

Senator Mark B. Madsen proposes the following substitute bill:

**MEDICAL CANNABIS AMENDMENTS**

2015 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Mark B. Madsen**

House Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill modifies provisions related to medical cannabis.

**Highlighted Provisions:**

This bill:

- ▶ allows an individual with a qualifying illness who registers with the Department of Public Safety to possess and use, under certain circumstances, cannabis, cannabis products, and devices designed for ingesting cannabis;

- ▶ directs the Division of Occupational and Professional Licensing to issue a license to operate a medical cannabis establishment to a person who meets certain requirements;

- ▶ allows a licensed person to grow, process, possess, and sell cannabis for the medical use of a patient, under certain circumstances; and

- ▶ directs the Division of Occupational and Professional Licensing to register an individual to act as an agent of a medical cannabis establishment under certain circumstances.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**



26 None

27 **Utah Code Sections Affected:**

28 ENACTS:

29 **53-17-101**, Utah Code Annotated 1953

30 **53-17-102**, Utah Code Annotated 1953

31 **53-17-103**, Utah Code Annotated 1953

32 **53-17-104**, Utah Code Annotated 1953

33 **53-17-105**, Utah Code Annotated 1953

34 **58-37-3.6**, Utah Code Annotated 1953

35 **58-85-101**, Utah Code Annotated 1953

36 **58-85-102**, Utah Code Annotated 1953

37 **58-85-103**, Utah Code Annotated 1953

38 **58-85-104**, Utah Code Annotated 1953

39 **58-85-105**, Utah Code Annotated 1953

40 **58-85-106**, Utah Code Annotated 1953

41 **58-85-107**, Utah Code Annotated 1953

42 **58-85-108**, Utah Code Annotated 1953

43 **58-85-201**, Utah Code Annotated 1953

44 **58-85-202**, Utah Code Annotated 1953

45 REPEALS:

46 **26-56-101**, as enacted by Laws of Utah 2014, Chapter 25

47 **26-56-102**, as enacted by Laws of Utah 2014, Chapter 25

48 **26-56-103**, as enacted by Laws of Utah 2014, Chapter 25

49 **58-37-4.3**, as enacted by Laws of Utah 2014, Chapter 25



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

52 Section 1. Section **53-17-101** is enacted to read:

53 **CHAPTER 17. MEDICAL CANNABIS REGISTRATION ACT**

54 **53-17-101. Title.**

55 This chapter is known as "Medical Cannabis Registration Act."

56 Section 2. Section **53-17-102** is enacted to read:

57 53-17-102. Definitions.

58 As used in this chapter:

59 (1) "Cannabis" means marijuana.

60 (2) "Cannabis device" means a device, except for a device that facilitates cannabis  
61 combustion, that is used to aid an individual in ingesting cannabis or a cannabis product.

62 (3) "Cannabis product" means a product that:

63 (a) is intended for human ingestion; and

64 (b) contains cannabis or tetrahydrocannabinol.

65 (4) "Designated caregiver" means an individual who a patient with a medical cannabis  
66 patient card designates as the patient's caregiver under Section [53-17-103](#).

67 (5) "Drug paraphernalia" means the same as that term is defined in Section [58-37a-3](#).

68 (6) "Electronic verification system" means the system described in Section [53-17-104](#).

69 (7) "Marijuana" means the same as that term is defined in Section [58-37-2](#).

70 (8) "Medical cannabis establishment" means the same as that term is defined in Section  
71 [58-85-102](#).

72 (9) "Medical cannabis establishment agent registration card" means a registration card  
73 issued under Section [58-85-203](#).

74 (10) "Medical cannabis patient card" means an official document or card, issued by the  
75 department under Section [53-17-103](#), that is connected to the electronic verification system  
76 described in Section [53-17-104](#).

77 (11) "Physician" means an individual who:

78 (a) is licensed to practice:

79 (i) medicine, under Title 58, Chapter 67, Utah Medical Practice Act; or

80 (ii) osteopathic medicine, under Title 58, Chapter 68, Utah Osteopathic Medical

81 Practice Act; and

82 (b) has completed a residency or fellowship in:

83 (i) anesthesiology;

84 (ii) gastroenterology;

85 (iii) neurology

86 (iv) oncology;

87 (v) ophthalmology;

