



SENATE OF PENNSYLVANIA BILL SUMMARY

Senate Bill 3 Printer's No. 224

Prime Sponsor: Senator Mike Folmer
Committee: State Government

SYNOPSIS:

Establishes the Medical Cannabis (MC) Act (Act), which provides for the medical use of cannabis in the Commonwealth.

SUMMARY: OF SB3 AS WOULD BE REPLACED BY AMENDMENT A00675

CHAPTER 1-PRELIMINARY PROVISIONS

Section 102 (Definitions)- defines: *account; board; change in control; Department; health care facility; health care practitioner* (only includes a medical doctor or a doctor of osteopathy); *medical cannabis* (includes: extracted oil, ointments, tinctures and medical cannabis delivered by a nebulizer; but does not include edible products); *medical cannabis access card; medical cannabis dispenser; medical cannabis employee; medical cannabis grower; medical cannabis processor; medical cannabis strains; medical use; nebulizer; occupation permit; owner or operator; patient; patient representative; practitioner-patient relationship; qualified medical condition* (adds HIV/AIDS and Glaucoma to the list); *testing laboratory; tracking system; verification system; written certification.*

CHAPTER 3- STATE BOARD OF MEDICAL CANNABIS LICENSING AND ADMINISTRATIVE PROCEDURE

State Board of Medical Cannabis Licensing:

Establishes the State Board of Medical Cannabis Licensing within the Department of State (Department). The board consists of the Secretary of Health, two public members, two members who are physicians representing specialties that utilize medical marijuana, two members who are registered nurses, the Secretary of Public Welfare (now Human Services), a licensed pharmacist, and the Commissioner of the Bureau of Professional and Occupational Affairs. Adds medical doctor with pediatric expertise and the physician general to the list of board members. Each public and professional member must be appointed by the Governor with the consent of the Senate. The board must meet at least once per month and then after the first year, the board must meet at least six times per year but may meet more frequently.

Board Powers and Duties, including:

- License medical cannabis growers, processors, and dispensers.
- Issue occupation permits to employees of growers, processors and dispensers of MC.

- Issue certificates to laboratories which test MC.
- Implement procedures to allow for the expansion for a “qualified medical condition” for which a patient may obtain MC.
- Conduct background checks and otherwise investigate license or occupation permit applicants.
- Establish license and occupation permits fees.
- Charge for services related to the enforcement and administration of the act.
- Provide standards for dispensers of MC so a professional appearance is maintained.
- Require site plans.
- Require utilization of any prescription monitoring program established by the Commonwealth to review a patient’s pharmaceutical history.
- To establish an electronic verification system to access and verify patient medical cannabis access cards, as well as an electronic tracking system to track growing, transporting, processing, dispensing, and testing of medical cannabis.
- Establish a MC registry to ensure adequate availability of different MC strains and concentrations.
- Develop inspection schedules and conduct unannounced inspections.
- Develop standards/requirements for security systems.
- Develop a system for mandatory/voluntary recall of defective products.
- To develop standards for creation and maintenance of qualifying patient records.
- To establish record retention policies. (the act also requires a two year minimum retention of records)
- Promulgate regulations, including:
 - The receipt of MC for study and research by accredited universities.
 - The determination of required quality and safe clinical strength of MC.
 - The disposal of MC.
 - The storage and transportation of MC.
 - The establishment of standards for containers, tracking, labeling (which includes the cultivation site in labeling) and testing of MC.
 - The form and content of the authority given to a registered patient by a health care provider to obtain MC.
 - Print advertising and marketing of medical cannabis.
- The board also must adopt a schedule of civil penalties for operating without a current license or occupation permit or for other violations of the act. The board has the power to revoke licenses for violations of the act or a regulation or for conviction of a criminal offense. The board may also issue cease and desist orders, order restitution, or levy an administrative penalty.
- The board may levy a civil penalty of not more than \$25,000 for a violation of the act, or impose a civil penalty of not more than \$15,000 if a person aids the unlicensed growing, processing, distribution or dispensing of MC. The board may also assess the cost of the investigation against the person.

