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Summary: Medical use of cannabis

**HISTORY OF LEGISLATIVE ACTIONS**

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**VERSIONS OF THIS BILL**

[4/16/2015](file:///p:\pprever\2015-16\4004_20150416.docx)

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SUBARTICLE 5 TO ARTICLE 18, CHAPTER 53, TITLE 44 SO AS TO ALLOW THE MEDICAL USE OF LOW‑THC CANNABIS BY CERTAIN INDIVIDUALS WITH CERTAIN MEDICAL CONDITIONS, TO GRANT PHYSICIANS THE AUTHORITY TO ORDER LOW‑THC CANNABIS FOR MEDICAL USE BY A PATIENT UNDER CERTAIN CIRCUMSTANCES, TO REQUIRE CREATION OF A COMPASSIONATE USE REGISTRY TO FACILITATE THE PURPOSES OF THE SUBARTICLE, TO REQUIRE ESTABLISHMENT OF DISPENSING ORGANIZATIONS TO DISPENSE LOW‑THC CANNABIS FOR MEDICAL USE, TO PROTECT QUALIFYING PATIENTS, DESIGNATED CAREGIVERS, AND PHYSICIANS FROM ARREST, PROSECUTION, AND CERTAIN PENALTIES FOR CONDUCT PERMITTED BY THE PROVISIONS OF THE SUBARTICLE, TO ESTABLISH CRIMINAL PENALTIES, AND FOR OTHER PURPOSES; BY ADDING SUBARTICLE 7 TO ARTICLE 18, CHAPTER 53, TITLE 44 SO AS TO ALLOW CERTAIN ENTITIES TO CONDUCT RESEARCH ON CANNABIDIOL AND LOW‑THC CANNABIS, TO REQUIRE THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL TO FACILITATE PROPER TECHNIQUES FOR HANDLING AND TESTING OF MARIJUANA‑INFUSED PRODUCTS, AND FOR OTHER PURPOSES; TO AMEND SECTION 44‑53‑110, AS AMENDED, RELATING TO DEFINITIONS OF TERMS, SO AS TO CHANGE THE DEFINITION FOR MARIJUANA; TO AMEND SECTION 44‑53‑1810, RELATING TO DEFINITIONS OF TERMS, SO AS TO INCLUDE DEFINITIONS FOR ADDITIONAL TERMS; TO AMEND SECTION 44‑53‑1840, RELATING TO IMMUNITY FROM ARREST AND PROSECUTION UNDER STATE AND LOCAL LAW, PROTECTION FROM CERTAIN PENALTIES, AND THE DUTY TO DEFEND, SO AS TO PROVIDE IMMUNITY AND OTHER PROTECTIONS FOR CERTAIN INDIVIDUALS WHO ACT IN COMPLIANCE WITH SECTIONS 44‑53‑1820 AND 44‑53‑1830; AND TO REDESIGNATE CERTAIN SECTIONS OF ARTICLE 18 AS SUBARTICLES.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Article 18, Chapter 53, Title 44 of the 1976 Code is amended by adding:

“Subarticle 5

Low‑THC Cannabis Medical Use

Section 44‑53‑1850. A physician who has examined and is treating a patient suffering from a qualifying medical condition may order, for the patient’s medical use, low‑THC cannabis to treat the qualifying medical condition or to alleviate symptoms of the qualifying medical condition, if no other satisfactory alternative treatment options exist for that patient and the physician:

(1) determines that the risks of ordering low‑THC cannabis are reasonable in light of the potential benefit for that patient; however, if a patient is younger than eighteen years of age, a second physician must concur with this determination, and the determination must be documented in the patient’s medical record;

(2) registers as the orderer of low‑THC cannabis for the named patient on the compassionate use registry maintained by the department, updates the registry to reflect the contents of the order, and deactivates the patient’s registration when treatment is discontinued;

(3) maintains a patient treatment plan that includes the dose, route of administration, planned duration, and monitoring of the patient’s symptoms and other indicators of tolerance or reaction to the low‑THC cannabis;

(4) submits the patient treatment plan quarterly to the department for research on the safety and efficacy of low‑THC cannabis on patients; and

(5) obtains the voluntary informed consent of the patient or the patient’s legal guardian to treatment with low‑THC cannabis after sufficiently explaining the current state of knowledge in the medical community of the effectiveness of treatment of the patient’s condition with low‑THC cannabis, the medically acceptable alternatives, and the potential risks and side effects.

