

MEDICAL CANNABIS PATIENT PROTECTION

AMENDMENTS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Daniel W. Thatcher

House Sponsor: Joel Ferry

Cosponsors: Michael S. Kennedy

Jacob L. Anderegg Daniel McCay

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LONG TITLE

General Description:

This bill amends protections for medical cannabis patients.

Highlighted Provisions:

This bill:

- ▶ amends protections for medical cannabis patients, including public employees, to protect the holding of a medical cannabis card and medical cannabis recommendations; and

- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

26-61a-111, as last amended by Laws of Utah 2021, Chapter 344

78A-2-231, as last amended by Laws of Utah 2021, Chapters 260 and 337

80-3-110, as last amended by Laws of Utah 2021, Chapters 38, 337 and renumbered

29 and amended by Laws of Utah 2021, Chapter 261 and last amended by Coordination Clause,
30 Laws of Utah 2021, Chapter 261

31

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

33 Section 1. Section **26-61a-111** is amended to read:

34 **26-61a-111. Nondiscrimination for medical care or government employment --**
35 **Notice to prospective and current public employees -- No effect on private employers.**

36 (1) For purposes of medical care, including an organ or tissue transplant, a patient's
37 use, in accordance with this chapter, of cannabis in a medicinal dosage form or a cannabis
38 product in a medicinal dosage form:

39 (a) is considered the equivalent of the authorized use of any other medication used at
40 the discretion of a physician; and

41 (b) does not constitute the use of an illicit substance or otherwise disqualify an
42 individual from needed medical care.

43 (2) (a) Notwithstanding any other provision of law and except as provided in
44 Subsection (2)(b), the state or any political subdivision shall treat:

45 (i) an employee's use of medical cannabis in accordance with this chapter or Section
46 [58-37-3.7](#) in the same way the state or political subdivision treats employee use of any
47 prescribed controlled substance~~[-]~~; and

48 (ii) an employee's status as a medical cannabis cardholder or an employee's medical
49 cannabis recommendation from a qualified medical provider or limited provider in the same
50 way the state or political subdivision treats an employee's prescriptions for any prescribed
51 controlled substance.

52 (b) A state or political subdivision employee who has a valid medical cannabis card is
53 not subject to adverse action, as that term is defined in Section [67-21-2](#), for failing a drug test
54 due to marijuana or tetrahydrocannabinol without evidence that the employee was impaired or
55 otherwise adversely affected in the employee's job performance due to the use of medical
56 cannabis.

57 (c) Subsections (2)(a) and (b) do not apply where the application of Subsection (2)(a)
58 or (b) would jeopardize federal funding, a federal security clearance, or any other federal
59 background determination required for the employee's position, or if the employee's position is
60 dependent on a license that is subject to federal regulations.

61 (3) (a) (i) A state employer or a political subdivision employer shall take the action
62 described in Subsection (3)(a)(ii) before:

63 (A) giving to a current employee an assignment or duty that arises from or directly
64 relates to an obligation under this chapter; or

65 (B) hiring a prospective employee whose assignments or duties would include an
66 assignment or duty that arises from or directly relates to an obligation under this chapter.

67 (ii) The employer described in Subsection (3)(a)(i) shall give the employee or
68 prospective employee described in Subsection (3)(a)(i) a written notice that notifies the
69 employee or prospective employee:

70 (A) that the employee's or prospective employee's job duties may require the employee
71 or prospective employee to engage in conduct which is in violation of the criminal laws of the
72 United States; and

73 (B) that in accepting a job or undertaking a duty described in Subsection (3)(a)(i),
74 although the employee or prospective employee is entitled to the protections of Title 67,
75 Chapter 21, Utah Protection of Public Employees Act, the employee may not object or refuse to
76 carry out an assignment or duty that may be a violation of the criminal laws of the United
77 States with respect to the manufacture, sale, or distribution of cannabis.

78 (b) The Division of Human Resource Management shall create, revise, and publish the
79 form of the notice described in Subsection (3)(a).

80 (c) Notwithstanding Subsection 67-21-3(3), an employee who has signed the notice
81 described in Subsection (3)(a) may not:

82 (i) claim in good faith that the employee's actions violate or potentially violate the laws
83 of the United States with respect to the manufacture, sale, or distribution of cannabis; or

84 (ii) refuse to carry out a directive that the employee reasonably believes violates the

85 criminal laws of the United States with respect to the manufacture, sale, or distribution of
86 cannabis.

87 (d) An employer may not take retaliatory action as defined in Section 67-19a-101
88 against a current employee who refuses to sign the notice described in Subsection (3)(a).

89 (4) Nothing in this section requires a private employer to accommodate the use of
90 medical cannabis or affects the ability of a private employer to have policies restricting the use
91 of medical cannabis by applicants or employees.

92 Section 2. Section 78A-2-231 is amended to read:

93 **78A-2-231. Consideration of lawful use or possession of medical cannabis.**

94 (1) As used in this section:

95 (a) "Cannabis product" means the same as that term is defined in Section 26-61a-102.

96 (b) "Directions of use" means the same as that term is defined in Section 26-61a-102.

97 (c) "Dosing guidelines" means the same as that term is defined in Section 26-61a-102.

98 (d) "Medical cannabis" means the same as that term is defined in Section 26-61a-102.

99 (e) "Medical cannabis card" means the same as that term is defined in Section
100 26-61a-102.

101 (f) "Medical cannabis device" means the same as that term is defined in Section
102 26-61a-102.

103 (g) "Recommending medical provider" means the same as that term is defined in
104 Section 26-61a-102.

