**South Carolina General Assembly**

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**H. 4872**

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Summary: Medical Marijuana Act

**HISTORY OF LEGISLATIVE ACTIONS**

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3/6/2014 House Referred to Committee on **Judiciary** ([House Journal‑page 24](file:///H:\HJ%20Archive\2014\03-06-14.docx))

**VERSIONS OF THIS BILL**

[3/6/2014](file:///p:\pprever\2013-14\4872_20140306.docx)

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, SO AS TO ENACT THE “SOUTH CAROLINA MEDICAL MARIJUANA ACT” BY ADDING ARTICLE 17 TO CHAPTER 53, TITLE 44 SO AS TO AUTHORIZE THE MEDICAL USE OF MARIJUANA BY CERTAIN INDIVIDUALS AND FOR CERTAIN DISEASES AND MEDICAL CONDITIONS; TO AUTHORIZE PHYSICIANS LICENSED IN GOOD STANDING IN THE STATE TO RECOMMEND THE MEDICAL USE OF MARIJUANA UNDER CERTAIN CONDITIONS; TO AUTHORIZE CERTAIN INDIVIDUALS TO ACT AS CAREGIVERS FOR PATIENTS TO ASSIST IN THE MEDICAL USE OF MARIJUANA UNDER LIMITED CIRCUMSTANCES; TO CREATE A CONFIDENTIAL REGISTRY THROUGH WHICH TO ISSUE IDENTIFICATION CARDS TO REGISTERED PATIENTS AND REGISTERED CAREGIVERS AUTHORIZED TO ENGAGE IN THE MEDICAL USE OF MARIJUANA; TO PROVIDE CERTAIN DEFENSES AND OTHER PROTECTIONS TO REGISTERED PATIENTS, REGISTERED CAREGIVERS, AND PHYSICIANS FROM CRIMINAL PROSECUTION AND SANCTIONS AND PROFESSIONAL DISCIPLINE FOR CONDUCT AUTHORIZED BY THIS ARTICLE; TO PROVIDE FOR THE OPERATION OF DISPENSARIES TO CULTIVATE, GROW, AND DISPENSE MARIJUANA FOR MEDICAL USE; TO PROVIDE CERTAIN DEFENSES AND PROTECTIONS TO DISPENSARIES FOR CONDUCT AUTHORIZED BY THIS ARTICLE; TO ALLOW ESTABLISHMENT OF FEES; TO CREATE CRIMINAL PENALTIES FOR VIOLATING THE TERMS OF THE ARTICLE; TO PROVIDE FOR THE DEVELOPMENT OF FORMS, PROCESSES, AND REGULATIONS TO IMPLEMENT THE ARTICLE; AND FOR OTHER PURPOSES; AND TO REPEAL ARTICLE 4, CHAPTER 53, TITLE 44.

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

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

“Article 17

South Carolina Medical Marijuana Act

Section 44‑53‑1710.This article may be cited as the ‘South Carolina Medical Marijuana Act’.

Section 44‑53‑1720. For purposes of this article:

(1) ‘Bona fide physician‑patient relationship’ means:

(a) a physician and patient treatment or counseling relationship, in the course of which the physician has completed a full assessment of the patient’s medical history and current medical condition, including an appropriate personal physical examination;

(b) physician consultation with a patient with respect to the patient’s debilitating medical condition before the patient applies for a registry identification card; and

(c) physician availability to provide follow‑up care and treatment to the patient including, but not limited to, patient examination to determine the efficacy of the use of medical marijuana as a treatment of the patient’s debilitating medical condition.

(2) ‘Criminal record’ means all information documenting an individual’s contact with the criminal justice system, including data regarding identification, arrest, citation, arraignment, conviction, judicial disposition, custody, and supervision.

(3) ‘Debilitating medical condition’ means:

(a) cancer, glaucoma, positive status for human immunodeficiency virus, and acquired immune deficiency syndrome, or treatment for these conditions;

(b) a chronic or debilitating disease or medical condition, or treatment of that disease or medical condition, that results in one or more of the following symptoms, and for which, in the professional opinion of that patient’s physician, the use of medical marijuana would alleviate one or more of the symptoms:

(i) cachexia;

(ii) severe pain;

(iii) severe nausea;

(iv) seizures, including those that are characteristic of epilepsy; or

(v) persistent muscle spasms, including those characteristic of multiple sclerosis; and

(c) another disease or medical condition, or treatment of that disease or medical condition, determined by the department to be a debilitating medical condition pursuant to department regulation or department approval of a petition submitted by a patient or a patient’s physician.

(4) ‘Department’ means the Department of Health and Environmental Control.

(5) ‘Dispensary’ means an entity registered pursuant to Section 44‑53‑2040.

(6) ‘Enclosed secured facility’ means a closet, room, greenhouse, building, or other enclosed area equipped with locks or other security devices that permit access only by a registered patient, registered caregiver, or an employee or agent of a dispensary, as applicable.

(7) ‘Engage in the medical use of marijuana’ means the acquisition, possession, production, cultivation, use, transfer, or transportation of marijuana or paraphernalia relating to the administration of marijuana to alleviate the symptoms and side effects of a registered patient’s debilitating medical condition, which is in compliance with all the limitations and restrictions of this article.