Section 44‑53‑1860. A person who fraudulently represents that he has a qualifying medical condition for the purpose of being ordered low‑THC cannabis by a physician is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars or imprisoned not more than thirty days.

Section 44‑53‑1870. (A) A physician is not subject to arrest by state or local law enforcement, prosecution or penalty under state or local law, or the denial of a right or privilege including, but not limited to, disciplinary action by the South Carolina Board of Medicine or other occupational or professional licensing entity, for providing a written order for low‑THC cannabis for a patient pursuant to Section 44‑53‑1850; however, nothing prevents a professional licensing entity from sanctioning a physician for failing to properly evaluate or treat a patient’s medical condition.

(B) Notwithstanding subsection (A), the department shall track the number of qualifying patients who are ordered low‑THC cannabis by a physician and shall refer any concerns about physician conduct to the appropriate licensing board.

Section 44‑53‑1880. (A) The department shall create a secure, electronic, and online compassionate use registry for the registration of physicians and qualifying patients pursuant to this section. The registry must be accessible to law enforcement agencies and to a dispensing organization in order to verify patient authorization for low‑THC cannabis and record the low‑THC cannabis dispensed. The registry must prevent an active registration of a patient by multiple physicians.

(B) The department shall authorize the establishment of four dispensing organizations to ensure reasonable statewide accessibility and availability as necessary for patients registered in the compassionate use registry who are ordered low‑THC cannabis pursuant to this subarticle, one in each of the following regions:

(1) upstate region consisting of Oconee, Pickens, Greenville, Anderson, Abbeville, Greenwood, Laurens, Spartanburg, Cherokee, Union, York, and Chester counties;

(2) midlands region consisting of McCormick, Edgefield, Saluda, Newberry, Fairfield, Lancaster, Chesterfield, Kershaw, Richland, Lexington, Aiken, Barnwell, Bamberg, Orangeburg, Calhoun, Clarendon, Sumter, and Lee counties;

(3) southeast region consisting of Allendale, Hampton, Jasper, Beaufort, Colleton, Dorchester, Charleston, and Berkley counties; and

(4) northeast region consisting of Marlboro, Dillon, Marion, Horry, Georgetown, Williamsburg, Florence, and Darlington counties.

(C) The department shall develop an application form and impose an initial application and biennial renewal fee that is sufficient to cover the costs of administering this subarticle. An applicant for approval as a dispensing organization must be able to demonstrate:

(1) the technical and technological ability to cultivate and produce low‑THC cannabis;

(2) the ability to secure the premises, resources, and personnel necessary to operate as a dispensing organization;

(3) the ability to maintain accountability of all raw materials, finished products, and any byproducts to prevent diversion or unlawful access to or possession of these substances;

(4) an infrastructure reasonably located to dispense low‑THC cannabis to registered patients statewide or regionally as determined by the department;

(5) the financial ability to maintain operations for the duration of the two‑year approval cycle, including the provision of certified financials to the department, and upon approval to post a five million dollar performance bond;

(6) that all owners, managers, and employees have undergone state and federal criminal background checks and have not been convicted of, or pled guilty or nolo contendere to, a felony drug‑related offense;

(7) the employment of a medical director who is a physician to supervise the activities of the dispensing organization;

(8) the possession of a valid certificate of registration issued by the Department of Agriculture pursuant to Section 46‑33‑90;

(9) the operation by a nurseryman as defined in Section 46‑33‑90; and

(10) the operation as a registered nursery in this State for at least thirty continuous years.