- 88           (vi) psychiatry; or  
89           (vi) psychiatry.  
90           (12) "Qualifying illness" means:  
91           (a) acquired immune deficiency syndrome;  
92           (b) Alzheimer's disease;  
93           (c) amyotrophic lateral sclerosis;  
94           (d) an autoimmune disorder;  
95           (e) cachexia or physical wasting, nausea, and malnutrition associated with chronic  
96 disease;  
97           (f) cancer;  
98           (g) Crohn's disease;  
99           (h) epilepsy, or a condition that causes debilitating seizures;  
100           (i) glaucoma;  
101           (j) multiple sclerosis or a similar condition that causes persistent and debilitating  
102 muscle spasms;  
103           (k) post-traumatic stress disorder; or  
104           (l) severe, chronic pain:  
105           (i) that is not responsive to conventional treatment; and  
106           (ii) for which a physician determines the individual with the severe, chronic pain is at  
107 risk of abusing, becoming chemically dependent on, or overdosing on pain medication.  
108           (13) "Tetrahydrocannabinol" means a substance derived from cannabis that meets the  
109 description in Subsection 58-37-4(2)(a)(iii)(AA).  
110           Section 3. Section **53-17-103** is enacted to read:  
111           **53-17-103. Medical cannabis patient card -- Application -- Fees -- Database.**  
112           (1) The department shall issue a medical cannabis patient card, via the electronic  
113 verification system described in Section 53-17-104, to an individual if the individual:  
114           (a) is at least 18 years of age;  
115           (b) is a Utah resident;  
116           (c) provides the department with a statement signed by a physician that indicates that  
117 the individual:  
118           (i) suffers from a qualifying illness; and

- 119           (ii) may benefit from treatment with cannabis or a cannabis product;  
120           (d) pays the department a \$25 fee; and  
121           (e) submits an application to the department, using the electronic verification system  
122 described in Section 53-17-104, that contains:  
123           (i) the individual's name and address; and  
124           (ii) a copy of the individual's valid photo identification.  
125           (2) The department shall issue a medical cannabis patient card, via the electronic  
126 verification system described in Section 53-17-104, to an individual who is the parent or legal  
127 guardian of a minor if the individual:  
128           (a) is at least 18 years of age;  
129           (b) is a Utah resident;  
130           (c) provides the department with a statement signed by the physician that indicates that  
131 the minor:  
132           (i) suffers from a qualifying illness; and  
133           (ii) may benefit from treatment with cannabis or a cannabis product;  
134           (d) pays the department a \$25 fee; and  
135           (e) submits an application to the department, using the electronic verification system  
136 described in Section 53-17-104, that contains:  
137           (i) the parent's or legal guardian's name and address;  
138           (ii) the minor's name; and  
139           (iii) a copy of the parent's or legal guardian's valid photo identification.  
140           (3) An individual who applies for a medical cannabis patient card under Subsection (1)  
141 or (2) shall fill out and submit the application described in Subsection (1) or (2):  
142           (a) online, in connection with the electronic verification system described in Section  
143 53-17-104; and  
144           (b) with a physician, during an office visit with the physician.  
145           (4) An individual who holds a valid medical cannabis patient card under Subsection (1)  
146 who a physician determines is unable to obtain cannabis or a cannabis product from a cannabis  
147 dispensary may register with the department up to two individuals to serve as designated  
148 caregivers of the individual.  
149           (5) A designated caregiver registered with the department under Subsection (3) may

150 carry an individual's valid medical cannabis patient card and purchase and possess, in  
151 accordance with this chapter, cannabis, a cannabis product, or a cannabis device on behalf of  
152 the individual.

153 (6) A medical cannabis patient card the department issues under Subsection (1) or (2)  
154 is:

155 (a) valid for the lesser of:

156 (i) an amount of time determined by the physician who recommends treatment with  
157 cannabis or a cannabis product under Subsection (1) or (2); and

158 (ii) two years; and

159 (b) renewable, if, at the time of renewal, the individual with the medical cannabis  
160 patient card meets the requirements of either Subsection (1) or (2).

161 Section 4. Section **53-17-104** is enacted to read:

162 **53-17-104. Electronic verification system.**

163 (1) The department shall contract, in accordance with Title 63G, Chapter 3, Utah  
164 Administrative Rulemaking Act, with a private person to implement and maintain an electronic  
165 verification system that:

166 (a) allows an individual, under Subsection [53-17-103\(1\)](#), or an individual who is the  
167 parent or legal guardian of a minor under Subsection [53-17-103\(2\)](#), to apply, in the presence of  
168 a physician, to the department for a medical cannabis patient card;

169 (b) allows a physician to electronically recommend, during a visit with a patient,  
170 treatment with cannabis or a cannabis product for the patient;

171 (c) issues to an individual, if the individual meets the requirements in Section  
172 [53-17-103](#), a medical cannabis patient card;

173 (d) accepts and holds funds from an individual with a medical cannabis patient card;

174 (e) allows an individual with a medical cannabis patient card to use the funds described  
175 in Subsection (1)(e) to purchase cannabis, a cannabis product, or a cannabis device from a  
176 cannabis dispensary;

177 (f) transmits the funds described in Subsection (1)(e) to a cannabis dispensary for the  
178 purchase of cannabis, a cannabis product, or a cannabis device;

179 (g) remits to the State Tax Commission the state sales tax due for a purchase of  
180 cannabis, a cannabis product, or a cannabis device;

181 (h) connects with an inventory control system used by a cannabis dispensary, described  
 182 in Section 58-85-104, to track, in real time, for the purchase of cannabis or a cannabis product  
 183 by a medical cannabis patient card holder:

184 (i) the time and date of the purchase;

185 (ii) the quantity and type of cannabis or a cannabis product purchased;

186 (iii) the amount of money the medical cannabis patient card holder spent; and

187 (iv) any medical cannabis establishment associated with the cannabis or cannabis  
 188 product;

189 (i) is accessible by the department; and

190 (j) is accessible by state or local law enforcement during a traffic stop.