(8) ‘Managing the well‑being of a registered patient’ means performing tasks to assist a registered patient with activities of daily living, provided the assistance is not limited only to helping a patient to engage in the medical use of marijuana.

(9) Marijuana has the same meaning as defined in Section 44‑53‑110.

(10) ‘Medical verification’ means documentation required by the department provided by a physician to a patient in the course of a bona fide physician‑patient relationship for the patient’s submission to the department with an application for a registry identification card, which supports the physician’s opinion that the patient has a debilitating medical condition with symptoms or side effects that might be alleviated by the medical use of marijuana and that reasonable medical efforts have been made over a reasonable amount of time without success to relieve the symptoms or side‑effects.

(11) ‘Paraphernalia’ has the same meaning as defined in Section 44‑53‑110.

(12) ‘Parent’ means:

(a) a custodial mother or father of a patient under the age of eighteen years; or

(b) a person with legal custody of a patient under the age of eighteen years; or

(c) a person who is the legal guardian of a patient under the age of eighteen years.

(13) ‘Patient’ means a person who qualifies as a person with a debilitating medical condition.

(14) ‘Physician’ means a physician who is licensed in good standing to practice medicine in this State pursuant to Chapter 47, Title 40.

(15) ‘Registered caregiver’ means a person, other than a registered patient or a registered patient’s physician, who is eighteen years or older and who has been issued a registry identification card by the department, identifying the person as someone who has agreed to undertake responsibility for managing the well‑being of a registered patient including, but not limited to, by assisting the registered patient with the medical use of marijuana.

(16) ‘Registered patient’ means a person who has been issued a registry identification card by the department identifying the person as having a debilitating medical condition who is entitled to engage in the medical use of marijuana.

(17) ‘Registry identification card’ means the nontransferable confidential registry identification card issued by the department to a patient or caregiver that identifies the patient as authorized to engage in the medical use of marijuana or a caregiver as authorized to help a particular registered patient engage in the medical use of marijuana.

Section 44‑53‑1730. (A) A registered patient may engage in the medical use of marijuana in a quantity that is medically necessary to address a debilitating medical condition, provided the quantity does not exceed the limits provided for in subsection (B).

(B) A registered patient’s medical use of marijuana is lawful within the following limits:

(1) up to two ounces of a usable form of marijuana; and

(2) up to six marijuana plants, with three or fewer being mature, flowering plants that are producing a usable form of marijuana.

(C) Registered patients and registered caregivers may:

(1) cultivate or otherwise produce marijuana only in an enclosed, locked facility; and

(2) may acquire marijuana only from registered dispensaries or from one another.

Section 44‑53‑1740. In the case of medical use of marijuana in excess of the amounts allowed pursuant to Section 44‑53‑1730, a registered patient or registered caregiver may raise as an affirmative defense to charges of violation of this article, or violation of another provision of law relating to the regulation of marijuana, that the quantity of marijuana used in excess of those limitations is medically necessary to alleviate the symptoms or side effects of the patient’s debilitating medical condition and may submit the medical verification provided to the patient by his physician pursuant to Section 44‑53‑1820 as proof that the quantity is medically necessary.

Section 44‑53‑1750. (A) A registered patient or registered caregiver must not:

(1) engage in the medical use of marijuana in a way that endangers the health or well‑being of another person;

(2) engage in the medical use of marijuana in plain view of the public or in a public place; or

(3) possess medical marijuana or otherwise engage in the use of medical marijuana in or on the grounds of a public or private school or childcare facility or in a school bus.

(B) A registered patient must not:

(1) undertake a task while under the influence of marijuana pursuant to this article when doing so would constitute negligence or professional malpractice; or

(2) operate, navigate, or otherwise be in actual physical control of a vehicle, aircraft, or motorboat while under the influence of marijuana pursuant to this article.

Section 44‑53‑1760. In addition to other penalties provided in this article and other applicable laws of the State, the department shall revoke for a period of one year the registry identification card of a registered patient or registered caregiver found to have wilfully violated a provision of this article.

Section 44‑53‑1770. A patient under eighteen years of age must not engage in the medical use of marijuana unless:

(1) two physicians have diagnosed the patient as having a debilitating medical condition with symptoms or side effects that might be alleviated by the medical use of marijuana;

(2) reasonable medical efforts have been made over a reasonable period of time without success to relieve the symptoms or side effects;

(3) one of the physicians referred to in this section has explained the possible risks and benefits of medical use of marijuana to the patient and the patient’s parents who reside in the State;

(4) the physician referred to in item (3) has provided the patient and the patient’s parents who reside in the State with the medical verification required pursuant to Section 44‑53‑1820;

(5) the patient’s parents who reside in the State consent in writing to the patient’s medical use of marijuana;

(6) a parent of the patient who resides in the State:

(a) consents in writing to serve as the patient’s registered caregiver; and

(b) submits to the department:

(i) an application for the patient’s registry identification card;

(ii) an application to serve as the registered caregiver of the patient;

(iii) the written consents required pursuant to this section;

(iv) the medical verification from the patient’s physician required pursuant to this section; and

(v) any other information required by the department;

(7) the department approves the patient’s and parent’s applications to qualify as a registered patient and registered caregiver, respectively, and provides both registry identification cards to the parent designated as the registered caregiver;

(8) the registered patient and registered caregiver collectively possess quantities of marijuana no greater than those specified in Section 44‑53‑1730 or 44‑53‑1740 at any given time; and

(9) the registered caregiver controls the acquisition of the marijuana and the dosage and frequency of its use by the registered patient.

