possesses low-THC cannabis
6 obtained under a valid prescription from a dispensing organization;
7 [~~or~~]

8 (2) is a director, manager, or employee of a low-THC
9 cannabis dispensing organization and the person, solely in
10 performing the person's regular duties at the organization,
11 acquires, possesses, produces, cultivates, dispenses, or disposes
12 of:

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

16 (B) any drug paraphernalia used in the
17 acquisition, possession, production, cultivation, delivery, or
18 disposal of low-THC cannabis;

19 (3) for an offense involving possession only of
20 marihuana or drug paraphernalia, is a patient for whom medical use
21 is recommended under Chapter 169A, Occupations Code, and the person
22 possesses no more than the allowable amount of medical cannabis, as
23 determined under Section 488.002; or

24 (4) is a director, manager, or employee of a medical
25 cannabis dispensing organization or cannabis testing facility and
26 the person, solely in performing the person's regular duties at the
27 organization or facility, acquires, possesses, produces,

1 cultivates, dispenses, or disposes of:

2 (A) in reasonable quantities, any medical
3 cannabis or raw materials used in or by-products created by the
4 production or cultivation of medical cannabis; or

5 (B) any drug paraphernalia used in the
6 acquisition, possession, production, cultivation, delivery, or
7 disposal of medical cannabis.

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

9 (1) "Cannabis testing facility" [~~"Dispensing~~
10 ~~organization"~~] has the meaning assigned by Section 488.001
11 [~~487.001~~].

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

14 (3) "Low-THC cannabis dispensing organization" means
15 a dispensing organization as defined by Section 487.001.

16 (4) "Medical cannabis" and "medical use" have the
17 meanings assigned by Section 169A.001, Occupations Code.

18 (5) "Medical cannabis dispensing organization" means
19 a dispensing organization as defined by Section 488.001.

20 SECTION 3. Subtitle C, Title 6, Health and Safety Code, is
21 amended by adding Chapter 488 to read as follows:

22 CHAPTER 488. USE OF CANNABIS FOR MEDICAL PURPOSES

23 SUBCHAPTER A. GENERAL PROVISIONS

24 Sec. 488.001. DEFINITIONS. In this chapter:

25 (1) "Cannabis testing facility" means an independent
26 entity licensed by the department under this chapter to analyze the
27 safety and potency of medical cannabis.

1 (2) "Debilitating medical condition," "medical
2 cannabis," and "medical use" have the meanings assigned by Section
3 169A.001, Occupations Code.

4 (3) "Department" means the Department of Public
5 Safety.

6 (4) "Director" means the public safety director of the
7 department.

8 (5) "Dispensing organization" means an organization
9 licensed by the department to cultivate, process, and dispense
10 medical cannabis to a patient for whom medical use is recommended
11 under Chapter 169A, Occupations Code.

12 Sec. 488.002. ALLOWABLE AMOUNT OF MEDICAL CANNABIS. (a)
13 The allowable amount of medical cannabis for a person for whom
14 medical use is recommended under Chapter 169, Occupations Code, is:

15 (1) not more than 2.5 ounces of medical cannabis;

16 (2) if applicable, a greater amount specified in
17 accordance with department rules by a recommending physician under
18 Chapter 169A, Occupations Code, and included with the patient's
19 registration on the medical use registry established under Section
20 488.054; or

21 (3) an amount of oils or products infused with medical
22 cannabis such that the quantity of tetrahydrocannabinols and
23 cannabidiol in the oil or product does not exceed the quantity of
24 those substances contained in the amount of medical cannabis under
25 Subdivision (1) or (2), as applicable.

26 (b) Oils and products infused with medical cannabis must be
27 labeled in accordance with department rules to indicate the

1 quantity of tetrahydrocannabinols and cannabidiol contained in the
2 oil or product for purposes of determining compliance with this
3 section.

4 SUBCHAPTER B. DUTIES OF DEPARTMENT

5 Sec. 488.051. DUTIES OF DEPARTMENT. The department shall
6 administer this chapter.

7 Sec. 488.052. RULES. (a) The director shall adopt any
8 rules necessary for the administration and enforcement of this
9 chapter.

10 (b) The director shall adopt rules imposing fees under this
11 chapter in amounts sufficient to cover the cost of administering
12 this chapter.

13 (c) The director shall adopt rules in accordance with
14 Section 488.002 governing the allowable amount of medical cannabis
15 a physician may recommend for a patient for whom medical use is
16 recommended under Chapter 169A, Occupations Code.

17 (d) The director by rule shall adopt labeling requirements
18 for medical cannabis. In adopting labeling requirements, the
19 director shall ensure each oil and product infused with medical
20 cannabis is labeled with the quantity of tetrahydrocannabinols and
21 cannabidiol contained in the oil or product.