191 (2) An individual with a medical cannabis patient card may only purchase cannabis, a  
 192 cannabis product, or a cannabis device using funds transmitted in advance to the individual's  
 193 account with the provider of the electronic verification system described in Subsection (1).

194 (3) The department may release, in a format such that it is impossible to determine the  
 195 identity of an individual medical cannabis patient card holder, the data collected by the system  
 196 under Subsection (1) for the purpose of conducting medical research.

197 Section 5. Section **53-17-105** is enacted to read:

198 **53-17-105. Standard of care -- Medical practitioners not liable -- No private right**  
 199 **of action.**

200 (1) It is not a breach of the applicable standard of care for a physician, other licensed to  
 201 recommend treatment with cannabis or a cannabis product to an individual under this chapter.

202 (2) A physician that recommends treatment with cannabis or a cannabis product to an  
 203 individual under this chapter may not, solely based on the cannabis or cannabis product  
 204 recommendation, be subject to:

205 (a) civil liability;

206 (b) criminal liability; or

207 (c) licensure sanctions under:

208 (i) Title 58, Chapter 67, Utah Medical Practice Act; or

209 (ii) Title 58, Chapter 68, Utah Osteopathic Medical Practice Act.

210 Section 6. Section **58-37-3.6** is enacted to read:

211 **58-37-3.6. Exemption for possession or use of cannabis to treat a qualifying**

212 illness.

213 (1) As used in this section:

214 (a) "Cannabis" means marijuana.

215 (b) "Cannabis device" means a device, except for a device that facilitates cannabis  
216 combustion, that is used to aid an individual in ingesting cannabis or a cannabis product.

217 (c) "Cannabis product" means a product that:

218 (i) is intended for human ingestion; and

219 (ii) contains cannabis or tetrahydrocannabinol.

220 (d) "Designated caregiver" means an individual who a patient with a medical cannabis  
221 patient card designates, with the Department of Public Safety, as the patient's caregiver under  
222 Section [53-17-103](#).

223 (e) "Drug paraphernalia" means the same as that term is defined in Section [58-37a-3](#).

224 (f) "Marijuana" means the same as that term is defined in Section [58-37-2](#).

225 (g) "Medical cannabis establishment" means the same as that term is defined in Section  
226 [58-85-102](#).

227 (h) "Medical cannabis patient card" means an official document or card, issued by the  
228 Department of Public Safety under Section [53-17-103](#), that is connected to the electronic  
229 verification system described in Section [53-17-104](#).

230 (i) "Qualifying illness" means:

231 (i) acquired immune deficiency syndrome;

232 (ii) Alzheimer's disease;

233 (iii) amyotrophic lateral sclerosis;

234 (iv) an autoimmune disorder;

235 (v) cachexia or physical wasting, nausea, and malnutrition associated with chronic  
236 disease;

237 (vi) cancer;

238 (vii) Crohn's disease;

239 (viii) epilepsy, or a condition that causes debilitating seizures;

240 (ix) glaucoma;

241 (x) multiple sclerosis or a similar condition that causes persistent and debilitating  
242 muscle spasms;



243 (xi) post-traumatic stress disorder; or

244 (xii) severe, chronic pain:

245 (A) that is not responsive to conventional treatment; and

246 (B) for which a physician determines the individual with the severe, chronic pain is at  
247 risk of abusing, becoming chemically dependent on, or overdosing on pain medication.

248 (j) "Tetrahydrocannabinol" means a substance derived from cannabis that meets the  
249 description in Subsection 58-37-4(2)(a)(iii)(AA).

250 (2) Notwithstanding any other provision of this chapter, except as described in  
251 Subsection (7), an individual who possesses or uses cannabis, a cannabis product, or a cannabis  
252 device is not subject to, for the possession or use of the cannabis, cannabis product, or cannabis  
253 device, the penalties described in this title for possession or use of marijuana,  
254 tetrahydrocannabinol, or drug paraphernalia, if the individual holds a valid medical cannabis  
255 patient card.