105 (2) In any judicial proceeding in which a judge, panel, jury, or court commissioner
106 makes a finding, determination, or otherwise considers an individual's medical cannabis card,
107 medical cannabis recommendation from a recommending medical provider, or possession or
108 use of medical cannabis, a cannabis product, or a medical cannabis device, the judge, panel,
109 jury, or court commissioner may not consider or treat the individual's card, recommendation,
110 possession, or use any differently than the lawful possession or use of any prescribed controlled
111 substance if:

112 (a) the individual's possession complies with Title 4, Chapter 41a, Cannabis Production

113 Establishments;

114 (b) the individual's possession or use complies with Subsection 58-37-3.7(2) or (3); or

115 (c) (i) the individual's possession or use complies with Title 26, Chapter 61a, Utah

116 Medical Cannabis Act; and

117 (ii) the individual reasonably complies with the directions of use and dosing guidelines

118 determined by the individual's recommending medical provider or through a consultation

119 described in Subsection 26-61a-502(4) or (5).

120 (3) Notwithstanding Sections 77-18-105 and 77-2a-3, for probation, release, a plea in

121 abeyance agreement, a diversion agreement, or a tendered admission under Utah Rules of

122 Juvenile Procedure, Rule 25, a term or condition may not require that an individual abstain

123 from the use or possession of medical cannabis, a cannabis product, or a medical cannabis

124 device, either directly or through a general prohibition on violating federal law, without an

125 exception related to medical cannabis use, if the individual's use or possession complies with:

126 (a) Title 26, Chapter 61a, Utah Medical Cannabis Act; or

127 (b) Subsection 58-37-3.7(2) or (3).

128 Section 3. Section 80-3-110 is amended to read:

129 **80-3-110. Consideration of cannabis during proceedings -- Drug testing.**

130 (1) As used in this section:

131 (a) "Cannabis" means the same as that term is defined in Section 26-61a-102.

132 (b) "Cannabis product" means the same as that term is defined in Section 26-61a-102.

133 (c) (i) "Chronic" means repeated or patterned.

134 (ii) "Chronic" does not mean an isolated incident.

135 (d) "Directions of use" means the same as that term is defined in Section 26-61a-102.

136 (e) "Dosing guidelines" means the same as that term is defined in Section 26-61a-102.

137 (f) "Medical cannabis" means the same as that term is defined in Section 26-61a-102.

138 (g) "Medical cannabis cardholder" means the same as that term is defined in Section

139 26-61a-102.

140 (h) "Recommending medical provider" means the same as that term is defined in

141 Section [26-61a-102](#).

142 (2) In a proceeding under this chapter, in which the juvenile court makes a finding,
143 determination, or otherwise considers an individual's medical cannabis card, medical cannabis
144 recommendation from a recommending medical provider, or possession or use of medical
145 cannabis, a cannabis product, or a medical cannabis device, the juvenile court may not consider
146 or treat the individual's medical cannabis card, recommendation, possession, or use any
147 differently than the lawful possession or use of any prescribed controlled substance if:

148 (a) the individual's possession or use complies with Title 4, Chapter 41a, Cannabis
149 Production Establishments;

150 (b) the individual's possession or use complies with Subsection [58-37-3.7\(2\)](#) or (3); or

151 (c) (i) the individual's possession or use complies with Title 26, Chapter 61a, Utah
152 Medical Cannabis Act; and

153 (ii) the individual reasonably complies with the directions of use and dosing guidelines
154 determined by the individual's recommending medical provider or through a consultation
155 described in Subsection [26-61a-502\(4\)](#) or (5).

156 (3) In a proceeding under this chapter, a child's parent's or guardian's use of cannabis or
157 a cannabis product is not abuse or neglect of the child unless there is evidence showing that:

158 (a) the child is harmed because of the child's inhalation or ingestion of cannabis, or
159 because of cannabis being introduced to the child's body in another manner; or

160 (b) the child is at an unreasonable risk of harm because of chronic inhalation or
161 ingestion of cannabis or chronic introduction of cannabis to the child's body in another manner.

162 (4) Unless there is harm or an unreasonable risk of harm to the child as described in
163 Subsection (3), in a child welfare proceeding under this chapter, a child's parent's or guardian's
164 use of medical cannabis or a cannabis product is not contrary to the best interests of the child
165 if:

166 (a) for a medical cannabis cardholder after January 1, 2021, the parent's or guardian's
167 possession or use complies with Title 26, Chapter 61a, Utah Medical Cannabis Act, and there
168 is no evidence that the parent's or guardian's use of medical cannabis unreasonably deviates

169 from the directions of use and dosing guidelines determined by the parent's or guardian's
170 recommending medical provider or through a consultation described in Subsection
171 26-61a-502(4) or (5); or

172 (b) before January 1, 2021, the parent's or guardian's possession or use complies with
173 Subsection 58-37-3.7(2) or (3).

174 (5) Subsection (3) does not prohibit a finding of abuse or neglect of a child, and
175 Subsection (3) does not prohibit a finding that a parent's or guardian's use of medical cannabis
176 or a cannabis product is contrary to the best interests of a child, if there is evidence showing a
177 nexus between the parent's or guardian's use of cannabis or a cannabis product and behavior
178 that would separately constitute abuse or neglect of the child.

179 (6) If an individual, who is party to a proceeding under this chapter, is ordered by the
180 juvenile court to submit to drug testing, or is referred by the division or a guardian ad litem for
181 drug testing, the individual may not be ordered or referred for drug testing by means of a hair
182 or fingernail test that is administered to detect the presence of drugs.