CHAPTER 5 LICENSING

Licensing of Growers of MC:

Licensed to supply MC for distribution to processors and dispensers. The cost of a license for a grower of MC is \$50,000, and the fee is deposited into the General Fund. The license must be renewed annually, the cost of renewal is \$5,000 and is deposited in the Professional Licensure Augmentation Account. The board may not license more than 65 growers. While there is no restriction on the strains of MC that may be grown, genetically modified organisms may not be used by growers.

MC growers may only use conventional methods in an indoor, enclosed, secure facility approved by the board. Growers have a list of responsibilities, including that they must: test MC and submit to board or department inspections; package and label MC in accordance with board regulations; take a weekly physical inventory of all plants; utilize any board required electronic tracking system; notify law enforcement within 24 hours of any theft of MC and record the loss or theft in the electronic tracking system; only sell or deliver MC to a processor, a laboratory, or a dispenser; and keep accurate records.

Prohibitions: May not: be located within 1,000 feet of a school or day care center or be located in a residential dwelling or an area zoned for residential use; acquire MC from outside PA; allow a person to consume MC on the property of the grower; or advertise on radio or television.

Licensing of Processors of MC:

The board may not license more than 65 processors. Licensed processors turn the MC into oil-based medical cannabis products, including oil, ointments and tinctures. Licensees must be geographically dispersed throughout PA. The cost of a license for MC processor is \$50,000, and the fee is deposited into the General Fund. The license must be renewed annually, the cost of renewal is \$5,000 and is deposited in the Professional Licensure Augmentation Account.

MC processors have a list of responsibilities, including that they must: Only use extraction and processing methods approved by the board; submit to board and department inspections, including unannounced inspections; Conduct quality testing utilizing a board-approved laboratory; Only sell, transport or deliver MC to either a laboratory or an MC dispenser; Conduct processing activity in a secure indoor facility; Provide a processing, inventory and packaging plan; Perform weekly inspection of all plants, containers and materials; Notify law enforcement within 24 hours of any theft of MC, and record the loss or theft in the electronic tracking system; Maintain daily records of all sales of MC.

Prohibitions: May not: be located within 1,000 feet of a school or day care center or be located in a residential dwelling or an area zoned for residential use; acquire MC from outside PA or from anyone other than a licensed MC grower; process cannabis for any purpose other than to provide MC to a licensed dispenser; or advertise on radio or television.

Licensing of Dispensers of MC:

The board licenses MC dispensers, and may not license more than 130 dispensers. The dispensers must be geographically dispersed throughout PA. The dispensers shall accept MC access cards of a patient or patient representative in accordance with a health care practitioner's instructions. A dispenser license costs \$50,000, and the fee is deposited into the General Fund. The license must be renewed annually, the cost of renewal is \$5,000 and is deposited in the Professional Licensure Augmentation Account.

MC dispensers have a list of responsibilities, including that they must:

- Maintain ongoing connection with the DOH's verification system for MC access cards;
- Submit to board and Department inspections;
- Use the verification system to ensure individual has a valid MC access card prior to dispensing;
- Maintain a daily log of all medical cannabis sold and dispensed, and provide board required reports relating to amounts dispensed;
- Maintain an enclosed, secure premises wherein MC is dispensed;
- Dispense no more than a 28-day supply (no more than 2.5 ounces of MC to a patient within a 14-day period), unless the patient receives a waiver for a larger amount from the Department of Health;
- Maintain an electronic security system, as well as an inventory and packaging plan that complies with the inventory control system;
- Provide supervision of individuals dispensing MC, with the Board determining the necessary health care, educational, pharmaceutical or management qualifications needed to supervise;
- Appoint a physician to serve as medical director of the dispensing facility;
- Perform a weekly physical inventory, and notify law enforcement of any theft of MC within 24 hours, and record the loss or theft in the electronic tracking system;
- Obtain medical cannabis only from a medical cannabis processor.

Prohibitions: May not: be located within 1,000 feet of a school or day care center or be located in a residential dwelling or an area zoned for residential use; advertise on radio or television or sell MC over the Internet; allow a person to use MC on its property or sell products which contain nicotine or alcohol.

