

**The Florida Senate**  
**COMMITTEE MEETING EXPANDED AGENDA**

**HEALTH POLICY**  
**Senator Young, Chair**  
**Senator Passidomo, Vice Chair**

**MEETING DATE:** Thursday, June 8, 2017  
**TIME:** 8:00—9:30 a.m.  
**PLACE:** Pat Thomas Committee Room, 412 Knott Building

**MEMBERS:** Senator Young, Chair; Senator Passidomo, Vice Chair; Senators Benacquisto, Book, Hukill, Hutson, Montford, and Powell

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	<b>SB 8-A</b> Bradley (Similar H 5-A, Compare H 7-A, Linked S 6-A)	Medical Use of Marijuana; Providing an exemption from the state tax on sales, use, and other transactions for marijuana and marijuana delivery devices used for medical purposes; providing qualifying medical conditions for a patient to be eligible to receive marijuana or a marijuana delivery device; providing for the establishment of medical marijuana testing laboratories; establishing the Coalition for Medical Marijuana Research and Education within the H. Lee Moffitt Cancer Center and Research Institute, Inc., etc.  HP      06/08/2017 Fav/3 Amendments AP	Fav/3 Amendments (606998, 501070, 633510) Yeas 7 Nays 0
2	<b>SB 6-A</b> Bradley (Similar H 7-A, Compare H 5-A, Linked S 8-A)	Public Records/Medical Marijuana Use Registry/Physician Certification for Marijuana and Dispensing/Department of Health; Exempting from public records requirements personal identifying information of patients, caregivers, and physicians held by the Department of Health in the medical marijuana use registry and personal identifying information related to the physician certification for marijuana and the dispensing thereof held by the department; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc.  HP      06/08/2017 Favorable AP	Favorable Yeas 7 Nays 0

Other Related Meeting Documents

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Health Policy

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BILL: SB 8-A

INTRODUCER: Senator Bradley

SUBJECT: Medical Use of Marijuana

DATE: June 7, 2017

REVISED: 06/08/17

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	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	Stovall	HP	<b>Fav/3 amendments</b>
2.			AP	

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**Please see Section IX. for Additional Information:**

AMENDMENTS - Significant amendments were recommended

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**I. Summary:**

SB 8-A implements the provisions of s. 29, Art. X, of the State Constitution. The bill:

- Exempts the sale of marijuana and marijuana delivery devices from sales tax.
- Establishes procedures for physicians to issue physician certifications to patients who have qualifying medical conditions.
- Establishes residency requirements for patients to be issued a Medical Marijuana Use Registry Identification Card (ID card).
- Establishes qualifications required to become a caregiver including requiring the Department of Health (DOH) to create a caregiver certification course that each caregiver must take.
- Limits the number of caregivers each patient may have and the number of patients each caregiver may assist.
- Changes the name of the Compassionate Use Registry to the Medical Marijuana Use Registry and requires the DOH to issue ID cards to patients and caregivers.
- Details requirements for MMTC applicants and standards that each MMTC must meet to maintain licensure.
- Grandfathers in existing dispensing organizations as MMTCs and requires the DOH to license 10 new MMTCs by October 3, 2017, and then four new MMTCs each time the registry increases by 100,000 registered patients.
- Limits the number of dispensing facilities each MMTC may operate to 25 statewide and per region based on the percentage of population in each region. The total number of dispensing facilities each MMTC may operate increases by five per 100,000 patients registered in the Medical Marijuana Use Registry. MMTCs may sell dispensing facility slots to each other. These caps expire on April 1, 2020.

- Requires laboratory testing of MMTC products and creates a certification program for medical marijuana testing laboratories.
- Preempts the regulation of cultivation and processing of marijuana to the state.
- Allows local governments to ban MMTC dispensing facilities. If a local government does not ban dispensing facilities it may not place any restrictions on the number of dispensing facilities allowed and may not adopt any regulations for dispensing facilities that are more restrictive than its ordinances regulating pharmacies.
- Requires the DOH and the Department of Highway Safety and Motor Vehicles (DHSMV) to establish educational campaigns related to the medical use of marijuana.
- Creates the Coalition for Medicinal Cannabis Research and Education (coalition) to conduct rigorous scientific research, provide education, disseminate research, and to guide policy development for the adoption of a statewide policy on ordering and dosing practices for the medicinal use of cannabis.
- Includes rulemaking and other provisions to aid the DOH in adopting rules and implementing the provisions of Amendment 2 within the time frame specified in the amendment.
- Includes appropriations for the state 2017-2018 fiscal year for the DOH, for the education programs, and for the Coalition.

## II. Present Situation:

### Treatment of Marijuana in Florida

Florida law defines cannabis as “all parts of any plant of the genus *Cannabis*, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin,”<sup>1</sup> and places it, along with other sources of tetrahydrocannabinol (THC), on the list of Schedule I controlled substances.<sup>2</sup> The definition excludes “low-THC cannabis” as defined in s. 381.986, F.S., if manufactured, possessed, sold, purchased, delivered, distributed, or dispensed in conformance with that section.

Schedule I controlled substances are substances that have a high potential for abuse and no currently accepted medical use in the United States.<sup>3</sup> As a Schedule I controlled substance, possession and trafficking of cannabis carry criminal penalties that vary from a first-degree misdemeanor<sup>4</sup> up to a first-degree felony with a mandatory minimum sentence of 15 years in state prison and a \$200,000 fine.<sup>5</sup> Paraphernalia<sup>6</sup> that is sold, manufactured, used, or possessed with the intent to be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance, is also

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<sup>1</sup> Section 893.02(3), F.S.

<sup>2</sup> Section 893.03(1)(c)7. and 37., F.S.

<sup>3</sup> Section 893.03(1), F.S.

<sup>4</sup> This penalty is applicable to possession or delivery of less than 20 grams of cannabis. *See* s. 893.13(3) and (6)(b), F.S.

<sup>5</sup> Trafficking in more than 25 pounds, or 300 plants, of cannabis is a first-degree felony with a mandatory minimum sentence that varies from three to 15 years in state prison depending on the quantity of the cannabis possessed, sold, etc. *See* s. 893.135(1)(a), F.S.

<sup>6</sup> Section 893.145, F.S.

prohibited and carries criminal penalties ranging from a first degree misdemeanor to a third degree felony.<sup>7</sup>

## **Medical Marijuana in Florida: the Compassionate Medical Cannabis Act of 2014**

### ***Patient Treatment with Low-THC Cannabis***

The Compassionate Medical Cannabis Act of 2014<sup>8</sup> (act) legalized a low tetrahydrocannabinol (THC) and high cannabidiol (CBD) form of cannabis (low-THC cannabis)<sup>9</sup> for medical use<sup>10</sup> by patients suffering from cancer or a physical medical condition that chronically produces symptoms of seizures or severe and persistent muscle spasms. The act provides that a Florida licensed allopathic or osteopathic physician who has completed the required training<sup>11</sup> and has examined and is treating such a patient may order low-THC cannabis for that patient to treat such disease, disorder, or condition or to alleviate its symptoms, if no other satisfactory alternative treatment options exist for that patient. In order for a physician to order low-THC cannabis for a patient, all of the following conditions must apply:

- The patient is a permanent resident of Florida;
- The physician has treated the patient for at least 3 months immediately preceding the patient's registration and has determined that the risks of ordering low-THC cannabis are reasonable in light of the potential benefit for that patient;<sup>12</sup>
- The physician registers as the orderer of low-THC cannabis for the patient on the compassionate use registry (registry) maintained by the DOH and updates the registry to reflect the contents of the order;
- The physician 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;
- The physician submits the patient treatment plan quarterly to the University of Florida, College of Pharmacy (UFCP) for research on the safety and efficacy of low-THC cannabis on patients; and
- The physician 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 about the effectiveness of treatment of the patient's

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<sup>7</sup> Section 893.147, F.S.

<sup>8</sup> Chapter 2014-157, Laws of Fla., codified in s. 381.986, F.S.

<sup>9</sup> Section 381.986(b), F.S., defines "low-THC cannabis," as the dried flowers of the plant *Cannabis* which contain 0.8 percent or less of tetrahydrocannabinol and more than 10 percent of cannabidiol weight for weight, or the seeds, resin, or any compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin.