(D) The department shall monitor physician registration and ordering of low‑THC cannabis for ordering practices that could facilitate unlawful diversion or misuse of low‑THC cannabis and take disciplinary action as indicated.

(E) The department shall promulgate regulations necessary to implement this section.

Section 44‑53‑1890. The department shall require the medical director of each dispensing organization approved pursuant to Section 44‑53‑1880 to successfully complete a two‑hour course and subsequent examination that encompasses appropriate safety procedures and knowledge of low‑THC cannabis.

Section 44‑53‑1900. An approved dispensing organization shall maintain compliance with the criteria demonstrated for selection and approval as a dispensing organization pursuant to Section 44‑53‑1880 at all times. Before dispensing low‑THC cannabis to a qualifying patient, the dispensing organization shall verify that the patient has an active registration in the compassionate use registry, the order presented matches the order contents as recorded in the registry, and the order has not already been filled. Upon dispensing the low‑THC cannabis, the dispensing organization shall record in the registry the date, time, quantity, and form of low‑THC cannabis dispensed.

Section 44‑53‑1910. (A) Notwithstanding any other provision of law, but subject to the requirements of this subarticle, a qualifying patient and the qualifying patient’s designated caregiver may purchase and possess for the patient’s medical use up to the amount of low‑THC cannabis ordered for the patient.

(B) Notwithstanding any other provision of law, but subject to the requirements of this subarticle, an approved dispensing organization and its owners, managers, and employees may manufacture, possess, sell, deliver, distribute, dispense, and lawfully dispose of reasonable quantities of low‑THC cannabis, in accordance with department regulation.

Section 44‑53‑1920. (A) A qualifying patient or designated caregiver is not subject to arrest by state or local law enforcement, prosecution or penalty under state or local law, or the denial of a right or privilege including, but not limited to, professional or occupational discipline for the medical use of low‑THC cannabis pursuant to the provisions of this subarticle.

(B) Nothing in this subarticle protects a qualifying patient or designated caregiver from arrest, prosecution, penalty, or the denial of a privilege for:

(1) using or possessing low‑THC cannabis for purposes other than for medical use or assisting with the medical use as permitted by this subarticle;

(2) being under the influence of low‑THC cannabis while:

(a) operating a motor vehicle, commercial vehicle, boat, vessel, or another vehicle propelled or drawn by power other than muscular power;

(b) working in his place of employment without the written permission of the employer; or

(c) operating or handling heavy machinery or a dangerous instrumentality;

(3) using low‑THC cannabis by vaporization in a public place including, but not limited to:

(a) a public bus or other public vehicle; or

(b) a public park, public beach, or public field;

(4) possessing low‑THC cannabis on the grounds of:

(a) a public or private preschool, elementary school, or secondary school;

(b) a public recreation center or youth center;

(c) an area designated as a drug‑free zone;

(d) a correctional facility; or

(e) a law enforcement facility.

Section 44‑53‑1930. A designated caregiver may receive compensation for costs, not including labor, associated with assisting a qualifying patient who has designated the caregiver to assist with the medical use of low‑THC cannabis. The compensation does not constitute the sale of a controlled substance.

Section 44‑53‑1940. (A) A person entitled to custody of, or visitation or parenting time with, a minor must not be denied these rights for conduct allowed pursuant to this subarticle.

(B) There is no presumption of child abuse or neglect for conduct allowed pursuant to this subarticle.

Section 44‑53‑1950. For purposes of medical care, including organ transplants, a qualifying patient’s use of low‑THC cannabis pursuant to this subarticle is considered the authorized use of a medication taken at the direction of a physician and does not constitute the use of an illegal substance.