Section 44‑53‑1780. The department shall create and maintain a confidential registry of patients who have applied for a registry identification card authorizing the medical use of marijuana pursuant to this article.

Section 44‑53‑1790. (A) No person is permitted to gain access to information about patients or caregivers maintained in the department’s confidential registry or received by the department as part of an application for a registry identification card, or information otherwise maintained by the department about applicants, except for authorized department employees in the course of performing official duties related to this article and authorized officials of state or local law enforcement agencies who have detained or arrested a person who claims to be engaged in the medical use of marijuana.

(B) A state or local law enforcement official’s right to access the information contained within the department’s confidential registry and other information referenced in subsection (A) is limited to the purpose of verifying that an individual who has presented a registry identification card or documentation serving as the functional equivalent is lawfully in possession of the card or its functional equivalent.

(C) Information maintained in the confidential registry is considered protected health information that must not be released in accordance with state and federal confidentiality statutes including, but not limited to, the Health Insurance Portability and Accountability Act, as amended.

(D) Information maintained in the confidential registry is not public information subject to access under the state’s Freedom of Information Act.

Section 44‑53‑1800. (A)(1) A patient who fraudulently represents a medical condition to a physician, the department, or a state or local law enforcement official for the purpose of falsely obtaining a patient registry identification card from the department pursuant to this article, or for the purpose of avoiding arrest and prosecution for a marijuana‑related offense, is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars or imprisoned not more than six months, or both.

(2) A caregiver who fraudulently represents the nature of the assistance provided to a registered patient with regard to the registered patient’s activities of daily living to obtain a caregiver registry identification card from the department pursuant to this article, or for the purpose of avoiding arrest and prosecution for a marijuana‑related offense, is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars or imprisoned not more than six months, or both.

(3) If a department employee or a state or local law enforcement official receives information that reasonably causes the employee or official to believe that a fraudulent representation as described in item (1) or (2) has occurred, the employee or official shall report the information to the department director and the county solicitor or Attorney General.

(B) The fraudulent use or theft of a registered patient’s or registered caregiver’s registry identification card is a misdemeanor, punishable up to five hundred dollars or six months in prison, or both.

(C) The fraudulent production or counterfeiting of, or tampering with, a registered patient’s or registered caregiver’s registry identification card is a misdemeanor, punishable up to five hundred dollars or six months in prison, or both.

(D) A person including, but not limited to, an employee of the department or a state or local law enforcement agency official, who releases or makes public information contained in the confidential registry without the written authorization of the registered patient or registered caregiver, or as otherwise allowed by law, is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars or imprisoned not more than six months, or both.

(E) Registered patients and registered caregivers not in possession of their registry identification card issued by the department when engaged in the medical use of marijuana are guilty of a misdemeanor, and, upon conviction, must be fined not more than one hundred dollars or imprisoned not more than thirty days, or both.

Section 44‑53‑1810. (A) In order to be placed on the confidential registry for the medical use of marijuana, a patient must be a resident of the State and submit an application and other information as required by the department.

(B) The application must require the patient to provide, at a minimum:

(1) the name, address, date of birth, and social security number of the patient;

(2) the name, address, and telephone number of the patient’s physician providing a medical verification;

(3) the medical verification, required pursuant to Section 44‑53‑1820;

(4) the name, address, and phone number of the patient’s registered caregiver, if one is designated at the time of application;

(5) an acknowledgement for the patient to sign that sets forth:

(a) the penalties for providing false information;

(b) definitions of:

(i) ‘bona fide physician‑patient relationship’, as defined in Section 44‑53‑1720;

(ii) ‘debilitating medical condition’, as defined in Section 44‑53‑1720;

(iii) ‘engage in the medical use of marijuana’, as defined in Section 44‑53‑1720; and

(iv) ‘managing the well‑being of a patient’, as defined in Section 44‑53‑1720.

(C) The department may charge a patient a reasonable fee for processing an application.

Section 44‑53‑1820. The department shall develop a medical verification form to be completed by a physician and submitted by a patient applying for a registry identification card. The form must include:

(1) the physician’s name, address, phone number, and medical license number;

(2) an acknowledgement to be signed by the physician that sets forth:

(a) the penalties for providing false information, including the department’s right to notify the medical board or other similar authority established pursuant to Chapter 47, Title 40; and

(b) definitions of:

(i) ‘bona fide physician‑patient relationship’, as defined in Section 44‑53‑1720;

(ii) ‘debilitating medical condition’, as defined in Section 44‑53‑1720; and

(iii) ‘physician’, as defined in Section 44‑53‑1720; and

(3) an affidavit for the physician to sign with the following provisions:

(a) the physician and patient have a bona fide physician‑patient relationship;

(b) the patient has a debilitating medical condition, identifying the patient’s disease or medical condition, and that the symptoms or side effects might benefit from the medical use of marijuana; and

(c) reasonable medical efforts have been made over a reasonable period of time without success to relieve the symptoms or side effects of the debilitating medical condition.