<sup>10</sup> Section 381.986(1)(c), F.S., defines "medical use" as administration of the ordered amount of low-THC cannabis; and the term does not include the possession, use, or administration by smoking, or the transfer of low-THC cannabis to a person other than the qualified patient for whom it was ordered or the qualified patient's legal representative. Section 381.986(1)(e), F.S., defines "smoking" as burning or igniting a substance and inhaling the smoke; smoking does not include the use of a vaporizer.

<sup>11</sup> Section 381.986(4), F.S., requires such physicians to successfully complete an 8-hour course and examination offered by the Florida Medical Association or the Florida Osteopathic Medical Association that encompasses the clinical indications for the appropriate use of low-THC cannabis, appropriate delivery mechanisms, contraindications for such use, and the state and federal laws governing its ordering, dispensing, and processing.

<sup>12</sup> If a patient is younger than 18 years of age, a second physician must concur with this determination, and such determination must be documented in the patient's medical record.

condition with low-THC cannabis, the medically acceptable alternatives, and the potential risks and side effects.<sup>13</sup>

The act creates exceptions to existing law to allow qualified patients<sup>14</sup> and their legal representatives to purchase, acquire, and possess low-THC cannabis – up to the amount ordered – for that patient’s medical use; and to allow dispensing organizations (DO) and their owners, managers, and employees to acquire, possess, cultivate, and dispose of excess product in reasonable quantities to produce low-THC cannabis and to possess, process, and dispense low-THC cannabis. The DOs and their owners, managers, and employees are not subject to licensure and regulation under ch. 465, F.S., relating to pharmacies.<sup>15</sup>

### ***Patient Treatment with Medical Cannabis***

Chapter 2016-123, Laws of Florida, amended the act to expand the regulatory structure relating to dispensing low-THC cannabis and authorized approved dispensing organizations to cultivate and dispense medical cannabis to eligible patients as defined under the Right to Try Act (RTTA).<sup>16</sup> In conjunction with s. 381.986, F.S., the RTTA allows physicians to treat eligible patients with terminal conditions with medical cannabis by including medical cannabis<sup>17</sup> within the definition of an investigational drug, biological product, or device. Physicians must order the use of medical cannabis for those patients pursuant to the provisions of s. 381.986, F.S.

### ***Dispensing Organizations under the Act***

Section 381.986, F.S., requires that the DOH approve five DOs, one in each of five regions throughout the state. In order to be approved as a DO, an applicant must possess a certificate of registration issued by the Department of Agriculture and Consumer Services (DACS) for the cultivation of more than 400,000 plants, be operated by a nurseryman, and have been operating as a registered nursery in this state for at least 30 continuous years. DOs must be vertically integrated, meaning the DO performs all stages in the production, processing, marketing, and retailing of low-THC and medical cannabis. Applicants are required to demonstrate:

- The technical and technological ability to cultivate and produce low-THC cannabis;
- The ability to secure the premises, resources, and personnel necessary to operate as a DO;
- 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;
- An infrastructure reasonably located to dispense low-THC cannabis to registered patients statewide or regionally as determined by the DOH;
- The financial ability to maintain operations for the duration of the two year approval cycle, including the provision of certified financials to the DOH;
- That all owners and managers have been fingerprinted and have successfully passed a Level 2 background screening pursuant to s. 435.04, F.S; and

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<sup>13</sup> Section 381.986(2), F.S.

<sup>14</sup> Section 381.986(1)(d), F.S., defines a “qualified patient” as a Florida resident who has been added by a physician licensed under ch. 458 or 459, F.S., to the compassionate use registry to receive low-THC cannabis from a DO.

<sup>15</sup> Section 381.986(7), F.S.

<sup>16</sup> Section 499.0295, F.S.

<sup>17</sup> “Medical cannabis” means all parts of any plant of the genus *Cannabis*, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, sale, derivative, mixture, or preparation of the plant or its seeds or resin that is dispensed only from a DO for medical use by an eligible patient as defined in the Right to Try Act.

- The employment of a medical director, who must be a physician<sup>18</sup> and successfully completed a course and examination that encompasses appropriate safety procedures and knowledge of low-THC cannabis.<sup>19</sup>

An approved DO must post a \$5 million performance bond within 10 business days of approval. The DOH is authorized to charge an initial application fee and a licensure renewal fee, but is not authorized to charge an initial licensure fee.<sup>20</sup> An approved DO must maintain all approval criteria at all times.<sup>21</sup>

Beginning on July 7, 2014, the DOH held several rule workshops<sup>22</sup> to write and adopt rules implementing the provisions of s. 381.986, F.S., and the DOH put forward a proposed rule on September 9, 2014.<sup>23</sup> This proposed rule was challenged by multiple organizations involved in the rulemaking workshops and was found to be an invalid exercise of delegated legislative authority by an administrative law judge on November 14, 2014.<sup>24</sup> Afterward, the DOH held a negotiated rulemaking workshop in February of 2015, which resulted in a new proposed rule being published on February 6, 2015.<sup>25</sup> The new proposed rule was also challenged on, among other things, the DOH's statement of estimated regulatory costs and the DOH's conclusion that the rule will not require legislative ratification. Hearings were held on April 23 and 24, 2015, and a final order was issued on May 27, 2015, which found the rule to be valid.<sup>26</sup> The rule took effect June 17, 2015, and the DOH held an application period for DO approval, which ended on July 8, 2015. Twenty-eight applications were submitted and 26 of the applications were scored.<sup>27</sup>

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<sup>18</sup> Licensed under ch. 458 or 459, F.S.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> Section 381.986(6), F.S.

<sup>22</sup> Audio recordings of the rule development workshops are available on the DOH website at: <http://www.floridahealth.gov/programs-and-services/office-of-compassionate-use/resources/rulemaking/index.html> (last visited June 7, 2017).

<sup>23</sup> Proposed Rule ch. 64-4, F.A.C., ID 14941024, (Aug. 14, 2014) and changed, ID 15040352, (Sept. 9, 2014).

<sup>24</sup> Tornello Landscape Corp. v. DOH, Case No. 14-4547RP; Fl. Medical Cannabis Assoc. v. DOH, Case No. 14-4517RP; Plants of Ruskin, Inc. v. DOH, Case No. 14-4299RP; Costa Farms, LLC v. DOH, Case No. 14-4296RP (Fla. DOAH 2014). A copy of each Final Order is available on the Division of Administrative Hearings website.

<sup>25</sup> Proposed Rule ch. 64-4, F.A.C., ID 15645147, (Feb. 2, 2015).

<sup>26</sup> Baywood Nurseries Co., Inc. v. DOH, Case No. 15-1694RP (Fla. DOAH 2015).

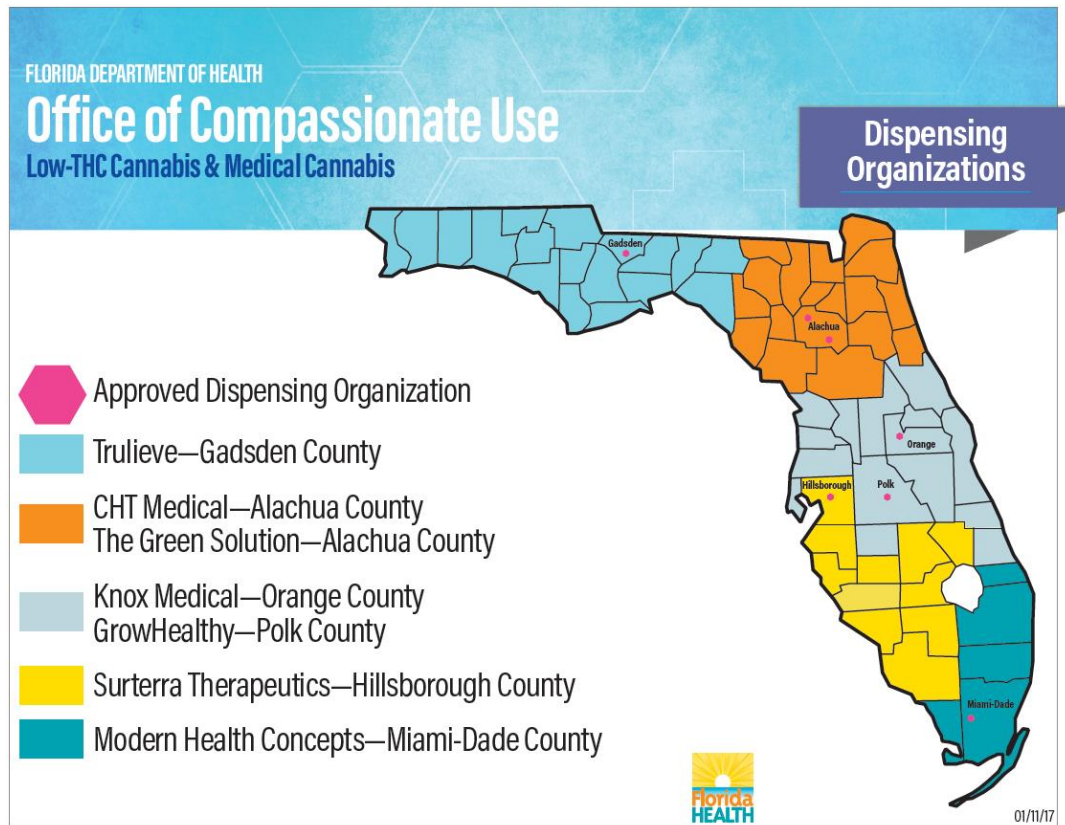
<sup>27</sup> Information about the applications and the approved DOs is available on the DOH, Office of Compassionate Use, website, available at: <http://www.floridahealth.gov/programs-and-services/office-of-compassionate-use/dispensing-organizations/dispensing-application-process/index.html> (last visited June 7, 2017).