256 (3) Notwithstanding any other provision of this chapter, except as described in  
257 Subsection (7), an individual who possesses cannabis, a cannabis product, or a cannabis device,  
258 or who distributes cannabis, a cannabis product, or a cannabis device to a patient is not subject  
259 to, for the possession or distribution of the cannabis, cannabis product, or cannabis device, the  
260 penalties described in this title for possession or distribution of marijuana,  
261 tetrahydrocannabinol, or drug paraphernalia, if the individual:

262 (a) if the patient is a minor, is the patient's parent or guardian and holds a valid medical  
263 cannabis patient card; or

264 (b) if the patient is 18 years of age or older and holds a medical cannabis patient card,  
265 is the patient's designated caregiver.

266 (4) Notwithstanding any other provision of this chapter, except as described in  
267 Subsection (7), a person who possesses, sells, or offers to sell cannabis, a cannabis product, or  
268 a cannabis device is not subject to, for the possession, sale, or offer for sale of cannabis, the  
269 cannabis product, or the cannabis device, the penalties described in this chapter for the  
270 possession, sale, or offering for sale of marijuana, tetrahydrocannabinol, or drug paraphernalia  
271 if the person:

272 (a) produces, sells, or offers to sell the cannabis, cannabis product, or cannabis device  
273 for the end purpose of providing the cannabis, cannabis product, or cannabis device to a patient

274 with a qualifying illness;

275 (b) is licensed with the division under Title 58, Chapter 85, Medical Cannabis  
276 Establishment Licensing Act; and

277 (c) complies with the operating requirements for a medical cannabis establishment  
278 under Title 58, Chapter 85, Part 1, Medical Cannabis Establishments.

279 (5) Notwithstanding any other provision of this chapter, a person who grows, sells, or  
280 offers to sell cannabis is not subject to, for the growth or sale of the cannabis, the penalties  
281 described in this chapter for the growth or sale of marijuana, if the person:

282 (a) grows the cannabis only for the purpose of selling the cannabis to a licensed  
283 medical cannabis establishment, for the end purpose of providing the cannabis to a patient with  
284 a qualifying illness;

285 (b) is licensed with the division under Title 58, Chapter 85, Medical Cannabis  
286 Establishment Licensing Act; and

287 (c) complies with the operating requirements for a cannabis cultivation facility under  
288 Title 58, Chapter 85, Part 1, Medical Cannabis Establishments.

289 (6) Notwithstanding any other provision of this chapter, except as described in  
290 Subsection (7), an individual who grows cannabis, or possesses, sells, or offers to sell cannabis,  
291 a cannabis product, or a cannabis device is not subject to, for the growth of cannabis, or for the  
292 possession, sale, or offer for sale of cannabis, the cannabis product, or the cannabis device, the  
293 penalties described in this chapter for the growth, possession, sale, or offering for sale of  
294 marijuana, tetrahydrocannabinol, or drug paraphernalia if the individual:

295 (a) grows, possesses, sells, or offers to sell the cannabis as an agent of a medical  
296 cannabis establishment that is licensed with the division under Title 58, Chapter 85, Medical  
297 Cannabis Establishment Licensing Act;

298 (b) is a valid medical cannabis establishment agent registration card holder; and

299 (c) complies with the employment requirements for a medical cannabis establishment  
300 agent under Title 58, Chapter 85, Part 2, Medical Cannabis Establishment Agents.

301 (7) An individual is not exempt from the penalties described in Subsections (2) through  
302 (6) if the individual:

303 (a) uses cannabis through a means involving cannabis combustion; or

304 (b) uses or possesses a cannabis device that facilitates the use of cannabis through

305 cannabis combustion.

306 Section 7. Section **58-85-101** is enacted to read:

307 **CHAPTER 85. MEDICAL CANNABIS ESTABLISHMENT LICENSING ACT**

308 **Part 1. Medical Cannabis Establishments**

309 **58-85-101. Title.**

310 (1) This chapter is known as "Medical Cannabis Establishment Licensing Act."

311 (2) This part is known as "Medical Cannabis Establishments."

312 Section 8. Section **58-85-102** is enacted to read:

313 **58-85-102. Definitions.**

314 As used in this chapter:

315 (1) "Cannabis" means the same as that term is defined in Section [58-37-2](#).

316 (2) "Cannabis cultivation facility" means a person that:

317 (a) is licensed by the division under Section [58-85-103](#); and

318 (b) possesses, grows, and sells cannabis to:

319 (i) a cannabis dispensary;

320 (ii) a cannabis processing facility; or

321 (iii) another cannabis cultivation facility.

322 (3) "Cannabis device" means a device, except for a device that facilitates cannabis  
323 combustion, that is used to aid an individual in ingesting cannabis or a cannabis product.

324 (4) "Cannabis dispensary" means a business that:

325 (a) is licensed by the division to act as a cannabis dispensary under Section [58-85-103](#);

326 and

327 (b) purchases, possesses, or sells cannabis, a cannabis product, or a cannabis device.