Section 44‑53‑1830. (A) The department shall approve or deny the application for patient registration submitted pursuant to Section 44‑53‑1810 in writing within thirty days from receipt of a completed application and processing fee. If the application is approved, the department shall issue the applicant a registration card which includes:

(1) the registered patient’s name, address, date of birth, and photograph;

(2) a unique alphanumeric identifier for department and law enforcement verification purposes; and

(3) the date of issuance and expiration of the registry identification card.

(B) The department shall deny and notify the patient of the denial of the application for a registry identification card if:

(1) the information required pursuant to Section 44‑53‑1810 has not been provided or has been falsified;

(2) the medical verification provided pursuant to Section 44‑53‑1820 fails to state there is a bona fida physician‑patient relationship, that the patient has a debilitating medical condition that might benefit from the use of marijuana, and that the physician has made reasonable medical efforts over a reasonable period of time without success to relieve the symptoms or side effects of the debilitating condition; or

(3) the physician is not licensed to practice medicine in the State, or the physician’s medical verification contains false information or has been falsified.

Section 44‑53‑1840. (A) An application is considered approved if the department fails to issue a registry identification card or fails to issue written notice of denial of an application within thirty‑five days of receipt of an application. The department’s date of receipt of an application is the date on which the application is hand delivered to the department or the date on which the application is placed in the mail.

(B) A patient who has applied for but who has not received a registry identification card in accordance with Section 44‑53‑1830 and who is questioned by a state or local law enforcement official about the use of marijuana may provide a copy of the application submitted to the department, including the required medical verification, and proof of the date of mailing or delivery to the department, which has the same legal effect as a registry identification card, until the patient receives the registry identification card or notice of denial of application.

Section 44‑53‑1850. (A) A patient whose application for a registry identification card has been denied by the department may not reapply during the one year following the date of the denial.

(B) The denial of a registry identification card is a final department decision and may be contested only in accordance with the Administrative Procedures Act. Only the patient whose application is denied has standing to contest the department decision.

(C) A registry card is effective for one year. To maintain an effective registry identification card, a registered patient annually shall submit to the department, at least thirty days prior to the expiration date stated on the card:

(1) an updated medical verification from the patient’s physician;

(2) changes to the registered patient’s name or address, if any;

(3) the name and address of the patient’s registered caregiver, if one has been designated; and

(4) other information required by the department.

Section 44‑53‑1860. (A) When there is a change in the name or address of the registered patient or the name or address of the patient’s registered caregiver, the registered patient shall provide the updated information to the department within ten days.

(B) A registered patient who has not designated a registered caregiver at the time of submitting an application to the department may designate one during the period of the registry identification card’s effectiveness by submitting to the department the name and address of the registered caregiver. A person designated as the registered caregiver may act in that capacity only after the patient sends written notification to the department of the designation.

Section 44‑53‑1870. (A) In order to be placed on the confidential registry as a registered caregiver, a caregiver must be a resident of the State and submit an application and other information as required by the department.

(B) The application must require the caregiver to provide, at a minimum:

(1) the name, address, date of birth, and social security number of the caregiver;

(2) the name, address, and telephone number of the registered patient;

(3) a signed consent to undergo a criminal background check;

(4) a signed consent to undergo checks of the Department of Social Services registry for the abuse or neglect of a vulnerable adult or a child and the Central Registry of Child Abuse and Neglect;

(5) an acknowledgement signed by the caregiver that sets forth:

(a) the penalties for providing false information;

(b) definitions of:

(i) ‘registered caregiver’, as defined in Section 44‑53‑1720;

(ii) ‘engage in the medical use of marijuana’, as defined in Section 44‑53‑1720;

(iii) ‘managing the well‑being of a registered patient’, as defined in Section 44‑53‑1720; and

(c) an affidavit signed by the caregiver stating that the caregiver:

(i) manages the well‑being of the registered patient, identifying the assistance provided by the caregiver; and

(ii) serves as the caregiver only for the registered patient identified on the application.

(C) The department may require payment of a reasonable fee for processing an application.

Section 44‑53‑1880. (A) Subject to subsection (B), the department shall approve or deny the application for caregiver registration submitted pursuant to Section 44‑53‑1870 in writing within thirty days from receipt of a completed application and processing fee. If the application is approved, the department shall issue the caregiver a registration card which includes:

(1) the registered caregiver’s name, address, date of birth, and photograph;

(2) a unique alphanumeric identifier for department and law enforcement verification purposes;

(3) the name and address of the registered caregiver’s registered patient; and

(4) the date of issuance and expiration of the registry identification card.

(B) Prior to approving a caregiver’s application, the department shall verify that the caregiver:

(1) is serving as the registered caregiver for only one registered patient;

(2) has not been convicted of, or pled guilty or nolo contendere to, a drug‑related crime; and

(3) is not listed on the Department of Social Services registry for the abuse or neglect of a vulnerable adult or a child or on the Central Registry of Child Abuse and Neglect.