Applicant	Region	Reviewer 1	Reviewer 2	Reviewer 3	Final Rank	Regional Rank
3 Boys	Southwest	2.6875	3.1000	4.6125	3.4667	4
Alpha	Southwest	4.8750	3.5000	3.9375	4.1042	5
Perkins	Southwest	1.3750	2.0375	2.9375	2.1167	1
Plants of Ruskin	Southwest	2.7625	2.3375	2.8375	2.6458	2
Sun Bulb	Southwest	3.3000	4.0250	2.1500	3.1583	3
Bill's	Southeast	2.1125	1.1500	1.3875	1.5500	1
Costa	Southeast	4.2750	4.2375	4.6875	4.4000	5
Keith's St. Germain	Southeast	2.4125	4.1250	3.1000	3.2125	4
Nature's Way	Southeast	2.4500	3.4875	2.7125	2.8833	2
Redland	Southeast	3.7500	2.0000	3.7750	3.1750	3
Deleon	Central	1.8375	2.8875	1.0000	1.9083	1
Dewar	Central	4.7500	4.5750	2.5375	3.9542	3
Knox	Central	4.1750	6.5875	5.8750	5.5458	7
McCrary's	Central	5.4125	4.6875	6.5250	5.5417	6
Redland	Central	6.4000	2.3375	4.5500	4.4292	4
Spring Oak	Central	1.4375	1.3750	3.3125	2.0417	2
Treadwell	Central	3.9875	5.4375	4.2750	4.5667	5
Bill's	Northeast	1.2500	1.4250	1.0000	1.2250	1
Chestnut Hill	Northeast	4.7250	3.6500	3.0000	3.7917	4
Hart's	Northeast	3.2375	2.0750	2.0000	2.4375	2
Loop's	Northeast	2.7250	3.9875	4.0000	3.5708	3
San Felasco	Northeast	3.0625	3.8625	5.0000	3.9750	5
Alpha	Northwest	3.3125	2.9000	2.0000	2.7375	3
Hackney	Northwest	3.6125	3.4500	4.0000	3.6875	4
Hart's	Northwest	1.7250	1.9250	3.0000	2.2167	2
Tree King	Northwest	1.3500	1.7250	1.0000	1.3583	1

On November 23, 2015, the DOH approved a DO in each of the following five regions as required by the act: northwest Florida, northeast Florida, central Florida, southeast Florida, and southwest Florida.<sup>28</sup> Numerous petitions were filed challenging the DOH's selection process. In order to allow the approved DOs to begin dispensing products, the 2016 Legislature required the DOH to approve as a DO applicants that received the highest aggregate score through the DOH's evaluation process, notwithstanding any prior determination by the DOH that the applicant failed to meet the requirements of s. 381.986, F.S. The Legislature also provided that if the Division of Administrative Hearings, the DOH, or a court of competent jurisdiction makes a final determination that an applicant was entitled to be a DO, that both this DO and currently approved DOs may operate in the same region.<sup>29</sup> Currently, in addition to the five DOs originally approved, the DOH has since approved The Green Solution in Alachua County and Grow Health in Polk County. The following map depicts the currently approved DOs.

<sup>28</sup> Section 381.986(5)(b), F.S. A map of the dispensing regions and approved dispensing organizations is available on the DOH website at: <http://www.floridahealth.gov/programs-and-services/office-of-compassionate-use/documents/ocu-dispensing-map.pdf> (last visited June 7, 2017).

<sup>29</sup> Chapter 2016-123, Laws of Fla.



In addition to the currently approved DOs, s. 381.986(5)(c), F.S., requires the DOH to approve three additional DOs upon the registration of 250,000 active qualified patients in the compassionate use registry. At least one of the newly approved DOs must be an applicant that is a recognized class member of *Pigford v. Glickman*, 185 F.R.D. 82 (D.D.C. 1999), or *In Re Black Farmers Litig.*, 856 F. Supp. 2d 1 (D.D.C. 2011), and a member of the Black Farmers and Agriculturalists Association. These additional applicants are not required to meet the requirement to possess a certificate of registration issued by the DACS for the cultivation of more than 400,000 plants, be operated by a nurseryman, and have been operating as a registered nursery in Florida for at least 30 continuous years.

***The Compassionate Use Registry***

The act requires the DOH to create a secure, electronic, and online registry for the registration of physicians and patients and for the verification of patient orders by DOs, which is accessible to law enforcement.<sup>30</sup> The registry must allow DOs to record the dispensing of low-THC cannabis, and must prevent an active registration of a patient by multiple physicians. Physicians must register qualified patients with the registry and DOs are required to verify that the patient has an active registration in the registry, that the order presented matches the order contents as recorded in the registry, and that the order has not already been filled before dispensing any low-THC cannabis. The DOs are also required to record in the registry the date, time, quantity, and form of low-THC cannabis dispensed.<sup>31</sup> The Compassionate Use Registry became operational on

<sup>30</sup> Section 381.986(5)(a), F.S.

<sup>31</sup> Section 381.986(6), F.S.

July 11, 2016.<sup>32</sup> As of June 1 2017, there were 15,878 patients registered with the Compassionate Use Registry.<sup>33</sup>

### ***The Office of Compassionate Use and Research on Low-THC Cannabis***

The DOH was required to establish the Office of Compassionate Use under the direction of the deputy state health officer to administer the act.<sup>34,35</sup>

The act includes several provisions related to research on low-THC cannabis and cannabidiol including:

- Requiring physicians to submit quarterly patient treatment plans to the UFCP for research on the safety and efficacy of low-THC cannabis;<sup>36</sup>
- Authorizing state universities to perform research on cannabidiol and low-THC cannabis and exempting them from the provisions in ch. 893, F.S., for the purposes of such research;<sup>37</sup> and
- Appropriating \$1 million to the James and Esther King Biomedical Research Program for research on cannabidiol and its effects on intractable childhood epilepsy.<sup>38</sup>

### **Medical Marijuana in Florida: Amendment 2 (2016)**

On November 4, 2016, Amendment 2 was voted into law and established Article X, section 29 of the State Constitution. This section of the constitution became effective on January 3, 2017, and creates several exemptions from criminal and civil liability for:

- Qualifying patients medically using marijuana in compliance with the amendment;
- Physicians, solely for issuing physician certifications with reasonable care and in compliance with the amendment; and
- Medical Marijuana Treatment Centers (MMTCs), their agents, and employees for actions or conduct under the amendment and in compliance with DOH rules.

The constitution defines multiple terms including:

- “Qualifying patient” to mean a person who:
  - Has been diagnosed with a “debilitating medical condition;”

<sup>32</sup> Office of Compassionate Use, *Implementation Timeline* (October 2016) available at [http://www.floridahealth.gov/programs-and-services/office-of-compassionate-use/\\_documents/ocu-timeline.pdf](http://www.floridahealth.gov/programs-and-services/office-of-compassionate-use/_documents/ocu-timeline.pdf), (last visited June 7, 2017).

<sup>33</sup> Email from the Legislative Affairs Director, Department of Health (June 1, 2017) (n file with the Senate Committee on Health Policy).

<sup>34</sup> Section 385.212, F.S.