The Board may adjust or waive the distance prohibition if it is shown necessary, by clear and convincing evidence, to provide adequate access to patients, and the adjustment or waiver includes additional measures necessary to protect children.

Owner or Operator License:

Each owner or operator of a grower, processor, or dispenser must be licensed. An owner or operator may only have an interest in the licensed activity, and their license application shall include verification from a dispenser, grower or processor and a description of responsibilities. The board may waive licensure requirements for an owner of securities in a publicly- traded company if the board determines that the holder of the securities is not significantly involved in the activities of the applicant.

Occupation Permit for Employees and Certain Patient Representatives:

Each MC employee, and each patient representative who is not a parent or guardian of a patient must obtain a non-transferrable occupation permit from the board.

Location:

Each license for a grower, processor or dispenser is valid only for the specific location for which the license is granted. A person may not distribute MC other than from a licensed facility. Facilities for the manufacturing, preparation and production of MC shall meet the same zoning and land use requirements as other manufacturing, preparation and production facilities. Facilities for the dispensing of MC shall meet the same zoning and land use requirements as other commercial facilities. An owner may petition the board to move the facility. Grower, processor or dispenser license applications must include a copy of the applicant's zoning approval, which must be obtained prior to issuance of board licensure.

Donation of MC:

A MC dispenser, grower or processor may donate MC in new and unopened condition that has been purchased or produced and tested in this Commonwealth. It can only be donated for researching purpose to an accredited Commonwealth research institution, university or college. The electronic tracking system must monitor disposals and donations of medical cannabis by licensees and record any lost or stolen donations.

Testing laboratories:

The board will certify accredited laboratories to test medical cannabis, and these labs also are subject to the electronic tracking system.

CHAPTER 7 MEDICAL CANNABIS ACCESS

Access Card:

A person with a "qualified medical condition" may register with the Department of Health (DOH) for a MC access card. A "patient representative" may obtain a MC access card on behalf of a patient.

DOH shall develop MC access card applications, with annual renewal of the access card required. The application must include a certification that the patient has a qualified medical condition, as well as other identifying information on the application (i.e., address, photo). DOH must approve or deny the application within 90 business days. Application fee will be no more than \$100, and renewal fee will be no more than \$50.

Each patient will be registered in the electronic verification system through their MC access card. A MC access card is valid for two years from the date of issuance. DOH will notify patients if their MC access card is no longer valid. The information contained in the electronic verification system is confidential and may not be disclosed except to: authorized Board and DOH employees; licensed dispensers; law enforcement; and health care practitioners.

Allows for reciprocity among other states that issue MC access cards, but the person may only use MC in PA if the person has a qualified medical condition. The DOH must investigate the person and confirm the person's credentials to use MC, and will use the electronic verification system to confirm their status as a legal user of MC.

Patient Representatives:

Must register with the department in order to transport registered patients to and from MC dispensers; obtain and transport MC for a patient; and prepare and administer MC to a patient.

If a patient representative is no longer employed with a health care facility, the ability of the patient representative to obtain MC is void. A health care facility that employs a patient representative to pick up, deliver, or administer MC shall notify the department immediately if the patient representative's employment has been terminated.

Health Care Practitioners:

May recommend the use of MC if the health care practitioner: (1) has a good faith practitioner-patient relationship with the patient, not limited to the certification of MC use; (2) is licensed to practice within PA; (3) registers with the Department; (4) has the responsibility for ongoing care of a patient; (5) has documented an in-person medical assessment of the patient no longer than 90 days prior to certifying the patient to receive MC; (6) certifies that the patient is under physician's care for a qualified medical condition and it likely to receive therapeutic or palliative benefit from MC, and the certification must also include the recommended dosage (no more than 2.5 ounces in 14 days without a DOH waiver); (7) has adopted a record keeping system for patients recommended to use MC.

Veterans:

A veteran who has received treatment at a VA hospital is deemed to have a bona-fide physician-patient relationship with a VA physician if the patient has been seen for the qualified medical condition.

Expansion of medical conditions:

Beginning in July 1, 2017, allows residents to petition the board to add other qualified medical conditions to the list for which a patient may receive medical cannabis. The board shall permit or deny the petition, in accordance with regulations of the board.