Section 44‑53‑1960. Nothing in this article may be construed to require:

(1) a health insurance provider, health care plan, or medical assistance program to be liable for or reimburse a claim for the medical use of low‑THC cannabis;

(2) an individual or entity in lawful possession of property to allow a guest, client, customer, or other visitor to engage in the medical use of low‑THC cannabis while on the property;

(3) an employer to accommodate the medical use of low‑THC cannabis at his place of employment; or

(4) a jail, detention center, correctional facility, or other type of penal institution to allow the medical use of low‑THC cannabis on its premises.

Section 44‑53‑1970. Low‑THC cannabis that is possessed, owned, or used in connection with the medical use of low‑THC cannabis as allowed pursuant to this article or acts incidental to that use, must not be seized or forfeited if the basis for the seizure or forfeiture is activity authorized by and not subject to penalties pursuant to this subarticle.

Section 44‑53‑1980. (A) A dispensing organization shall conduct a state and federal criminal background check on a prospective employee or volunteer before employing or allowing the person to volunteer. The department shall fine an organization one thousand dollars for failure to comply with this section.

(B)(1) A prospective employee or volunteer shall consent in writing to undergo a state and federal criminal background check and a drug screen as a condition of employment or volunteering and shall provide annual criminal background checks to the organization and consent to periodic drug screens while employed or volunteering. A prospective or existing employee or volunteer shall pay the costs of the criminal background checks and drug screens.

(2) A dispensing organization shall maintain the results of criminal background checks and drug screens as part of the employee’s or volunteer’s personnel records.

Section 44‑53‑1990. A dispensing organization is subject to inspection by the department. During an inspection, the department may review the alternative treatment center’s records, including its dispensing and data collection records.

Section 44‑53‑2000. (A) A dispensing organization must not be located in a residential district or within one thousand feet of the property line of a preexisting kindergarten, public or private elementary or secondary school, or a designated drug‑free school zone.

(B) Low‑THC cannabis and low‑THC cannabis paraphernalia must not be visible off the premises of a dispensing organization.

Section 44‑53‑2010. A dispensing organization shall implement appropriate security measures to deter and prevent the unauthorized entrance into areas containing low‑THC cannabis and low‑THC cannabis paraphernalia and the theft thereof and shall ensure that each location has an operational security alarm system.

Section 44‑53‑2020. Low‑THC cannabis dispensed by a dispensing organization must include a label specifying the weight of the low‑THC cannabis and any other information required by the department. The label also must state that the low‑THC cannabis is for medical use only and that diversion is a felony which, upon conviction, results in:

(1) revocation of the registry card;

(2) a fine of not more than five thousand dollars or imprisonment of not more than ten years, or both; and

(3) the possibility of other penalties allowed pursuant to law.

Subarticle 7

Research, Oversight, and Compliance

Section 44‑53‑2030. (A) An academic medical center may conduct research on cannabidiol and low‑THC cannabis. This research may include, but is not limited to, the agricultural development, production, clinical research, and use of liquid medical derivatives of cannabidiol and low‑THC cannabis for the therapeutic use.

(B) A state university with both medical and agricultural research programs, including those that have satellite campuses or research agreements with other similar institutions, may conduct research on cannabidiol and low‑THC cannabis. This research may include, but is not limited to, the agricultural development, production, clinical research, and use of liquid medical derivatives of cannabidiol and low‑THC cannabis for therapeutic use.

Section 44‑53‑2040. The department shall establish requirements for the handling, testing, inspection, and production of marijuana infused products. The requirements must be established in compliance with applicable state, local, and federal guidelines including, but not limited to, the Food Safety Modernization Act.

Section 44‑53‑2050. Subject to Chapter 35, Title 11, South Carolina Consolidated Procurement Code, the department is authorized to procure services of qualified contractors to assist in implementing this article, including testing, auditing, inspection, registry management, diversion control, and other compliance services.”