<sup>35</sup> The Office of Compassionate Use is authorized to enhance access to investigational new drugs for Florida patients through approved clinical treatment plans or studies by: creating a network of state universities and medical centers recognized for demonstrating excellence in patient-centered coordinated care for persons undergoing cancer treatment and therapy in this state; making any necessary application to the U.S. Food and Drug Administration (FDA) or a pharmaceutical manufacturer to facilitate enhanced access to compassionate use for Florida patients; and entering into agreements necessary to facilitate enhanced access to compassionate use for Florida patients. *See* ss. 381.925 and 385.212, F.S.

<sup>36</sup> Section 381.986(2)(e), F.S.

<sup>37</sup> Section 385.211, F.S.

<sup>38</sup> Chapter 2014-157, Laws of Fla. The DOH and the University of Florida executed a contract (ID 5EP01) on June 5, 2015, and \$483,334 of the \$1 million grant award has been spent. Florida Accountability Contract Tracking System (FACTS) available at: <https://facts.fldfs.com/Search/ContractDetail.aspx?AgencyId=640000&ContractId=5EP01>. (last visited June 7, 2017).

- Has a “physician certification;” and
- Has a valid qualifying patient identification card issued by the DOH.
- In the case of a minor patient, must also have the consent of a parent or legal guardian prior to both obtaining a physician certification and obtaining an identification card from the DOH.<sup>39</sup>
- “Debilitating Medical Condition” to mean:
  - Cancer;
  - Epilepsy;
  - Glaucoma;
  - HIV/AIDS;
  - Post-Traumatic Stress Disorder (PTSD);
  - Amyotrophic lateral sclerosis (ALS);
  - Crohn’s Disease;
  - Parkinson’s Disease;
  - Multiple Sclerosis; or
  - Another debilitating medical condition of the same kind or class as, or comparable to, the enumerated conditions.
  - Additionally, a physician must believe that the medical use of marijuana would likely outweigh the potential health risks for the patient.
- “Marijuana” to have the meaning given to cannabis in section 893.02(3), F.S. (2014), and, in addition, “low-THC cannabis” as defined in section 381.986(1)(b), F.S. (2014), shall also be included in the meaning of the term “marijuana.”
- “MMTC” or “MMTC” to mean an entity that acquires, cultivates, possesses, processes (including development of related products such as food, tinctures, aerosols, oils, or ointments), transfers, transports, sells, distributes, dispenses, or administers marijuana, products containing marijuana, related supplies, or educational materials to qualifying patients or their caregivers and is registered by the DOH.
- “Medical use” to mean the acquisition, possession, use, delivery, transfer, or administration of an amount of marijuana not in conflict with DOH rules, or of related supplies by a qualifying patient or caregiver for use by the caregiver’s designated qualifying patient for the treatment of a debilitating medical condition.
- “Physician Certification” to mean a written document signed by a person who is “licensed to practice medicine” in Florida stating:
  - The physician has conducted a medical examination of the patient and a full assessment of the patient’s medical history;
  - That, in the physician’s professional opinion, the patient has a debilitating medical condition;
  - That, in the physician’s professional opinion, the medical use of marijuana will outweigh the health risks for the patient; and
  - For how long the physician recommends the medical use of marijuana for the patient.

Once certified, a patient may designate one or more caregivers to assist him or her with the medical use of marijuana. The amendment defines a “caregiver” as a person who is at least 21 years of age who has agreed to assist with a qualifying patient’s medical use of marijuana and has qualified for and obtained a caregiver identification card issued by the DOH. Caregivers:

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<sup>39</sup> This provision is included in the definition of “physician certification.”

- Are prohibited from consuming medical marijuana;
- Must obtain an ID card from the DOH;
- Are subject to standards and qualifications established by the DOH including:
  - Background checks;
  - Procedures for issuing ID cards; and
  - Limitations on the number of caregivers per patient and the number of patients per caregiver.

The DOH is required to register MMTCs that will be authorized to acquire, cultivate, possess, process, transfer, transport, sell, distribute, dispense, or administer medical marijuana, related supplies, or educational materials to patients and caregivers. The DOH is required to adopt rules regarding MMTCs including:

- Procedures to register as an MMTC;
- Procedures for the issuance, renewal, suspension, and revocation of MMTC registrations; and
- Standards to ensure proper security, record keeping, testing, labeling, inspection, and safety.

The amendment requires the DOH to adopt rules no later than July 3, 2017, six months after its effective date. The stated purpose of the rules is to ensure the availability and safe use of medical marijuana by qualifying patients. Currently, the DOH has begun the rulemaking process to implement Article X, section 29 of the State Constitution and has held several workshops around Florida.<sup>40</sup> The DOH is required to adopt rules for:

- Issuing patient and caregiver ID cards;<sup>41</sup>
- Procedures for establishing caregiver qualifications;
- Procedures for registering MMTCs; and
- A regulation that defines the amount of marijuana that could reasonably be presumed to be an adequate supply, based on the best available medical evidence. This presumption can be overcome on an individual patient basis.

If the DOH does not adopt rules by the deadline, the amendment creates a cause of action for any Florida citizen to seek judicial relief to compel the DOH's compliance.

Additionally, the DOH is required to begin registering MMTCs and issuing patient and caregiver ID cards by October 3, 2017, nine months after the amendment's effective date. If the DOH does not comply with this requirement, the amendment states that a physician certification is sufficient for a person to become a qualifying patient without being issued an ID card from the DOH.

The amendment also creates a number of specific restrictions on its exemption from liability, and its grants of authority, including specifically:

- Not repealing or allowing violations of other laws related to the non-medical use of marijuana;

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<sup>40</sup> Rule 64-4.012, F.A.C., rule notice published on Jan. 17, 2017, *available at* <https://www.flrules.org/gateway/ruleNo.asp?id=64-4.012>, (last visited on June 7, 2017).

<sup>41</sup> On Feb. 18, 2017, the DOH adopted Rule 64-4.011, F.A.C., addressing the issuance of Compassionate Use Registry Identification Cards. This rule may bring the DOH into compliance with the requirement to adopt rules for issuing ID cards by July 3, 2017; however, the rule may need requiring amending to comply with constitutional terms and to comply with changes to s. 381.986, F.S., provided in this bill.

- Not permitting the operation of any vehicle under the influence of marijuana;
- Not requiring the accommodation of the use of marijuana in specific areas or in any public place;
- Not requiring any health insurance provider to cover the medical use of marijuana; and
- Not affecting laws related to negligence or malpractice on the part of any patient, caregiver, physician, or MMTC agent or employee.

The State Constitution authorizes the Legislature to enact laws consistent with the constitution's language, and provides for severability so that if any clause, sentence, paragraph or section of the amendment, or an application thereof, is found to be invalid by a court of competent jurisdiction, other provisions shall continue to be in effect to the fullest extent possible.

The Revenue Estimating Conference has estimated that under Amendment 2 and the proposed DOH rules, sales tax revenue from medical marijuana sales will be \$2.6 million in Fiscal Year 2017-2018 and will increase to \$24.3 million in Fiscal Year 2021-2022.

### **Medical Marijuana in Florida: The Necessity Defense**

Despite the fact that the use, possession, and sale of marijuana are prohibited by state law, Florida courts have found that circumstances can necessitate medical use of marijuana and circumvent the application of criminal penalties. The necessity defense was successfully applied in a marijuana possession case in *Jenks v. State* where the First District Court of Appeal found that s. 893.03, F.S., does not preclude the defense of medical necessity for the use of marijuana if the defendant:

- Did not intentionally bring about the circumstance which precipitated the unlawful act;
- Could not accomplish the same objective using a less offensive alternative available; and
- The evil sought to be avoided was more heinous than the unlawful act.<sup>42</sup>

In the cited case, the defendants, a married couple, were suffering from uncontrollable nausea due to AIDS treatment and had testimony from their physician that he could find no effective alternative treatment. Under these facts, the court found that the defendants met the criteria to qualify for the necessity defense and ordered an acquittal of the charges of cultivating cannabis and possession of drug paraphernalia.

### **Medical Marijuana Laws in Other States**

Currently, 28 states, the District of Columbia, and Guam have some form of law that permits the use of marijuana for medicinal purposes.<sup>43</sup> These laws vary widely in detail but most share

<sup>42</sup> *Jenks v. State*, 582 So.2d 676, 679 (Fla. 1st DCA 1991), *review denied*, 589 So.2d 292 (Fla. 1991).