328 (5) "Cannabis processing facility" means a person that:

329 (a) is licensed by the division to act as a cannabis processing facility under Section  
330 [58-85-103](#);

331 (b) purchases cannabis from a cannabis cultivation facility;

332 (c) possesses cannabis or a cannabis product; and

333 (d) manufactures a cannabis product for sale to a cannabis dispensary.

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

335 (a) is intended for human ingestion; and

- 336 (b) contains cannabis or tetrahydrocannabinol.
- 337 (7) "Crime of violence" means any felony involving the use or threatened use of force
- 338 or violence against the person or property of another.
- 339 (8) "Electronic verification system" means the system described in Section [53-17-104](#).
- 340 (9) (a) "Excluded felony offense" means, for an individual:
- 341 (i) a crime of violence; or
- 342 (ii) a felony conviction of a state or federal law pertaining to controlled substances.
- 343 (b) "Excluded felony offense" does not include a criminal offense for which the
- 344 individual completed the individual's sentence, including any term of probation, incarceration,
- 345 or supervised release, more than 10 years before the day on which the individual applies for a
- 346 medical cannabis patient card or a medical cannabis establishment agent registration card.
- 347 (10) "Independent testing laboratory" means a facility that:
- 348 (a) is licensed by the division under Section [58-85-103](#); and
- 349 (b) meets the requirements of Section [58-85-108](#).
- 350 (11) "Inventory control system" means a connected electronic database and associated
- 351 tracking devices that monitor the chain of custody of cannabis from the point of the cannabis's
- 352 first cultivation to the point the cannabis is sold to a medical cannabis patient card holder.
- 353 (12) "Medical cannabis establishment" means:
- 354 (a) an independent testing laboratory;
- 355 (b) a cultivation facility;
- 356 (c) a cannabis processing facility; or
- 357 (d) a cannabis dispensary.
- 358 (13) "Medical cannabis establishment agent" means an owner, officer, board member,
- 359 employee, or volunteer of a medical cannabis establishment.
- 360 (14) "Medical cannabis establishment agent registration card" means a registration card
- 361 that is issued by the division under Section [58-28-203](#) that authorizes an individual to volunteer
- 362 or work at a medical cannabis establishment.
- 363 (15) "Medical cannabis patient card" means an official document or card, issued by the
- 364 Department of Public Safety under Section [53-17-103](#), that is connected to an electronic
- 365 verification system.
- 366 (16) "Physician" means an individual who:

367 (a) is licensed to practice:  
 368 (i) medicine, under Title 58, Chapter 67, Utah Medical Practice Act; or  
 369 (ii) osteopathic medicine, under Title 58, Chapter 68, Utah Osteopathic Medical  
 370 Practice Act; and

371 (b) has completed a residency or fellowship in:  
 372 (i) anesthesiology;  
 373 (ii) gastroenterology;  
 374 (iii) neurology  
 375 (iv) oncology;  
 376 (v) ophthalmology;  
 377 (vi) psychiatry; or  
 378 (vi) psychiatry.

379 (17) "Tetrahydrocannabinol" means a substance that meets the description in  
 380 Subsection 58-37-4(2)(a)(iii)(AA).

381 Section 9. Section **58-85-103** is enacted to read:

382 **58-85-103. Medical cannabis establishment -- License -- General operating**  
 383 **requirements.**

384 (1) Subject to Subsection (2), the division shall issue a license to operate a medical  
 385 cannabis establishment to a person who submits to the division:

386 (a) a proposed name, address, and physical location where the person will operate the  
 387 medical cannabis establishment;

388 (b) evidence that the person possesses or controls a minimum of \$750,000 in liquid  
 389 assets;

390 (c) a \$5,000 application fee;

391 (d) evidence that the person meets the eligibility requirements for:

392 (i) a cannabis cultivation facility;

393 (ii) a cannabis processing facility;

394 (iii) a cannabis dispensary; or

395 (iv) an independent cannabis testing laboratory;

396 (e) a security plan for the medical cannabis establishment;

397 (f) evidence that the person will implement an inventory control system at the medical

398 cannabis establishment; and

399 (g) the results of a criminal background check for each owner, principal, or shareholder  
400 of the person that will operate the medical cannabis establishment.

401 (2) The division shall, for a medical cannabis establishment to which the division  
402 issues a license under Subsection (1), designate whether the license authorizes the medical  
403 cannabis establishment to operate as:

404 (a) a cannabis cultivation facility;

405 (b) a cannabis processing facility;

406 (c) a cannabis dispensary; or

407 (d) an independent cannabis testing laboratory.

408 (3) The division may not issue more than the greater of, in each county in the state:

409 (a) one cannabis dispensary license; or

410 (b) one cannabis dispensary license per 200,000 county residents.