22 (e) The director shall adopt rules for analyzing the safety
23 and potency of any medical cannabis made available through a
24 dispensary.

25 (f) The director shall adopt rules requiring a dispensing
26 organization to have an adequate supply of medical cannabis to
27 compensate for any shortfall by another dispensing organization.

1 Sec. 488.053. LICENSING OF DISPENSING ORGANIZATIONS AND
2 CANNABIS TESTING FACILITIES; REGISTRATION OF CERTAIN ASSOCIATED
3 INDIVIDUALS. (a) The department shall:

4 (1) issue or renew a license under Subchapter C to
5 operate as:

6 (A) a dispensing organization to each applicant
7 who satisfies the requirements established under this chapter for
8 licensure as a dispensing organization; and

9 (B) a cannabis testing facility to each applicant
10 who satisfies the requirements established under this chapter for
11 licensure as a cannabis testing facility; and

12 (2) register directors, managers, and employees under
13 Subchapter D of each:

14 (A) dispensing organization; and

15 (B) cannabis testing facility.

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

20 Sec. 488.054. MEDICAL USE REGISTRY. (a) The department
21 shall establish and maintain a secure online medical use registry
22 that contains:

23 (1) the name of each physician who registers as the
24 physician recommending medical use for a patient under Section
25 169A.003, Occupations Code, and the name and date of birth of the
26 patient; and

27 (2) if applicable, the allowable amount of cannabis

1 specified by a recommending physician for the patient under Chapter
2 169A, Occupations Code.

3 (b) The department shall ensure the registry:

4 (1) is designed to prevent more than one physician
5 from registering as the physician recommending medical use for a
6 single patient;

7 (2) is accessible to law enforcement agencies and
8 dispensing organizations for the purpose of verifying whether a
9 patient is one for whom medical use is recommended under Chapter
10 169A, Occupations Code; and

11 (3) allows a physician recommending medical use under
12 Chapter 169A, Occupations Code, to input safety and efficacy data
13 derived from the treatment of patients for whom medical use is
14 recommended.

15 (c) A patient must be a permanent resident of this state to
16 be included in the registry. The department may issue an
17 identification card to a patient listed in the registry.

18 SUBCHAPTER C. LICENSING OF DISPENSING ORGANIZATIONS AND CANNABIS
19 TESTING FACILITIES

20 Sec. 488.101. LICENSE REQUIRED. A person may not operate as
21 a dispensing organization or a cannabis testing facility without
22 the appropriate license issued by the department under this
23 subchapter.

24 Sec. 488.102. ELIGIBILITY FOR LICENSE TO OPERATE AS
25 DISPENSING ORGANIZATION. An applicant for a license to operate as a
26 dispensing organization is eligible for the license if:

27 (1) as determined by the department, the applicant

1 possesses:

2 (A) the technical and technological ability to
3 cultivate and produce medical cannabis;

4 (B) the ability to secure:

5 (i) the resources and personnel necessary
6 to operate as a dispensing organization; and

7 (ii) premises reasonably located to allow
8 patients listed on the medical use registry access to the
9 organization through existing infrastructure;

10 (C) the ability to maintain accountability for
11 the raw materials, the finished product, and any by-products used
12 or produced in the cultivation or production of medical cannabis to
13 prevent unlawful access to or unlawful diversion or possession of
14 those materials, products, or by-products; and

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

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

19 (3) the applicant satisfies any additional criteria
20 determined by the director to be necessary to safely implement this
21 chapter.

22 Sec. 488.1021. ELIGIBILITY FOR LICENSE TO OPERATE AS
23 CANNABIS TESTING FACILITY. An applicant for a license to operate as
24 a cannabis testing facility is eligible for the license if:

25 (1) as determined by the department, the applicant
26 possesses:

27 (A) the ability to secure the resources and

1 personnel necessary to operate as a cannabis testing facility; and
2 (B) the financial ability to maintain operations
3 for not less than two years from the date of application;
4 (2) each director, manager, or employee of the
5 applicant is registered under Subchapter D; and
6 (3) the applicant satisfies any additional criteria
7 determined by the director to be necessary for the operation of a
8 cannabis testing facility.

9 Sec. 488.103. APPLICATION. (a) A person may apply for an
10 initial or renewal license under this subchapter by submitting a
11 form prescribed by the department along with the application fee in
12 an amount set by the director.

13 (b) The application must include the name and address of the
14 applicant, the name and address of each of the applicant's
15 directors, managers, and employees, and any other information
16 considered necessary by the department to determine the applicant's
17 eligibility for the license.