<sup>43</sup> These states include: Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, Vermont, and Washington. California was the first to establish a medical marijuana program in 1996 and New York was the most recent state to pass medical marijuana legislation in June 2014. Seventeen states allow limited access to marijuana products (low-THC and/or high CBD-cannabidiol). Alabama, Florida, Georgia, Iowa, Kentucky, Louisiana, Mississippi, Missouri, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Utah, Virginia, Wisconsin, and Wyoming. National Conference of State Legislatures, *State Medical Marijuana Laws*, (Mar. 16, 2017), available at <http://www.ncsl.org/research/health/state-medical-marijuana-laws.aspx> (last visited June 7, 2017).

certain features. For example, most state laws require an identification card and registry for patients and caregivers to use medical marijuana; require the patient to receive certification from up to two physicians that the patient has a qualifying condition before the patient may use medical marijuana; allow a patient to designate a caregiver who can possess the medical marijuana and assist the patient in using the medical marijuana; and provide general restrictions on how medical marijuana can be obtained (self-cultivated or from a dispensary) and where it can be used.<sup>44</sup>

Of the 17 states with low-THC cannabis laws similar to s. 381.986, F.S., most specify that the use of such low-THC cannabis is reserved for patients with epileptic or seizure disorders. Florida allows the treatment of cancer and Georgia allows the treatment of end stage cancer and other specified conditions. Additionally, the definition of low-THC cannabis differs from state to state. The THC level allowed ranges from a high of below five percent to less than 0.3 percent; most states restrict the level of THC to below one percent. CBD levels are generally required to be high, with most states requiring at least 10 percent.<sup>45</sup>

### ***Interaction with the Federal Government***

The federal Controlled Substances Act lists marijuana as a Schedule 1 drug and provides no exceptions for medical uses.<sup>46</sup> Possession, manufacture, and distribution of marijuana is a crime under federal law.<sup>47</sup> Although a state's medical marijuana laws protect patients from prosecution for the legitimate use of marijuana under state law, state medical marijuana laws, or Constitutional provisions, do not protect individuals from prosecution under federal law.

In 2013, the U.S. Department of Justice (USDOJ) issued statements indicating that the federal government would not pursue cases for low-level drug crimes, leaving such prosecutions largely up to state authorities. The U.S. Attorney General issued a statement that the USDOJ was changing policy such that individuals “who have committed low-level, nonviolent drug offenses, who have no ties to large-scale organizations, gangs, or cartels, will no longer be charged with offenses that impose draconian mandatory minimum sentences... [and] would instead receive sentences better suited to their individual conduct...”<sup>48</sup> Further, the USDOJ issued a memorandum clarifying that the department considers small-scale marijuana use to be a state matter which states may choose to punish, and certain operations adhering to state laws legalizing marijuana in conjunction with robust state regulatory systems would be far less likely to come under federal scrutiny.<sup>49</sup> In addition, a rider in recent appropriations acts and continuing resolutions has prohibited the USDOJ from using appropriated funds to prevent specified states

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<sup>44</sup> Analysis by Senate Health Policy committee staff of *supra* note 49.

<sup>45</sup> *Supra* note 49.

<sup>46</sup> 21 U.S.C. s. 812. Note: On August 11, 2016, the Federal Drug Enforcement Administration refused two petitions to reschedule marijuana under the Controlled Substances Act, see <https://www.dea.gov/divisions/hq/2016/hq081116.shtml>, (last visited on June 7, 2017).

<sup>47</sup> The punishments vary depending on the amount of marijuana and the intent with which the marijuana is possessed. See 21 U.S.C ss. 841-865.

<sup>48</sup> USDOJ, *Smart on Crime: Reforming the Criminal Justice System for the 21<sup>st</sup> Century*, (Aug. 2013), p. 3, available at <http://www.justice.gov/ag/smart-on-crime.pdf> (last visited on June 7, 2017).

<sup>49</sup> USDOJ Memorandum for all U.S. Attorneys from James M. Cole, Deputy Attorney General, *Guidance Regarding Marijuana Enforcement* (August 29, 2013), available at <http://www.justice.gov/iso/opa/resources/3052013829132756857467.pdf> (last visited June 7, 2017).

(including Florida) from implementing the states' own medical marijuana laws.<sup>50</sup> It is worth noting that, with the election of President Trump and changes to the leadership of the USDOJ, the guidance issued by the USDOJ may be amended in the future; however, it would require an act of Congress to amend the rider preventing the USDOJ from using funds to prevent specified states from implementing medical marijuana laws.

### III. Effect of Proposed Changes:

**Section 1** creates a new unnumbered section of the Florida Statutes which establishes the legislative intent to implement s. 29, Art. X of the State Constitution by creating a unified regulatory structure. The section establishes that the act will expire six months after the effective date of any constitutional amendment related to cannabis or marijuana.

**Section 2** amends s. 212.08, F.S., to exempt the sales of marijuana and marijuana delivery devices from taxation.

**Section 3** amends s. 381.986, F.S., to implement the provisions of s. 29, Art. X of the State Constitution. The bill substantially rewords the section, the details of the new provisions are as follows.

#### Definitions

The bill defines the terms:

- “Caregiver” to mean a resident of the state who has agreed to assist with a qualified patient’s medical use of marijuana, has a caregiver identification card, and meets the requirements for caregivers established in the section.
- “Chronic nonmalignant pain” to mean pain that is caused by a qualifying medical condition or that originates from a qualifying medical condition and persists beyond the usual course of that qualifying medical condition.
- “Close relative” to mean a spouse, parent, sibling, grandparent, child, or grandchild, whether related by whole or half blood, by marriage, or by adoption.
- “Edibles” to mean commercially produced food items made with marijuana oil, but no other form of marijuana, that are produced and dispensed by a MMTC.
- “Marijuana” to mean all parts of any plant of the genus *Cannabis*, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin, including low-THC cannabis, which are dispensed from a MMTC for medical use by a qualified patient.
- “Marijuana testing laboratory” to mean a facility that collects and analyzes marijuana samples from a MMTC and has been certified by the department pursuant to s. 381.988, F.S.

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<sup>50</sup> See Pub. Law No. 114-113, s. 542 (Consolidated Appropriations Act, 2016). A recent court order by the U.S. District Court for the Northern District of California recently held that a similar provision in the previous appropriations act (s. 538, Pub. L. No. 113-235) does not prohibit the USDOJ from enforcing violations of *federal* marijuana laws by individuals or businesses who are complying with state medical marijuana laws. *U.S. v. Marin Alliance for Medical Marijuana and Shaw*, Order re: Motion to Dissolve Permanent Injunction, No. C 98-00086 CB, (Oct. 19, 2015), *available at* <http://www.scribd.com/doc/286089509/US-vs-Marin-Alliance-for-Medical-Marijuana#scribd> (last visited June 7, 2017).

- “Medical use” to mean the acquisition, possession, use, delivery, transfer, or administration of marijuana authorized by a physician certification. The term does not include:
  - Possession, use, or administration of marijuana that was not purchased or acquired from a MMTC.
  - Possession, use, or administration of marijuana in a form for smoking, in the form of commercially produced food items other than edibles, or of marijuana seeds or flower, except for flower in a sealed, tamper-proof receptacle for vaping.
  - Use or administration of any form or amount of marijuana in a manner that is inconsistent with the qualified physician’s directions or physician certification.
  - Transfer of marijuana to a person other than the qualified patient for whom it was authorized or the qualified patient’s caregiver on behalf of the qualified patient.
  - Use or administration of marijuana in the following locations:
    - On any form of public transportation, except for low-THC cannabis.
    - In any public place, except for low-THC cannabis.
    - In a qualified patient’s place of employment, except when permitted by his or her employer.
    - In a state correctional institution, as defined in s. 944.02, F.S., or a correctional institution, as defined in s. 944.241, F.S.
    - On the grounds of a preschool, primary school, or secondary school, except as provided in s. 1006.062, F.S.
    - In a school bus, a vehicle, an aircraft, or a motorboat, except for low-THC cannabis.
- “Qualified physician” to mean a person who holds an active, unrestricted license as an allopathic physician under chapter 458 or as an osteopathic physician under chapter 459 and is in compliance with the physician education requirements.
- “Terminal condition” to mean a progressive disease or medical or surgical condition that causes significant functional impairment, is not considered by a treating physician to be reversible without the administration of life-sustaining procedures, and will result in death within 1 year after diagnosis if the condition runs its normal course.