411 (4) A medical cannabis establishment licensed by the division under Subsection (1)

412 shall:

413 (a) operate in a facility that houses, for the medical cannabis establishment's business  
414 address, only the medical cannabis establishment; and

415 (b) have a single, secure public entrance.

416 (5) A medical cannabis establishment may not allow any person to consume cannabis  
417 on the property or premises of the establishment.

418 (6) The division may inspect the records of a medical cannabis establishment in order  
419 to determine if the medical cannabis establishment complies with the licensing requirements of  
420 this chapter.

421 (7) A medical cannabis establishment may only accept payment for cannabis, a  
422 cannabis product, or a cannabis device, in a transaction facilitated by the inventory control  
423 system described in Section 58-85-104 and the electronic verification system described in  
424 Section 53-17-104.

425 (8) Except as provided in Subsection (9), a medical cannabis establishment may not  
426 advertise in any medium.

427 (9) A medical cannabis establishment may have a sign on the outside of the medical  
428 cannabis establishment that includes only:

429 (a) the medical cannabis establishment's name; and

430 (b) a green cross.

431 (10) A municipality or local government may not enact a zoning ordinance that  
432 prohibits a medical cannabis establishment from operating in a location within the  
433 municipality's or local government's jurisdiction, on the basis that the medical cannabis  
434 establishment is a medical cannabis establishment.

435 (11) A municipality or local government shall allow a medical cannabis establishment  
436 to operate in:

437 (a) if the medical cannabis establishment is a cannabis dispensary, as a permitted use,  
438 in an agricultural, industrial, or commercial zone; and

439 (b) if the medical cannabis establishment is a cannabis cultivation facility, a cannabis  
440 processing facility, or an independent testing laboratory:

441 (i) as a permitted use, in an agricultural or industrial zone; and

442 (ii) as a conditional use, in a commercial zone.

443 (12) A physician may not serve as an owner, principal, or shareholder of a medical  
444 cannabis establishment.

445 (13) The division may revoke the license of a medical cannabis establishment under  
446 this section if the medical cannabis establishment violates the requirements of this chapter.

447 Section 10. Section **58-85-104** is enacted to read:

448 **58-85-104. Inventory control system.**

449 Each medical cannabis establishment licensed under Section [58-85-103](#) shall maintain  
450 an inventory control system that:

451 (1) is capable of tracking, in real time, cannabis from the first point the cannabis is  
452 planted as a seed, a clone, or a cutting, until the cannabis is sold, in the form of unprocessed  
453 cannabis or a cannabis product, to a medical cannabis patient card holder;

454 (2) stores, in real time, a record of the amount of cannabis or cannabis products in a  
455 medical cannabis establishment's possession;

456 (3) keeps a record of the medical cannabis establishment's sales to medical cannabis  
457 patient card holders and other medical cannabis establishments;

458 (4) is capable of interfacing with the electronic verification system maintained by the  
459 Department of Public Safety under Section [53-17-104](#) in order for an individual with a medical

460 cannabis patient card who purchases cannabis, a cannabis product, or a cannabis device to:

461 (a) identify the origin of the cannabis or cannabis product the individual purchased;

462 and

463 (b) identify each medical cannabis establishment that had contact with the cannabis the  
464 individual purchased;

465 (5) transmits, for each medical cannabis purchase by an individual with a medical  
466 cannabis patient card, a 25 cents transaction fee to the Department of Public Safety;

467 (6) transfers funds used for cannabis or a cannabis product between medical cannabis  
468 establishments;

469 (7) includes a video recording system that monitors all activity related to handling  
470 cannabis or a cannabis product that is tamper proof and capable of storing a video record for a  
471 minimum of 90 days; and

472 (8) is accessible by the Department of Public Safety.

473 Section 11. Section **58-85-105** is enacted to read:

474 **58-85-105. Cannabis cultivation facility -- Operating requirements.**

475 (1) A cannabis cultivation facility shall cultivate cannabis only:

476 (a) indoors, in an enclosed, locked facility that is accessible only by an individual with  
477 a valid medical cannabis agent registration card under Section [58-85-202](#); and

478 (b) at the physical address provided to the division under Section [58-85-103](#).

479 (2) A cannabis cultivation facility shall ensure that any cannabis growing inside the  
480 facility is not visible from outside the building.

481 (3) A cannabis cultivation facility shall use a unique batch identifier for each batch of  
482 cannabis transferred to a cannabis dispensary or cannabis processing facility.