(C) The department shall deny and notify the caregiver of the denial of the application for a registry identification card if:

(1) the information required pursuant to Section 44‑53‑1870 has not been provided or has been falsified; or

(2) the caregiver has been convicted of, or pled guilty or nolo contendere to, a drug‑related crime or the caregiver’s name appears on the Department of Social Services registry for the abuse or neglect of a vulnerable adult or a child or on the Central Registry of Child Abuse and Neglect.

(D) If the department denies an application because the applicant has a criminal record history for a drug‑related crime or has been entered into the Department of Social Services registry for the abuse or neglect of a vulnerable adult or a child or on the Central Registry of Child Abuse and Neglect, the department shall provide a copy of the record to the applicant who has the right to provide information that reflects the record is not accurate.

Section 44‑53‑1890. (A) An application submitted pursuant to Section 44‑53‑1870 is considered approved if the department fails to issue a registry identification card or fails to issue written notice of denial of an application within thirty‑five days of receipt of an application. The department’s date of receipt of an application is the date on which the application is hand delivered to the department or the date on which the application is placed in the mail.

(B) A caregiver who has applied for, but who has not received a registry identification card, in accordance with Section 44‑53‑1880, and who is questioned by a state or local law enforcement official about the use of marijuana may provide a copy of the application submitted to the department and proof of the date of mailing or delivery to the department, which has the same legal effect as a registry identification card, until the caregiver receives the registry identification card or notice of denial of application.

Section 44‑53‑1900. (A) A caregiver whose application for a registry identification card has been denied by the department may not reapply during the six months following the date of the denial.

(B) The denial of a registry identification card is a final department decision and may be contested only in accordance with the Administrative Procedures Act. Only the caregiver whose application is denied has standing to contest the department decision.

(C) A registry card is effective for one year. To maintain an effective registry identification card, a registered caregiver annually shall submit to the department, at least thirty days prior to the expiration date stated on the card:

(1) changes to the registered caregiver’s name or address, if any;

(2) the name and address of the caregiver’s registered patient; and

(3) other information required by the department.

Section 44‑53‑1910. (A) A registered patient or registered caregiver charged by a state or local law enforcement official with a violation of Chapter 53, Title 44, or another provision of law related to the use of marijuana, has an affirmative defense to arrest and prosecution if:

(1) the patient was previously diagnosed by a physician as having a debilitating medical condition;

(2) the patient was advised by a physician, in the context of a bona fide physician‑patient relationship, that the patient might benefit from the medical use of marijuana to alleviate a debilitating medical condition;

(3) the patient and caregiver have a valid registration card issued by the department; and

(4) the patient and the caregiver collectively were in possession of quantities of marijuana only as permitted pursuant to Sections 44‑53‑1730 and 44‑53‑1740.

(B) An affirmative defense available to a registered patient or registered caregiver pursuant to this article is in addition to, and not in lieu of, any other legal defense available to that patient or caregiver.

Section 44‑53‑1920. Notwithstanding another provision of law, a physician is not subject to arrest or prosecution, or civil or criminal penalties, in a court of law in this State or subject to discipline by a professional licensing board for:

(1) providing a patient with a medical verification stating that the patient has a debilitating medical condition and might benefit from the medical use of marijuana, provided the opinion is based upon the physician’s contemporaneous assessment of the patient’s medical history and current medical condition as part of a bona fide physician‑patient relationship; or

(2) advising a patient about the risks and benefits of the medical use of marijuana, including advice as to whether the patient might benefit from the medical use of marijuana, provided the physician has diagnosed the patient as having a debilitating medical condition in the context of the physician’s contemporaneous assessment of the patient’s medical history and current medical condition as part of a bona fide physician‑patient relationship.

Section 44‑53‑1930. A physician must not be denied the rights or privileges for the acts authorized by this article.

Section 44‑53‑1940. No person including, but not limited to, registered patients and registered caregivers, is entitled to the protections provided pursuant to this article for acquisition, possession, production, cultivation, use, transfer, or transportation of marijuana or paraphernalia relating to the administration of marijuana for a use other than a medical use.

Section 44‑53‑1950. (A) State and local law enforcement officials must not harm, neglect, injure, or destroy an individual’s interest in or right to property that is possessed, owned, or used in connection with the medical use of marijuana, or acts incidental to the medical use of marijuana, while the property is in the possession of the state or local law enforcement official as a result of a seizure of property in connection with the claimed medical use of marijuana.

(B) A person does not forfeit a right or interest in property seized in connection with the medical use of marijuana by a state or local law enforcement official under a provision of state law providing for the forfeiture of property, unless the forfeiture is part of a sentence imposed on the person as a result of conviction of a criminal violation or entry of a plea of guilty or nolo contendere relating to a violation of this article.

(C) State and local law enforcement officials immediately shall return marijuana and marijuana paraphernalia seized from a registered patient or registered caregiver in connection with the claimed medical use of marijuana upon a legal determination that the registered patient or registered caregiver is entitled to a protection contained in this article including, but not limited to, a decision not to prosecute, the dismissal of charges, or an acquittal.