## **Patient and Physician Requirements**

### ***Qualifying Medical Conditions***

The bill specifies that the following medical conditions qualify a patient to receive marijuana and a marijuana delivery device: cancer, epilepsy, glaucoma, positive status for HIV, AIDS, PTSD, ALS, Crohn’s disease, Parkinson’s disease, multiple sclerosis, medical conditions of the same kind or class as the preceding, a terminal condition,<sup>51</sup> and chronic nonmalignant pain. Other than terminal conditions, this list is identical to the list of debilitating medical conditions in s. 29, Art. X of the State Constitution.

### ***Physician and Medical Director Training***

In order to issue physician certifications or to be a medical director of an MMTC, the bill requires that a physician complete a 2-hour training course prior to being approved to issue physician certifications and at each licensure renewal. The course must encompass the requirements of the section and any rules adopted to implement the section. The bill requires the

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<sup>51</sup> The terminal condition must be diagnosed by a physician other than the certifying physician.

Florida Medical Association (FMA) or the Florida Osteopathic Medical Association (FOMA) to develop and offer the course annually. The FMA or FOMA may not charge more than \$500 to take the course and may offer the course in a distance learning format, including online.

### ***Restrictions on Issuing Physician Certifications***

A physician may not issue a physician certification if he or she is employed by, or has any direct or indirect economic interest in, an MMTC or marijuana testing laboratory.

### ***Procedures for Issuing a Physician Certification***

Prior to issuing a physician certification to a patient, a physician must:

- Conduct an in-person physical examination of the patient and a full assessment of the patient's medical history;
- Diagnose the patient with at least one qualifying medical condition;
- Determine that the patient's use of marijuana would outweigh the risks;
  - If the patient is under the age of 18, two physicians must make this determination;
- Determine whether the patient is pregnant;
  - Physicians may only certify pregnant patients for low-THC cannabis;
- Review the patient's controlled substance prescription history in the prescription drug monitoring program database;
- Review the medical marijuana use registry (registry) to determine that the patient does not have an active physician certification from another qualified physician; and
- Register as the issuer of the physician certification on the registry. The physician must also:
  - Enter the contents of the physician certification into the registry including the patient's qualifying condition, the dosage not to exceed the daily dose amount determined by the DOH, the amount and forms of marijuana authorized for the patient, and any types of marijuana delivery devices needed by the patient;
  - Update the registry if any change is made to the physician certification; and
  - Deactivate the patient's registration when the physician no longer recommends the patient medically use marijuana.

### ***Informed Consent***

In addition to the criteria detailed above, a physician must also obtain the patient's voluntary and written informed consent each time he or she issues the patient a physician certification. The physician must use a standardized form created by the Board of Medicine (BOM) or the Board of Osteopathic Medicine (BOOM) and, if the patient is a minor, the physician must also obtain the consent of the patient's parent or legal guardian. The standardized informed consent form must include information related to:

- The Federal Government's classification of marijuana as a Schedule I controlled substance.
- The approval and oversight status of marijuana by the Food and Drug Administration.
- The current state of research on the efficacy of marijuana to treat the qualifying conditions set forth in this section.
- The potential for addiction.
- The potential effect that marijuana may have on a patient's coordination, motor skills, and cognition, including a warning against operating heavy machinery, operating a motor vehicle, or engaging in activities that require a person to be alert or respond quickly.

- The potential side effects of marijuana use.
- The risks, benefits, and drug interactions of marijuana.
- That the patient's de-identified health information contained in the physician certification and registry may be used for research purposes.

### ***Issuing a Physician Certification for a Condition of the "Same Kind or Class"***

If a physician issues a certification for a condition of the same kind or class as a listed condition, the physician must provide his or her applicable board (BOM or BOOM) with additional information within 14 days after issuing the physician certification. The additional information includes:

- Documentation supporting the qualified physician's opinion that the medical condition is of the same kind or class as the conditions enumerated.
- Documentation that establishes the efficacy of marijuana as treatment for the condition.
- Documentation supporting the qualified physician's opinion that the benefits of medical use of marijuana would likely outweigh the potential health risks for the patient.
- Any other documentation as required by board rule.

The DOH must also submit this additional documentation to the Coalition for Medical Marijuana Research and Education (Coalition) for research purposes.

### ***Supply Limits***

A qualified physician may not issue more than three 70-day supplies of marijuana. The DOH must quantify by rule a daily dose amount for each allowable form of marijuana. A physician may request an exception to the daily dose limit by electronically submitting a form adopted by the DOH in rule to the department. At a minimum, the form must include:

- The qualified patient's qualifying medical condition.
- The dosage and route of administration that was insufficient to provide relief to the qualified patient.
- A description of how the patient will benefit from an increased amount.
- The minimum daily dose amount of marijuana that would be sufficient for the treatment of the qualified patient's qualifying medical condition.

A qualified physician must provide the qualified patient's records upon the request of the department. The department must approve or disapprove the request within 14 days after receipt of the complete documentation required by this paragraph or the request is deemed approved.

### ***Patient Recertification***

A physician must recertify a patient at least once every 30 weeks. In order to recertify a patient a physician must:

- Determine if the patient still meets the requirements to be issued a physician certification.
- Identify and document in the qualified patient's medical records whether the qualified patient experienced either of the following related to the medical use of marijuana:
  - An adverse drug interaction with any prescription or nonprescription medication; or
  - A reduction in the use of, or dependence on, other types of controlled substances as defined in s. 893.02, F.S.

- Submit a report with the findings to the department.
  - The department must send submitted reports to the Coalition.

### ***Grandfathering***

For continuity of care, any patient that was issued an order for low-THC cannabis or medical cannabis pursuant to former s. 381.986, F.S., is deemed to be a qualified patient and his or her order is deemed to be a physician certification.

### ***Physician Monitoring***

The DOH is required to monitor physician registration in the registry and the issuance of physician certifications for practices that could facilitate the unlawful diversion or misuse of marijuana and take disciplinary actions as appropriate. Additionally, the BOM and the BOOM must jointly create a physician certification review panel to review all physician certifications submitted to the registry. The review panel is required to collect specified certification data and report such data individually by physician and in the aggregate by county and statewide. Starting January 1, 2018, and annually thereafter, the panel must submit a report to the Governor and the Legislature with findings and recommendations.

### **The Medical Marijuana Use Registry**

The previously named Compassionate Use Registry is renamed the Medical Marijuana Use Registry. The DOH is required to maintain the registry for physicians, patients, and caregivers. The electronic registry must be accessible on-line to law enforcement agencies, qualified physicians, and medical marijuana treatment centers (MMTC) to verify patient certifications. The registry must also be accessible to practitioners licensed to prescribe prescription drugs to ensure proper care for patients before prescribing medications that may interact with the medical use of marijuana.

### ***Residency Requirements***

Before registering a patient with the registry, the DOH must determine whether the patient is a resident of Florida, which may include a “seasonal resident.” A “seasonal resident” includes any person who:

- Temporarily resides in this state for a period of at least 31 consecutive days in each calendar year;
- Maintains a temporary residence in this state;
- Returns to the state or jurisdiction of his or her residence at least one time during each calendar year; and
- Is registered to vote or pays income tax in another state or jurisdiction.

To prove residency a Florida resident must provide the DOH with copy of his or her valid Florida driver license or identification card. A minor must have a parent or legal guardian who meets this requirements and must also provide the DOH with a certified copy of his or her birth certificate or his or her school registration from a Florida K-12 school.

A seasonal resident who cannot provide a copy of a Florida driver license or identification card may provide the DOH with two of the following to demonstrate a residential address in this state:

- A deed, mortgage, monthly mortgage statement, mortgage payment booklet or residential rental or lease agreement.
- One proof of residential address from the seasonal resident's parent, step-parent, legal guardian or other person with whom the seasonal resident resides and a statement from the person with whom the seasonal resident resides stating that the seasonal resident does reside with him or her.
- A utility hookup or work order dated within 60 days before registration in the medical use registry.
- A utility bill, not more than 2 months old.
- Mail from a financial institution, including checking, savings, or investment account statements, not more than 2 months old.
- Mail from a federal, state, county, or municipal government agency, not more than 2 months old.
- Any other documentation that provides proof of residential address as determined by department rule.