483 Section 12. Section **58-85-106** is enacted to read:

484 **58-85-106. Cannabis processing facility -- Eligibility requirements -- Operating**  
485 **requirements.**

486 (1) A cannabis processing facility shall ensure that a cannabis product that the cannabis  
487 processing facility sells or provides to a cannabis dispensary:

488 (a) has a label that:

489 (i) clearly and unambiguously states that the cannabis product contains cannabis;

490 (ii) clearly displays the full cannabinoid profile of the cannabis product; and



- 491 (iii) has a unique batch identifier;
- 492 (b) is sold in packaging that:
- 493 (i) is not appealing to children;
- 494 (ii) is opaque;
- 495 (iii) makes a physician's instructions easy to follow; and
- 496 (iv) allows the cannabis product to be tracked by an inventory control system; and
- 497 (c) is not configured or colored to resemble candy.
- 498 (2) A cannabis processing facility shall produce a cannabis product only:
- 499 (a) in an enclosed, locked facility that is accessible only by an individual with a valid
- 500 medical cannabis agent registration card under Section [58-85-202](#); and
- 501 (b) at the physical address provided to the division under Section [58-85-103](#).
- 502 Section 13. Section **58-85-107** is enacted to read:
- 503 **58-85-107. Cannabis dispensary -- Eligibility requirements -- Operating**
- 504 **requirements.**
- 505 (1) A cannabis dispensary shall ensure that:
- 506 (a) the cannabinoid profile in cannabis or a cannabis product that the dispensary sells
- 507 or offers for sale is clearly and accurately stated on the cannabis or cannabis product
- 508 packaging;
- 509 (b) the cannabis dispensary does not sell to an individual, in any one 14-day period:
- 510 (i) an amount of cannabis that exceeds two ounces by weight; or
- 511 (ii) an amount of cannabis products that exceeds the amount recommended by the
- 512 individual's physician; and
- 513 (c) the legal limit on the purchase of cannabis is posted clearly and conspicuously
- 514 within the public area of the cannabis dispensary.
- 515 (2) A cannabis dispensary may only sell cannabis or a cannabis product that has been
- 516 inspected by an independent testing laboratory to determine the concentration, in the cannabis
- 517 or cannabis product, of:
- 518 (a) cannabinoids;
- 519 (b) organic and non-organic substances in the cannabis or cannabis product;
- 520 (c) mold and fungus;
- 521 (d) pesticides and fertilizers; and

522 (e) nutrients.

523 (3) A cannabis dispensary may only sell:

524 (a) cannabis;

525 (b) a cannabis product; or

526 (c) a cannabis device.

527 (4) A cannabis dispensary may not sell a cannabis device that is constructed or  
528 produced such that, when an individual uses the cannabis device, the use imitates smoking.

529 (5) A cannabis dispensary may only sell cannabis, a cannabis product, or a cannabis  
530 device in a separate and defined area where only an individual with a medical cannabis patient  
531 card, or a designated caregiver authorized to use a medical cannabis patient card, may enter.

532 Section 14. Section **58-85-108** is enacted to read:

533 **58-85-108. Independent cannabis testing laboratory -- Eligibility requirements --**  
534 **Operating requirements.**

535 (1) In addition to the requirements described in Section [58-85-104](#), the division shall  
536 license a private laboratory as an independent cannabis testing laboratory if the laboratory is  
537 able to determine accurately, for cannabis or a cannabis product that a cannabis dispensary sells  
538 or offers to sell:

539 (a) the concentration of cannabinoids in the cannabis or cannabis product;

540 (b) whether the cannabis or cannabis product is or contains organic or nonorganic  
541 material;

542 (c) whether the cannabis or cannabis product contains mold or fungus;

543 (d) the concentration of pesticides and fertilizers in the cannabis or cannabis product;

544 and

545 (e) the concentration of nutrients in the cannabis or cannabis product.

546 (2) An independent cannabis testing laboratory may not have an owner, principal, or  
547 shareholder who is an owner, principal, or shareholder, of another medical cannabis  
548 establishment.

549 Section 15. Section **58-85-201** is enacted to read:

550 **Part 2. Medical Cannabis Establishment Agents**

551 **58-85-201. Title.**

552 This part is known as "Medical Cannabis Establishment Agents."

553 Section 16. Section **58-85-202** is enacted to read:

554 **58-85-202. Medical cannabis establishment agent -- Registration.**

555 (1) An individual may not act as an owner, shareholder, employee, or agent of a  
556 medical cannabis establishment unless the individual is registered by the division as a medical  
557 cannabis establishment agent.

558 (2) The division shall register and issue a medical cannabis establishment agent  
559 registration card to an individual who:

560 (a) has not been convicted of an excluded felony offense;

561 (b) provides to the division:

562 (i) the individual's name and address; and

563 (ii) the name and location of licensed medical cannabis establishments where the  
564 individual seeks to act as the medical cannabis establishment's agent; and

565 (c) authorizes the division to conduct a criminal background check on the individual.