SECTION 2. Section 44‑53‑110(27) of the 1976 Code, as last amended by Act 221 of 2014, is further amended to read:

“(27)(a) ‘Marijuana’ means:

(i) all species or variety of the marijuana plant and all parts thereof whether growing or not;

(ii) the seeds of the marijuana plant;

(iii) the resin extracted from any part of the marijuana plant; or

(iv) every compound, manufacture, salt, derivative, mixture, or preparation of the marijuana plant, marijuana seeds, or marijuana resin.

(b) ‘Marijuana’ does not mean:

(i) the mature stalks of the marijuana plant or fibers produced from these stalks;

(ii) oil or cake made from the seeds of the marijuana plant, including cannabidiol derived from the seeds of the marijuana plant;

(iii) any other compound, manufacture, salt, derivatives, mixture, or preparation of the mature stalks (except the resin extracted therefrom), including cannabidiol derived from mature stalks;

(iv) the sterilized seed of the marijuana plant which is incapable of germination;

(v) low‑THC cannabis as defined in Section 44‑53‑1810;

(vi) for persons participating in a clinical trial or in an expanded access program related to administering cannabidiol or low‑THC cannabis for the treatment of severe forms of epilepsy pursuant to Article 18, Chapter 53, Title 44, a drug or substance approved for the use of those participants by the federal Food and Drug Administration; or

~~(vi)~~(vii) for persons, or the persons’ parents, legal guardians, or other caretakers, who have received a written ~~certification~~ order from a physician licensed in this State that the person has been diagnosed by a physician as having Lennox‑Gastaut Syndrome, Dravet Syndrome, also known as ‘severe myoclonic epilepsy of infancy’, or any other severe form of epilepsy that is not adequately treated by traditional medical therapies, the substance cannabidiol, a nonpsychoactive cannabinoid, or any compound, manufacture, salt, derivative, mixture, or preparation of any plant of the genus cannabis that contains nine‑tenths of one percent or less of tetrahydrocannabinol and more than fifteen percent of cannabidiol.

(c) For purposes of this item, written certification means a document dated and signed by a physician stating that the patient has been diagnosed with Lennox‑Gastaut Syndrome, Dravet Syndrome, also known as ‘severe myoclonic epilepsy of infancy’, or any other severe form of epilepsy that is not adequately treated by traditional medical therapies and the physician’s conclusion that the patient might benefit from the medical use of cannabidiol.

(d) A physician is not subject to detrimental action, including arrest, prosecution, penalty, denial of a right or privilege, civil penalty, or disciplinary action by a professional licensing board for providing written certification for the medical use of cannabidiol to a patient in accordance with this section.”

SECTION 3. Section 44‑53‑1810 of the 1976 Code, as added by Act 221 of 2014, is amended to read:

“Section 44‑53‑1810. As used in this article:

(1) ‘Academic medical center’ means a research hospital that operates a medical residency program for physicians and conducts research that involves human subjects, and other hospital research programs conducting research as a subrecipient with the academic medical center as the prime awardee.

(2) ‘Approved source’ means a provider approved by the United States Food and Drug Administration which produces cannabidiol that:

(a) has been manufactured and tested in a facility approved or certified by the United States Food and Drug Administration or similar national regulatory agency in another country which has been approved by the United States Food and Drug Administration; and

(b) has been tested in animals to demonstrate preliminary effectiveness and to ensure that it is safe to administer to humans.

(3) ‘Cannabidiol’ means a finished preparation containing, of its total cannabinoid content, at least 98 percent cannabidiol and not more than 0.90 percent tetrahydrocannabinol by volume that has been extracted from marijuana or synthesized in a laboratory.

(4) ‘Designated caregiver’ means a person who provides informal or formal care to a qualifying patient, with or without compensation, on a temporary or permanent or full‑time or part‑time basis and includes a relative, household member, day care personnel, and personnel of a public or private institution or facility.

(5) ‘Dispensing organization’ means an organization approved by the department to cultivate, process, and dispense low‑THC cannabis pursuant to Subarticle 5.