### ***Patient and Caregiver Disqualification***

The DOH may suspend or revoke the registration of any qualified patient or caregiver if he or she:

- Provides misleading, incorrect, false, or fraudulent information to the department;
- Obtains a supply of marijuana in an amount greater than the amount authorized by the physician certification;
- Falsifies, alters, or otherwise modifies an identification card;
- Fails to timely notify the department of any changes to his or her qualified patient status; or
- Violates the requirements of this section or any rule adopted under this section.

The DOH must suspend the registration of a qualified patient who is charged with a violation of ch. 893, F.S., until the final disposition of the offense. The DOH may revoke the registration of a qualified patient or caregiver who cultivates, acquires, possesses, or delivers marijuana that was not obtained from an MMTC. Additionally, the DOH must revoke the registration of any qualified patient and his or her caregiver if such patient no longer meets the criteria of a qualified patient.

### **Caregivers**

In order to qualify as a caregiver an individual must:

- Not be a qualified physician and not be employed by or have an economic interest in an MMTC or a marijuana testing laboratory.
- Be 21 years of age or older and a resident of this state.
- Agree in writing to assist with the qualified patient's medical use of marijuana.
- Be registered in the medical marijuana use registry as a caregiver for no more than one qualified patient, with certain exceptions discussed below.

- Successfully complete a caregiver certification course developed and administered by the department or its designee, which must be renewed biennially. The price of the course may not exceed \$100.
- Pass a background screening, unless the patient is a close relative of the caregiver.

A qualified patient may only have one caregiver unless:

- The qualified patient is a minor and the designated caregivers are parents or legal guardians of the qualified patient;
- The qualified patient is an adult who has an intellectual or developmental disability that prevents the patient from being able to protect or care for himself or herself without assistance or supervision and the designated caregivers are the parents or legal guardians of the qualified patient; or
- The qualified patient is admitted to a hospice program.

A caregiver may only assist one qualified patient unless:

- The caregiver is a parent or legal guardian of more than one minor who is a qualified patient;
- The caregiver is a parent or legal guardian of more than one adult who is a qualified patient and who has an intellectual or developmental disability that prevents the patient from being able to protect or care for himself or herself without assistance or supervision; or
- All qualified patients the caregiver has agreed to assist are admitted to a hospice program and have requested the assistance of that caregiver with the medical use of marijuana; the caregiver is an employee of the hospice; and the caregiver provides personal care or other services directly to clients of the hospice in the scope of that employment.

A caregiver may not receive compensation for providing caregiver services other than actual expenses.

A caregiver must be in immediate possession of his or her medical marijuana use registry identification card at all times when in possession of marijuana or a marijuana delivery device and must present his or her card if requested by a law enforcement officer.

If a qualified patient is younger than 18 years of age, only a caregiver may purchase or administer marijuana for the patient's medical use.

### **Medical Marijuana Use Registry Identification Cards**

By August 7, 2017, the DOH is required to adopt rules for issuing medical marijuana use registry identification cards (ID cards) to qualified patients and caregivers and then begin issue ID cards to qualified patients and caregivers by October 3, 2017. The DOH may charge a reasonable fee for issuing ID cards and must allocate \$10 of the fee to the Florida Agricultural and Mechanical University for the purpose of educating minorities about marijuana for medical use and the impact of unlawful use of marijuana on minority communities. The DOH is authorized to contract with a third-party vendor to issue the identification cards. The ID cards must be resistant to tampering and counterfeiting and include, at a minimum:

- The name, address, and date of birth of the qualified patient or caregiver.

- A full-face, passport-type, color photograph of the qualified patient or caregiver taken within the 90 days immediately preceding registration or the Florida driver license or Florida identification card photograph of the qualified patient or caregiver obtained directly from the Department of Highway Safety and Motor Vehicles (DHSMV).
- Identification as a qualified patient or a caregiver.
- The unique numeric identifier used for the qualified patient in the medical marijuana use registry.
- For a caregiver, the name and unique numeric identifier of the caregiver and the qualified patient or patients that the caregiver is assisting.
- The expiration date of the identification card.

Prior to issuing an ID card to a minor, the DOH must receive written consent from the minor's parent or guardian. Patients and caregivers must return their ID cards within five business days after their registration is revoked.

## MMTCs

### *MMTC License Caps*

As soon as practicable, the DOH is required to license as an MMTC any dispensing organization (DO) that was licensed, or becomes licensed before July 1, 2017, under former s. 381.986, F.S., 2016.

The DOH is required to license 10 new MMTCs including:

- As soon as practicable, but no later than August 1, 2017, any DO applicant that:
  - Was reviewed, evaluated, and scored by the DOH;
  - Had one or more administrative or judicial challenges pending as of January 1, 2017, or that was within one point of the highest final ranking in its region under former s. 381.986, F.S., 2014;
  - Meets the requirements to be an MMTC; and
  - Can demonstrate that it has the infrastructure and the technical and technological ability to begin cultivating marijuana within 30 days after being licensed as an MMTC.
- As soon as practicable but no later than October 3, 2017, one licensee that must be a member of the Black Farmers and Agriculturalists Association-Florida Chapter, is a recognized class member of *Pigford v. Glickman*, 185 F.R.D. 82 (D.D.C. 1999), or *In Re Black Farmers Litig.*, 856 F. Supp. 2d 1 (D.D.C. 2011), and that meets the requirements to be an MMTC other than the requirements to be a registered nursery and to have been a Florida business for five consecutive years prior to applying.
- Any remaining licenses must be issued by October 3, 2017.
- For up to two of the remaining licenses, the DOH is required to grant a preference to applicants that own one or more facilities that are, or were, used for the canning, concentrating, or otherwise processing of citrus fruit for market or citrus molasses and will use or convert the facility or facilities for the processing of marijuana.

Additionally, within 6 months of the registration of 100,000 qualified patients in the registry and at each additional 100,000 patients thereafter, the DOH must license four new MMTCs.

### ***Dispensary Caps***

Once licensed, each MMTC is authorized to establish a maximum of 25 dispensaries statewide. The statewide maximum number of dispensaries is increased by five per MMTC each time the registry adds 100,000 additional qualified patients. Additionally, the number of dispensaries each MMTC is authorized to establish per region<sup>52</sup> is capped based on the percentage of the total statewide population contained in that region.<sup>53</sup> The regional cap is calculated by the DOH after the completion of each decennial census.

An MMTC may sell its unused dispensing facility slots to other licensed MMTCs. After selling a slot, the seller's statewide and regional maximum number of dispensing facilities decreases by one in the region where the slot was located and the buyer's maximums increase by one. When selling a lot, both the seller and the buyer must notify the DOH of the sale.

The bill specifies that the provisions placing caps on the number of dispensaries are severable and that the provisions expire on April 1, 2020.

### ***MMTC Applications***

Applicants for licensure as an MMTC must apply on a form prescribed by the DOH. The DOH is required to charge an initial application fee and a biennial renewal fee that is sufficient to cover the costs of implementing and administering the provisions of s. 381.986, F.S., as well as ss. 381.989 and 1004.4351, F.S.<sup>54</sup> The DOH is also required to identify applicants with strong diversity plans and must provide training programs and other educational programs to enable minority persons and minority business enterprises and veteran business enterprises to compete for MMTC licensure and contracts. Each applicant for licensure must be able to demonstrate:

- That, for the 5 consecutive years before submitting the application, the applicant has been registered to do business in in the state.
- Possession of a valid certificate of registration issued by the Department of Agriculture and Consumer Services pursuant to s. 581.131, F.S.
- The technical and technological ability to cultivate and produce marijuana, including, but not limited to, low-THC cannabis.
- The ability to secure the premises, resources, and personnel necessary to operate as a MMTC.
- 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.
- An infrastructure reasonably located to dispense marijuana to registered qualified patients statewide or regionally as determined by the department.
- The financial ability to maintain operations for the duration of the 2-year approval cycle, including the provision of certified financial statements to the department.
- That all owners, officers, board members, and managers have passed a background screening.

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<sup>52</sup> The regions include the northwest, northeast, central, southwest, and southeast. The bill specifies which counties are included in each region.

<sup>53</sup> For example, if the SE region contains 20 percent of the statewide population, each MMTC would only be allowed to place a maximum of 20 percent of its total dispensaries in that region.

<sup>54</sup> The bill creates s. 381.989, F.S., to establish statewide educational campaigns and s. 1004.4351, F.S., to establish the Coalition. The details of each section are included in this analysis.

- The employment of a medical director to supervise the activities of the MMTC.