566 (3) The division shall designate, for a medical cannabis establishment agent  
567 registration card the division issues under Subsection (2), whether the medical cannabis  
568 establishment agent registration card holder is authorized to act as an agent for:

569 (a) a cannabis cultivation facility;

570 (b) a cannabis processing facility;

571 (c) a cannabis dispensary; or

572 (d) an independent cannabis testing laboratory.

573 (4) The division may revoke the medical cannabis agent registration card of an  
574 individual who:

575 (a) violates the requirements of this chapter; or

576 (b) commits an excluded felony offense.

577 Section 17. **Repealer.**

578 This bill repeals:

579 Section **26-56-101**, Title.

580 Section **26-56-102**, Definitions.

581 Section **26-56-103**, Hemp extract registration card -- Application -- Fees --  
582 **Database.**

583 Section **58-37-4.3**, Exemption for use or possession of hemp extract.

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**Legislative Review Note**  
**as of 3-3-15 5:27 PM**

The Utah Legislature's Joint Rule 4-2-402 requires legislative general counsel to place a legislative review note on legislation. The Legislative Management Committee has further directed legislative general counsel to include legal analysis in the legislative review note only if legislative general counsel determines there is a high probability that a court would declare the legislation to be unconstitutional under the Utah Constitution, the United States Constitution, or both. As explained in the legal analysis below, legislative general counsel has determined, based on applicable state and federal constitutional language and current interpretations of that language in state and federal court case law, that this legislation has a high probability of being declared unconstitutional by a court.

S.B. 259: (1) defines "cannabis" as marijuana, defines "cannabis product" as a product containing tetrahydrocannabinol, and defines "cannabis device" as a device, except for a device that facilitates cannabis combustion, that is used to aid an individual in ingesting cannabis or a cannabis product; (2) gives the State Tax Commission the authority to issue a registration card to an individual who, based on a statement from a physician, could benefit from treatment by cannabis or a cannabis product, or to an individual caring for a minor who, based on a statement from a physician, could benefit from treatment by cannabis; (3) allows a registered individual, within certain limitations, to use or possess cannabis, a cannabis product, or a cannabis device; (4) allows a person licensed with the Utah Division of Occupational and Professional Licensing to grow cannabis, to possess and process cannabis and a cannabis product, and to sell cannabis and a cannabis product to a registered individual or another licensed person; and (5) directs the State Tax Commission to hold and transfer funds from cannabis and cannabis product transactions for and between licensed persons and registered individuals.

There is a high probability that a court will find S.B. 259 unconstitutional as preempted by federal law.

The federal Controlled Substances Act defines "marihuana" as "all parts of the plant *Cannabis sativa* L., whether growing or not," and only exempts a compound or other mixture made from the "mature stalks" or sterilized seeds of the plant. 21 U.S.C. § 802(16) (2015). The act lists marihuana as a controlled substance and makes it illegal to possess a controlled substance without a prescription, or to possess a controlled substance with intent to distribute the substance. *Id.* at §§ 841, 844. In addition to the federal Controlled Substances Act, other federal laws regarding banking and racketeering prohibit commercial and banking activity involving a controlled substance, including marihuana.

Under the Supremacy Clause in the U.S. Constitution, the U.S. Supreme Court has "long recognized that state laws that conflict with federal law are without effect." *Altira Group v. Good*, 555 U.S. 70 (2008). Federal law limits preemption under the federal Controlled Substances Act to those cases where a "positive conflict" exists between the Act and a state

law, such that it is impossible for a party to comply with both state and federal requirements. See 21 U.S.C. § 903; *Sprietsma v. Mercury Marine*, 537 U.S. 51, 64 (2002).

Substances that meet S.B. 259's definitions of cannabis and cannabis product need not be made exclusively from the mature stalks or sterilized seeds of the cannabis plant, and therefore are likely to be considered "marihuana" under the federal Controlled Substances Act. Any substance that meets the federal Controlled Substances Act's definition of marihuana will trigger the possession and distribution prohibitions contained in the Act. An individual possessing or using cannabis or a cannabis product likely could not comply with the provisions of S.B. 259 without also violating the possession prohibitions in federal law, creating a positive conflict with the bill and federal law. Likewise, a person that possesses and sells cannabis or a cannabis product likely could not comply with the provisions of S.B. 259 without violating the possession and distribution provisions in federal law, creating a second positive conflict.

In addition to the positive conflicts S.B. 259 creates with the federal Controlled Substances Act, S.B. 259 likely creates additional positive conflicts with federal banking and racketeering laws prohibiting commercial and banking activity involving a controlled substance. Those laws are likely to conflict with the regulatory scheme established by S.B. 259 for the transfer of funds related to the possession, sale, and distribution of cannabis and cannabis products.

Those positive conflicts result in a high probability that a court will hold that S.B. 259 is preempted by federal law and unconstitutional under the Supremacy Clause.

**Office of Legislative Research and General Counsel**