Section 44‑53‑1960. (A) A person must not be denied custody of, or visitation or parenting time with, a child for conduct allowed by this article.

(B) There is no presumption of child abuse, neglect, or other endangerment of a child for conduct allowed by this article.

Section 44‑53‑1970. A school or landlord is prohibited from refusing to enroll or lease to and may not otherwise penalize a registered patient or registered caregiver solely for the person’s status as registered to engage in the medical use of marijuana, unless failing to do so would violate federal law or regulations or cause the school or landlord to lose a monetary or licensing‑related benefit under federal law or regulations.

Section 44‑53‑1980. For the purposes of medical care, including organ transplants, a registered qualifying patient’s use of marijuana pursuant to Section 44‑53‑1730 or 44‑53‑1740 is considered the equivalent of the authorized use of other medication used at the discretion of a physician and does not constitute the use of an illicit substance or otherwise disqualify a qualifying patient from needed medical care.

Section 44‑53‑1990. (A) Except as provided in subsection (B), an employer is prohibited from discriminating against:

(1) a registered patient or registered caregiver in the hiring, termination, or establishment of a term or condition of employment, if the discrimination is based solely on the person’s status as registered to engage in the medical use of marijuana; or

(2) a registered patient with a positive drug test for marijuana components or metabolites, unless the patient used, possessed, or was impaired by marijuana on the premises of the place of employment or during the hours of employment.

(B) Subsection (A) does not apply if compliance with the subsection results in the violation of federal law or regulations.

Section 44‑53‑2000. Possession of or application for a registry identification card does not constitute probable cause or reasonable suspicion, nor may it be used to support a search of the person or property of the person possessing or applying for the registry identification card, or otherwise subject the person or property of the person to inspection by any governmental agency.

Section 44‑53‑2010. (A) The department may operate dispensaries in accordance with Section 44‑53‑2080 and shall develop and facilitate processes to register and issue dispensary certificates to privately owned dispensaries.

(B) A city or county may enact reasonable ordinances regulating the establishment and operation of dispensaries.

Section 44‑53‑2020. (A) In order to register as a dispensary, the prospective dispensary must be located in the State and submit an application and other information as required by the department.

(B) The application must require the prospective dispensary to provide, at a minimum:

(1) the legal name of the prospective dispensary;

(2) the physical address of the prospective dispensary, which must not be within two thousand feet of a public or private school or childcare facility existing before the date of the dispensary’s application;

(3) the name and date of birth of each principal officer and board member of the prospective dispensary;

(4) the name and date of birth of each additional agent of the prospective dispensary;

(5) an application fee in an amount to be determined by the department; and

(6) any additional information requested by the department.

Section 44‑53‑2030. The department shall approve or deny the application for a certificate to operate a dispensary submitted pursuant to Section 44‑53‑2020 in writing within ninety days from receipt of a completed application and processing fee. The application must be approved as long as:

(1) the information required pursuant to Section 44‑53‑2020 is complete and accurate;

(2) none of the principal officers or board members of the prospective dispensary has served as a principal officer or board member for a dispensary that has had its registration certificate revoked;

(3) none of the principal officers or board members of the prospective dispensary is under twenty‑one years of age;

(4) the prospective dispensary has never had a certificate that has been revoked;

(5) the prospective dispensary complies with department regulations that address the operation of dispensaries within a certain proximity of each other and within a certain geographical area that takes into account, among other factors, population density and demonstrated need for the use of medical marijuana; and

(6) if the city or county where the prospective dispensary would be located has enacted zoning restrictions, the prospective dispensary has provided a sworn statement certifying that the prospective dispensary is in compliance with the restrictions of the city or county.

Section 44‑53‑2040. If the application is approved, the department shall issue the applicant a dispensary certificate within ninety‑five days of submitting the application that includes:

(1) the dispensary’s name, address, and phone number;

(2) the name, address, and phone number of a principal officer or board member of the dispensary to serve as a contact for the department;

(3) a unique alphanumeric identifier for department and law enforcement verification purposes; and

(4) the date of issuance and expiration of the certificate.

Section 44‑53‑2050. (A) A dispensary certificate is valid for three years. The dispensary shall submit an application for renewal of its certificate in accordance with department regulations no later than ninety days before expiration of the certificate.

(B) The department shall issue a renewal certificate within ninety days of receipt of the prescribed renewal application, the processing fee, and other information required by the department, provided the dispensary’s current certificate is not under suspension or has not been revoked.

Section 44‑53‑2060. When competing applications are submitted to operate a dispensary within a single county, the department shall use an impartial and numerically scored competitive bidding process to determine the application or applications among those competing to approve. The department may conduct a criminal background check of the principal officers and board members of the prospective dispensary to carry out this provision.

Section 44‑53‑2070. The department may register additional dispensaries at its discretion.