(6) ‘Low‑THC cannabis’ means a plant of the genus Cannabis, the dried flowers of which contain 0.8 percent or less of tetrahydrocannabinol and more than 10 percent of cannabidiol weight for weight, the seeds of the plant, the resin extracted from any part of the plant, or any compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin that is dispensed only from a dispensing organization.

(7) ‘Medical use’ means administration of the ordered amount of low‑THC cannabis but does not include:

(a) the possession, use, or administration by smoking; or

(b) the transfer of low‑THC cannabis to a person other than the qualifying patient for whom it was ordered or the qualifying patient’s legal representative on behalf of the qualifying patient.

~~(5)~~(8) ‘Pharmacist’ means an individual health care provider licensed by this State to engage in the practice of pharmacy.

~~(6)~~(9) ‘Physician’ means a doctor of medicine or doctor of osteopathic medicine licensed by the South Carolina Board of Medical Examiners.

(10) ‘Qualifying medical condition’ means:

(a) cancer, glaucoma, positive status for human immunodeficiency virus, acquired immune deficiency syndrome, hepatitis C currently receiving antiviral treatment, amyotrophic lateral sclerosis, muscular dystrophy, Crohn’s disease, agitation of Alzheimer’s disease, multiple sclerosis, chronic pancreatitis, spinal cord injury or disease, traumatic brain injury, or an injury that significantly interferes with daily activities as documented by the patient’s physician;

(b) a severely debilitating or terminal medical condition or its treatment that has produced elevated intraocular pressure, cachexia, chemotherapy‑induced anorexia, wasting syndrome, severe pain that has not responded to previously prescribed medication or surgical measures or for which other treatment options produced serious side effects, constant or severe nausea, moderate to severe vomiting, seizures, or severe, persistent muscle spasms; and

(c) any other medical condition not included in subitems (a) or (b) that the department determines is severely debilitating or terminal.

~~(7)~~(11) ‘Qualifying patient’ means ~~anyone who~~ a resident of this State who:

(a) suffers from Lennox‑Gastaut Syndrome, Dravet Syndrome, also known as severe myoclonic epilepsy of infancy, or any other form of refractory epilepsy that is not adequately treated by traditional medical therapies; or

(b) has been diagnosed by a physician as having a qualifying medical condition and who has been added to the compassionate use registry by a physician licensed to prescribe drugs pursuant to Chapter 47, Title 40 and who possesses a registration from the United States Drug Enforcement Administration to prescribe controlled substances.

(12) ‘Smoking’ means burning or igniting a substance and inhaling the smoke but does not include the use of a vaporizer.

(13) ‘Vaporization’ means the inhalation of low‑THC cannabis without combustion of the low‑THC cannabis.

(14) ‘Written order’ means a document dated and signed by a physician stating that the patient has been diagnosed with a qualifying medical condition not adequately treated by traditional medical therapies and the physician’s conclusion that the patient might benefit from the medical use of low‑THC cannabidiol.”

SECTION 4. Section 44‑53‑1840 of the 1976 Code, as added by Act 221 of 2014, is amended to read:

“Section 44‑53‑1840. (A) A person acting in compliance with the provisions of this ~~article~~ subarticle must not be subject to arrest, prosecution, or any civil or administrative penalty, including a civil penalty or disciplinary action by a professional licensing board, or be denied any right or privilege, for the use, prescription, administration, possession, manufacture, or distribution of medical cannabis.

(B) The State must defend a state employee against a federal claim or suit that arises or by virtue of their good faith performance of official duties pursuant to this ~~article~~ subarticle.”

SECTION 5. Section 44‑53‑1810 within Article 18, Chapter 53, Title 44 is redesignated as Subarticle 1, “General Provisions”.

SECTION 6. Sections 44‑53‑1820 through 44‑53‑1840 within Article 18, Chapter 53, Title 44 are redesignated as Subarticle 3, “Cannabidiol Clinical Trials”.

SECTION 7. This act takes effect upon approval by the Governor.

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