Authorized use:

MC cannabis mixed into food or drinks in order to assist with ingestion does not violate the ban on edible products, however any food mixed with MC may not be sold.

**CHAPTER 9
PROTECTION, PROHIBITIONS, ENFORCEMENT AND PENALTIES**

Civil discrimination protection:

- A person's authorized MC use is equivalent to the use of other medicine used under the direction of a health care provider. MC may not be considered an illicit substance or otherwise disqualify a patient from medical care.
- A person may not be denied child custody due to MC use.
- A person may not be presumed to neglect or endanger a minor child due to MC use, unless the person's behavior creates "an unreasonable danger to the safety of the minor by clear and convincing evidence."
- A landlord may not refuse to lease or otherwise penalize a person because of possession of an MC card or for using MC, "unless the landlord would lose a monetary or licensing-related benefit under federal law or regulation."
- A school may not refuse to enroll or penalize a person because of a possession of an MC card or for using MC, unless the school "would lose a monetary or licensing-related benefit under federal law or regulation."
- An employer may not discriminate against a person in hiring or termination due to possession of an MC card. However, the employer can take into account possession of an MC card: if the employer can prove the person is abusing or misusing MC while on the employment premises or during work hours; or if failure to do so would cause an employer to lose licensing benefit under federal law or regulation." A positive drug test for cannabis may not be considered by an employer unless the person unlawfully used, possessed or was impaired by the MC while on the employment premises or during work hours.

Prohibitions and Use:

No individual may: Smoke MC or use a vaporizer to ingest or inhale MC; Operate or drive a motor vehicle, an aircraft, a motor boat, or heavy machinery with more than 10 nanograms of THC in their system. MC may be used in any public place, including public transportation, on school grounds, in a correctional institution or a public park or beach.

Unlawful Activities:

It is a criminal offense to (1) grow, process, or dispense MC without a license; (2) transport MC from or between an unlicensed grower, processor, or dispenser; (3) grow, test, process or dispense MC in violation of the act; (4) fail to pay a fee under the act; or (5) violate a board regulations.

A grower, processor or dispenser that provides MC to any unauthorized person commits a felony of the third degree (maximum penalty seven years imprisonment/\$15,000 fine). Falsification of an application or laboratory certification is a misdemeanor of the first degree (maximum penalty five years imprisonment/\$10,000). Otherwise, a violation of the act is graded as a misdemeanor of the second degree (maximum penalty two years imprisonment/\$ 5,000 fine). A second or subsequent offense is graded as a felony of the third degree.

Daily Log Access:

Establishes proper procedure under court order for law enforcement to access and use a MC dispenser's daily log of MC sold and dispensed.

Law Enforcement:

Verification system may only be accessed by department-registered law enforcement agencies in order to confirm MC access card authenticity. Without criminal charges, accessed information shall remain confidential.

**CHAPTER 11
MEDICAL CANNABIS SURCHARGE**

Medical Cannabis Surcharge:

Imposes a surcharge upon a grower, processor, and dispenser or any other person licensed to sell MC to a dispenser at the time the MC is first sold to a dispenser. The rate is 6% of the purchase price charged to a dispenser. A failure to pay the surcharge is a summary offense, punishable by not more than 60 days imprisonment and a fine of not less than \$100 but not more than \$1,000, or both. Evading the surcharge is an offense graded as a misdemeanor of the third degree, punishable by imprisonment of not more than one year and assessment of a fine of not more than \$5,000 or both.

**CHAPTER 51
MISCELLANEOUS PROVISIONS**

Regulations:

The board shall promulgate temporary regulations, which have a two-year expiration date. The temporary regulations shall not be subject to the Regulatory Review Act, the Commonwealth Documents Law, or the Commonwealth Attorneys Act. The board must begin publishing temporary regulations within six months of the effective date of the act.

Appropriation:

The sum of \$1.3 million is appropriated to the Bureau of Professional and Occupational Affairs within the Department of State in order to establish the board and to implement other provisions of the act.

Effective Date: 60 Days.

BILL HISTORY:

Referred to Senate State Government Committee, January 26, 2015

Prepared by: Totino 4/16/2015