Section 44‑53‑2080. A dispensary is authorized to:

(1) possess, plant, propagate, cultivate, grow, harvest, produce, process, manufacture, compound, convert, prepare, pack, repack, and store marijuana for medical use;

(2) deliver, transfer, and transport marijuana, marijuana paraphernalia, and related supplies that are for medical use and educational materials to and from other dispensaries;

(3) acquire, accept, or otherwise obtain marijuana offered by a registered patient or a registered caregiver for medical use if nothing of value is transferred in return;

(4) purchase or otherwise acquire marijuana for medical use from another dispensary; and

(5) dispense, supply, and sell marijuana, marijuana paraphernalia, and related supplies that are for medical use and educational materials to registered patients, registered caregivers, and other dispensaries.

Section 44‑53‑2090. A dispensary shall maintain operating documents and records on site including, but not limited to, a valid registration certificate issued by the department, personnel records, and sales and purchasing documentation that reflect quantities of marijuana grown, processed, and distributed for medical use. The dispensary shall make the information available to the department upon request.

Section 44‑53‑2100. A dispensary shall have written operating procedures approved by the department that address, at a minimum:

(1) recordkeeping; and

(2) security measures to deter and prevent the theft of marijuana and marijuana paraphernalia and the unauthorized entrance into areas containing marijuana and marijuana paraphernalia.

Section 44‑53‑2110. Information kept or maintained by a dispensary must identify cardholders by the registry identification numbers and not contain names or other personal identifying information.

Section 44‑53‑2120. (A) All activities authorized by Section 43‑53‑2080 including, but not limited to, planting, cultivating, harvesting, manufacturing, packing, and storing of marijuana by a dispensary pursuant to this article must take place in an enclosed, secured facility at a physical address provided to the department during the registration process.

(B) A dispensary must not:

(1) share office space with or refer patients to a physician; or

(2) allow a registered patient or other person to use marijuana on its property.

(C) A dispensary is subject to inspection by the department upon reasonable notice in order to provide:

(1) consumer protection services for registered patients by means of laboratory sampling and testing for marijuana potency and contamination;

(2) public information and training services, regarding:

(a) safe and effective cultivation, harvesting, manufacturing, packaging, labeling, and distribution of marijuana;

(b) security and inventory procedures; and

(c) scientific and medical research findings related to the medical use of marijuana; and

(3) other services as the department determines appropriate.

Section 44‑53‑2130. (A) A dispensary must not employ or otherwise allow a person to work or serve as an agent for the dispensary who:

(1) is under twenty‑one years of age;

(2) has been convicted of, or pled guilty or nolo contendere to, a drug‑related offense; or

(3) has a positive drug screen for the presence of marijuana components or metabolites.

(B)(1) A prospective employee shall consent in writing to undergo a criminal background check and drug screen as a condition of employment.

(2) Employees and agents of a dispensary are subject to periodic criminal background checks and drug screens while employed or otherwise working for a dispensary.

(C) A dispensary shall maintain the results of criminal background checks and drug screens as part of the employee’s personnel records.

Section 44‑53‑2140. (A) Before selling marijuana or marijuana paraphernalia to a person, a dispensary employee shall:

(1) require the person to present the registration card issued pursuant to Section 44‑53‑1830 or 44‑53‑1880, as applicable;

(2) confirm that the photograph on the registry card resembles the individual presenting the card;

(3) verify that the registry card has not expired or been revoked; and

(4) confirm in the dispensary’s records, and the department’s centralized database if one is operational, that the registered patient, or registered caregiver on behalf of the patient, has not acquired a quantity of marijuana that exceeds the quantity allowed pursuant to Sections 44‑53‑1730 and 44‑53‑1740.

(B) A dispensary employee shall call the department if there is reason to believe that:

(1) the person presenting the registry card is not the person to whom the card was issued; or

(2) the card has been tampered with or otherwise altered.

Section 44‑53‑2150. (A) A dispensary is not subject to search or inspection, except pursuant to Sections 44‑53‑2090 and 44‑53‑2120.

(B)(1) A dispensary, and its employees and agents, are not subject to arrest, prosecution, civil or criminal penalties, or disciplinary action, as applicable, by a court or business licensing board or similar entity, for acting pursuant to and in compliance with the provisions of this article.

(2) A dispensary, and its employees and agents, must not be denied a right or privilege of this article.

Section 44‑53‑2160. (A) State and local law enforcement officials must not harm, neglect, injure, or destroy a dispensary’s interest in or right to property possessed, owned, or used by the dispensary pursuant to this article while the property is in the possession of the state or local law enforcement officials as a result of a seizure of property in connection with the dispensary’s operation.

(B) A dispensary registered pursuant to this article does not forfeit a right or interest in property seized in connection with the operation of the dispensary by a state or local law enforcement official under a provision of state law providing for the forfeiture of property, unless the forfeiture is part of a sentence imposed on a dispensary or the dispensary’s employees or agents as a result of conviction of a criminal violation or entry of a plea of guilty or nolo contendere relating to a violation of this article.

(C) State and local law enforcement officials immediately shall return to a dispensary marijuana, related marijuana paraphernalia, and other property seized from the dispensary, or from its employees or agents, in connection with the dispensary’s operation, upon a legal determination that the dispensary, or an employee or agent, is entitled to a protection contained in this article including, but not limited to, a decision not to prosecute, the dismissal of charges, or an acquittal.