18 Sec. 488.104. ISSUANCE, RENEWAL, OR DENIAL OF LICENSE.

19 (a) The department shall issue or renew a license under this
20 subchapter only if:

21 (1) the department determines the applicant meets the
22 eligibility requirements described by Section 488.102 or 488.1021,
23 as applicable; and

24 (2) issuance or renewal of the license is necessary to
25 ensure reasonable statewide access to, and the availability of,
26 medical cannabis for patients registered in the medical use
27 registry and for whom medical cannabis is recommended under Chapter

1 169A, Occupations Code.

2 (b) If the department denies the issuance or renewal of a
3 license under Subsection (a), the applicant is entitled to a
4 hearing. The department shall give written notice of the grounds
5 for denial to the applicant at least 30 days before the date of the
6 hearing.

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

10 Sec. 488.105. CRIMINAL HISTORY BACKGROUND CHECK. (a) An
11 applicant for the issuance or renewal of a license under this
12 subchapter shall provide the department with the applicant's name
13 and the name of each of the applicant's directors, managers, and
14 employees.

15 (b) Before a license holder under this subchapter hires a
16 manager or employee for the organization or facility, the license
17 holder must provide the department with the name of the prospective
18 manager or employee. The license holder may not transfer the
19 license to another person before that prospective applicant and the
20 applicant's directors, managers, and employees pass a criminal
21 history background check and are registered as required by
22 Subchapter D.

23 (c) The department shall conduct a criminal history
24 background check on each individual whose name is provided to the
25 department under Subsection (a) or (b). The director by rule shall:

26 (1) determine the manner by which an individual is
27 required to submit a complete set of fingerprints to the department

1 for purposes of a criminal history background check under this
2 section; and

3 (2) establish criteria for determining whether an
4 individual passes the criminal history background check for the
5 purposes of this section.

6 (d) After conducting a criminal history background check
7 under this section, the department shall notify the relevant
8 applicant or organization or facility and the individual who is the
9 subject of the criminal history background check as to whether the
10 individual passed the criminal history background check.

11 Sec. 488.106. DUTY TO MAINTAIN ELIGIBILITY. Each license
12 holder under this subchapter must maintain compliance at all times
13 with the eligibility requirements described by Section 488.102 or
14 488.1021, as applicable.

15 Sec. 488.107. DUTIES RELATING TO DISPENSING MEDICAL
16 CANNABIS. (a) Before dispensing medical cannabis to a person for
17 whom medical use is recommended under Chapter 169A, Occupations
18 Code, the dispensing organization must verify that the person is
19 listed as a patient in the medical use registry.

20 (b) After dispensing medical cannabis to a patient for whom
21 medical use is recommended under Chapter 169A, Occupations Code,
22 the dispensing organization shall record in the medical use
23 registry the form and quantity of the medical cannabis dispensed
24 and the date and time of dispensation.

25 Sec. 488.108. LICENSE SUSPENSION OR REVOCATION. (a) The
26 department may at any time suspend or revoke a license issued under
27 this subchapter if the department determines that the license

1 holder has not maintained the eligibility requirements described by
2 Section 488.102 or 488.1021, as applicable, or has failed to comply
3 with a duty imposed under this chapter.

4 (b) The director shall give written notice to the license
5 holder of a license suspension or revocation under this section and
6 the grounds for the suspension or revocation. The notice must be
7 sent by certified mail, return receipt requested.

8 (c) After suspending or revoking a license issued under this
9 subchapter, the director may seize or place under seal all medical
10 cannabis and drug paraphernalia owned or possessed by the
11 dispensing organization or cannabis testing facility. If the
12 director orders the revocation of the license, a disposition may
13 not be made of the seized or sealed medical cannabis or drug
14 paraphernalia until the time for administrative appeal of the order
15 has elapsed or until all appeals have been concluded. When a
16 revocation order becomes final, all medical cannabis and drug
17 paraphernalia may be forfeited to the state as provided under
18 Subchapter E, Chapter 481.

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

21 SUBCHAPTER D. REGISTRATION OF CERTAIN INDIVIDUALS

22 Sec. 488.151. REGISTRATION REQUIRED. (a) An individual who
23 is a director, manager, or employee of a dispensing organization
24 must apply for and obtain a registration under this section.

25 (a-1) An individual who is a director, manager, or employee
26 of a cannabis testing facility must apply for and obtain a
27 registration under this section.

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

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

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

5 (3) pass a fingerprint-based criminal history
6 background check as required by Section 488.105.

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

10 SUBCHAPTER E. DUTIES OF COUNTIES AND MUNICIPALITIES

11 Sec. 488.201. COUNTIES AND MUNICIPALITIES MAY NOT PROHIBIT
12 MEDICAL CANNABIS. A municipality, county, or other political
13 subdivision may not enact, adopt, or enforce a rule, ordinance,
14 order, resolution, or other regulation that prohibits the
15 cultivation, production, dispensing, testing, or possession of
16 medical cannabis, as authorized by this chapter.

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

19 CHAPTER 169A. AUTHORITY TO RECOMMEND MEDICAL CANNABIS TO CERTAIN
20 PATIENTS WITH DEBILITATING MEDICAL CONDITIONS

21 Sec. 169A.001. DEFINITIONS. In this chapter:

22 (1) "Debilitating medical condition" means terminal
23 cancer, multiple sclerosis, autism, or Parkinson's disease.

24 (2) "Department" means the Department of Public
25 Safety.

26 (3) "Medical cannabis" means the plant Cannabis sativa
27 L., and any part of that plant or any compound, manufacture, salt,

1 derivative, mixture, preparation, resin, or oil of that plant.

2 (4) "Medical use" means the ingestion by a means of
3 administration other than by smoking of a recommended amount of
4 medical cannabis by a person for whom medical use is recommended
5 under this chapter.

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

8 Sec. 169A.002. RECOMMENDATION OF MEDICAL USE. (a) A
9 physician may recommend medical use in accordance with this chapter
10 for a patient with a debilitating medical condition.

11 (b) A physician who recommends medical use for a patient
12 must:

13 (1) comply with the registration requirements of
14 Section 169A.003; and

15 (2) certify to the department that:

16 (A) the patient is diagnosed with a debilitating
17 medical condition; and

18 (B) the physician has determined that the risk of
19 medical use by the patient is reasonable in light of the potential
20 benefit for the patient.

21 Sec. 169A.003. RECOMMENDING PHYSICIAN REGISTRATION.
22 Before a physician may recommend medical use for a patient under
23 this chapter, the physician must register as the recommending
24 physician for that patient in the medical use registry maintained
25 by the department under Section 488.054, Health and Safety
26 Code. The physician's registration must indicate:

27 (1) the physician's name;

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

2 (3) the allowable amount of medical cannabis
3 recommended for the patient, if the physician recommends an
4 allowable amount greater than the amount provided by Section
5 488.002(a)(1), Health and Safety Code.

6 Sec. 169A.004. PATIENT TREATMENT PLAN. A physician who
7 recommends medical use for a patient under this chapter must
8 maintain a patient treatment plan that indicates:

9 (1) a plan for monitoring the patient's symptoms; and

10 (2) a plan for monitoring indicators of tolerance or
11 reaction to medical cannabis.

12 SECTION 5. Section 551.004, Occupations Code, is amended by
13 amending Subsection (a) and adding Subsection (a-1) to read as
14 follows:

15 (a) This subtitle does not apply to:

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

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

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

25 (4) a home and community support services agency that
26 possesses a dangerous drug as authorized by Section 142.0061,
27 142.0062, or 142.0063, Health and Safety Code; [~~or~~]

1 (5) a low-THC cannabis dispensing organization[~~, as~~
2 ~~defined by Section 487.001, Health and Safety Code,~~] that
3 cultivates, processes, and dispenses low-THC cannabis, as
4 authorized by a license issued under Subchapter C, Chapter 487,
5 Health and Safety Code, to a patient listed in the
6 compassionate-use registry established under that chapter;

7 (6) a medical cannabis dispensing organization that
8 cultivates, processes, and dispenses medical cannabis, as
9 authorized by a license issued under Subchapter C, Chapter 488,
10 Health and Safety Code, to a patient listed in the medical use
11 registry established under that chapter; or

12 (7) a cannabis testing facility that analyzes the
13 safety and potency of medical cannabis, as authorized by a license
14 issued under Subchapter C, Chapter 488, Health and Safety Code.

15 (a-1) For purposes of Subsections (a)(5), (6), and (7):

16 (1) "Cannabis testing facility" has the meaning
17 assigned by Section 488.001, Health and Safety Code.

18 (2) "Low-THC cannabis dispensing organization" means
19 a dispensing organization as defined by Section 487.001, Health and
20 Safety Code.

21 (3) "Medical cannabis dispensing organization" means
22 a dispensing organization as defined by Section 488.001, Health and
23 Safety Code.

24 SECTION 6. Not later than January 1, 2018, the public safety
25 director of the Department of Public Safety shall adopt rules as
26 required to implement, administer, and enforce Chapter 488, Health
27 and Safety Code, as added by this Act, including rules to establish

1 the medical use registry required by that chapter.

2 SECTION 7. This Act takes effect immediately if it receives
3 a vote of two-thirds of all the members elected to each house, as
4 provided by Section 39, Article III, Texas Constitution. If this
5 Act does not receive the vote necessary for immediate effect, this
6 Act takes effect on the 91st day after the last day of the
7 legislative session.