Section 44‑53‑2170. (A)(1) Subject to Section 44‑53‑2180, the department may suspend or revoke a dispensary’s registration certificate for multiple negligent violations or an intentional violation of the requirements of this article or regulations promulgated pursuant to this article.

(2) The department shall provide fifteen days’ notice to the dispensary before suspending or revoking a certificate pursuant to this section. The notice must set forth the violations that are the basis for the suspension or revocation and other associated penalties and be sent to the dispensary’s address provided on the registration certificate by certified mail, return receipt requested.

(B) The department’s decision to suspend or revoke a dispensary certificate pursuant to subsection (A) is a final department decision and may be contested only in accordance with the Administrative Procedures Act. Only the board members or principal officers of the dispensary whose registration certificate is being suspended or revoked have standing to contest the department decision.

(C)(1) If the department suspends a registration certificate pursuant to this section, the suspension is effective no longer than six months, during which time the dispensary shall correct the concerns of the department that were the basis for the suspension. Upon correcting these concerns, the department shall remove the suspension. The dispensary may continue to cultivate and possess marijuana during a suspension, but may not dispense, transfer, or sell marijuana.

(2) If the dispensary fails to correct the department’s concerns within six months, the department may revoke the registration certificate or extend the suspension up to an additional ninety days by which time the dispensary shall correct the concerns or have its registration certificate revoked.

(D) If the department revokes the registration certificate pursuant to this section, the dispensary is prohibited from operating in any capacity. A dispensary must not reapply for a registry certificate for one year from the date of revocation of its registration certificate.

Section 44‑53‑2180. (A) A dispensary that intentionally sells or otherwise transfers marijuana in exchange for anything of value to a person other than a registered patient, a registered caregiver on behalf of a registered patient, or another dispensary is guilty of a felony and, upon conviction, must be fined not more than three thousand dollars or, its board members and principal officers must be imprisoned not more than two years, or both.

(B) A person convicted pursuant to this section is prohibited from owning or operating a dispensary in the State. The dispensary’s board members and principal officers are prohibited from serving as board members or principal officers for another dispensary.

Section 44‑53‑2190. Marijuana and marijuana paraphernalia sold, purchased, or otherwise transferred pursuant to this article are tangible personal property whose retail sales are subject to the provisions of Chapter 36, Title 12.

Section 44‑53‑2200. Not later than one year from the date of enactment of this article, the confidential registry created pursuant to this article must be operational and available statewide to patients and caregivers applying for registry identification cards and to prospective dispensaries applying for a certificate.

Section 44‑53‑2210. Not later than one year from the date of enactment of this article, the department shall develop and make available to residents of this State an application and other forms required to apply to be listed on the confidential registry of registered patients and registered caregivers and to apply to operate a dispensary.

Section 44‑53‑2220. Not later than one year from the date of enactment of this article, the department shall develop and make available to physicians of this State the medical verification form required by Section 44‑53‑1820 and information regarding the provisions of this article.

Section 44‑53‑2230. The department may promulgate and enforce regulations to implement this article.

Section 44‑53‑2240. Not later than one year from the date of enactment of this article, the department shall promulgate regulations that address at a minimum:

(1) establishment and maintenance of a confidential registry of patients and caregivers who have applied for and who are issued or denied a registry identification card;

(2) verification of medical information for patients submitting applications for issuance or renewal of a registry identification card;

(3) communications with law enforcement officials about suspended registry identification cards when a patient is no longer diagnosed as having a debilitating medical condition or when a registry card is expired or has been fraudulently obtained or altered as prohibited by Section 44‑53‑1800;

(4) receipt and review of applications for registration of a patient or caregiver on the confidential registry;

(5) determining whether to include a disease or medical condition as a debilitating medical condition;

(6) acceptable physician written documentation of a disease or medical condition to qualify as a debilitating medical condition;

(7) the extent of assistance provided by a caregiver to be considered as managing the well‑being of a registered patient, entitling the caregiver to serve as a registered caregiver;

(8) receipt and review of applications for registration as a dispensary;

(9) requirements to operate a dispensary including, but not limited to, security and record keeping; and

(10) consumer protection requirements addressing, at a minimum, potency and purity of marijuana cultivated and harvested, packaging and labeling of marijuana, and transporting marijuana and marijuana paraphernalia.

Section 44‑53‑2250. Not later than one year from the date of enactment of this article, the department shall develop the process for receipt and review of a physician’s and patient’s petition for inclusion of a disease or medical condition as a debilitating medical condition, as defined in Section 44‑53‑1720, and for, after a hearing as the department deems appropriate, approval or denial of a petition within one hundred eighty days of submission.

Section 44‑53‑2260. No public, private, or other health insurance provider is liable for a reimbursement claim for the medical use of marijuana.

Section 44‑53‑2270. Nothing in this article requires an employer to accommodate the medical use of marijuana in the workplace.”

SECTION 2. Article 4, Chapter 53, Title 44 of the 1976 Code is repealed.

SECTION 3. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this article is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this article, the General Assembly hereby declaring that it would have passed this article, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 4. Except as otherwise provided in this article, the act takes effect upon approval by the Governor.

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