In addition, each applicant must:

- Post a \$5 million performance bond issued by an authorized surety insurance company rated in one of the three highest rating categories by a nationally recognized rating service.
  - However, an MMTC serving at least 1,000 qualified patients may maintain a \$2 million performance bond.
  - In lieu of the performance bond under sub-subparagraph a., the applicant may provide an irrevocable letter of credit payable to the department or provide cash to the department. If provided with cash under this sub-subparagraph, the department shall deposit the cash with the state treasury for safekeeping. If the deposited funds generate interest, the amount of the interest shall be annually transferred to the department for the administration of this section.
- Submit a diversity plan that promotes and ensures the involvement of minority persons and minority business enterprises<sup>55</sup> or veteran business enterprises<sup>56</sup> in ownership, management, and employment.
- An applicant for licensure renewal must show the effectiveness of the diversity plan by including the following with his or her application for renewal:
  - Representation of minority persons and veterans in the MMTC's workforce;
  - Efforts to recruit minority persons and veterans for employment; and
  - A record of contracts for services with minority business enterprises and veteran business enterprises.

### ***MMTC Changes of Ownership***

A licensed MMTC may transfer ownership to an individual or entity who meets the requirements of this section including a publicly traded corporation or publicly traded company. To accommodate a change in ownership:

- The licensed MMTC shall notify the DOH in writing at least 60 days before the anticipated date of the change of ownership.
- The individual or entity applying for initial licensure due to a change of ownership must submit an application that must be received by the DOH at least 60 days before the date of change of ownership.
- The DOH must examine the application and, within 30 days after receipt, notify the applicant in writing of any apparent errors or omissions and request any additional information required.
- Requested information omitted from an application for licensure must be filed with the DOH within 21 days after the department's request for omitted information or the application shall be deemed incomplete and shall be withdrawn from further consideration and the fees shall be forfeited.
- The DOH must approve or deny the application within 30 days after the receipt of a complete application.

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<sup>55</sup> As defined in s. 288.703, F.S.

<sup>56</sup> As defined in s. 295.187, F.S.

An MMTC, and any individual or entity who directly or indirectly owns, controls, or holds with power to vote five percent or more of the voting shares of a MMTC, may not acquire direct or indirect ownership or control of any voting shares or other form of ownership of any other MMTC. An MMTC may not enter into any form of profit-sharing arrangement with the property owner or lessor of any of its facilities where cultivation, processing, storing, or dispensing of marijuana and marijuana delivery devices occurs.

### ***MMTC Requirements***

Each MMTC is required to cultivate, process, transport and dispense marijuana and an MMTC may not contract for services directly related to these functions except that an MMTC that was previously a licensed DO may contract with a single entity to perform the listed functions. Additionally, each MMTC is required to maintain compliance with the representations made in its application. The DOH may grant an MMTC a variance from such representations if the MMTC has proposed an alternative to the specific representation that will fulfill the same or similar purpose without lowering quality.

Many of the requirements that a licensed MMTC must meet are substantially similar to the current requirements for DOs. Differences include:

- MMTCs may not make a wholesale purchase or distribution of marijuana unless the MMTC submits proof of harvest failure to the DOH.
- All employees, as well as owners and managers, of an MMTC must pass a background screening.
- MMTCs are required to use the seed-to-sale tracking software that is established, maintained, and controlled by the DOH or integrate its own system with the DOH's system. The software must allow the DOH 24 hour access to the system, must allow for integration of other seed-to-sale systems, and included minimum notifications to the DOH. The DOH is authorized to contract with a vendor to produce the seed-to-sale tracking system. The contracted vendor may not have a contract to perform any other services for the DOH under s. 381.986, F.S., and may not have any direct or indirect interest in an MMTC.

### ***MMTC Cultivation Standards***

Each MMTC:

- Must grow within enclosed structure and in room separate from any other plant.
- Must comply with ch. 581, F.S., and Department of Agriculture and Consumer Services (DACS) rules regarding pest control.
- Must remove or destroy infected plants according to ch. 581, F.S., and DACS rules.
- May use DACS approved pesticides.

### ***MMTC Processing and Testing Standards***

Each MMTC must:

- Process in enclosed structure and separate room from other plants/ products.
- Not use hydrocarbon based solvents such as butane, hexane, or propane in extraction.
- Test processed marijuana before dispensing by a certified testing lab and verify testing results by two MMTC employees. The MMTC must ensure that the marijuana is safe for

human consumption and free from contaminants and must reserve 2 samples from each batch for at least nine months for testing and must contract with certified marijuana testing lab to perform audits.

- Ensure that edibles meet potency requirements.
- Ensure accurate labeling for cannabinoid potency.

### ***Packaging and Labeling Requirements***

Each MMTC must:

- Package the marijuana in compliance with the United States Poison Prevention Packaging Act of 1970, 15 U.S.C. ss. 1471 et seq.
- Package the marijuana in a receptacle that has a firmly affixed and legible label stating the following information:
  - The marijuana or low-THC cannabis meets testing requirements.
  - The name of the MMTC from which the marijuana originates.
  - The batch number and harvest number from which the marijuana originates and the date dispensed.
  - The name of the physician who issued the physician certification.
  - The name of the patient.
  - The product name, if applicable, and dosage form, including concentration of tetrahydrocannabinol and cannabidiol. The product name may not contain wording commonly associated with products marketed by or to children.
  - The recommended dose.
  - A warning that it is illegal to transfer medical marijuana to another person.
  - A marijuana universal symbol developed by the department.
- The MMTC shall include in each package a patient package insert with information on the specific product dispensed related to:
  - Clinical pharmacology.
  - Indications and use.
  - Dosage and administration.
  - Dosage forms and strengths.
  - Contraindications.
  - Warnings and precautions.
  - Adverse reactions.
- Each edible must be individually sealed in plain, opaque wrapping marked only with the marijuana universal symbol. Where practical, each edible shall be marked with the marijuana universal symbol. In addition to other packaging and labeling requirements, edible receptacles must be plain, opaque, and white without depictions of the product or images other than the MMTC's department-approved logo and the marijuana universal symbol. The receptacle must also include a list all of the edible's ingredients, storage instructions, an expiration date, a legible and prominent warning to keep away from children and pets, and a warning that the edible has not been produced or inspected pursuant to federal food safety laws.

### ***Dispensing Requirements***

MMTCs may not dispense more than a 70-day supply to a qualified patient and may not dispense directly to a minor patient. Each MMTC dispensing facility must include a waiting area with

sufficient space for all qualified patients and must include at least one private consultation area that is isolated from the waiting and the dispensing areas. The MMTC may not display products in the waiting area and must ensure that all patient records are kept out of sight of anyone other than an authorized MMTC employee, the patient, or the patient's caregiver.

Each MMTC that dispenses marijuana and marijuana delivery devices must make available to the public on its website:

- Each marijuana and low-THC product available for purchase, including the form, strain of marijuana from which it was extracted, cannabidiol content, tetrahydrocannabinol content, dose unit, total number of doses available, and the ratio of cannabidiol to tetrahydrocannabinol for each product.
- The price for a 30-day, 50-day, and 70-day supply at a standard dose for each marijuana and low-THC product available for purchase.
- The price for each marijuana delivery device available for purchase.
- If applicable, any discount policies and eligibility criteria for such discounts.

### ***Advertising***

An MMTC may not engage in advertising that is visible to members of the public from any street, sidewalk, park, or other public place, except:

- The dispensing location of a MMTC may have a sign that is affixed to the outside or hanging in the window of the premises which identifies the dispensary by the licensee's business name, a department-approved trade name, or a department-approved logo. An MMTC's trade name and logo may not contain wording or images commonly associated with marketing targeted toward children or which promote recreational use of marijuana.
- An MMTC may engage in Internet advertising and marketing under the following conditions:
  - All advertisements must be approved by the department.
  - An advertisement may not have any content that specifically targets individuals under the age of 18, including cartoon characters or similar images.
  - An advertisement may not be an unsolicited pop-up advertisement.
  - Opt-in marketing must include an easy and permanent opt-out feature.

### **Background Screening Requirements**

Any individual required to undergo a background screening pursuant to s. 381.986, F.S., must pass a level II background screening as provided under ch. 435, F.S. In addition to the disqualifying offenses in ch. 435, F.S., offenses established under chs. 837,<sup>57</sup> 895,<sup>58</sup> and 896,<sup>59</sup> F.S., are also disqualifying. Fingerprints submitted to the FDLE must be retained and enrolled in the Federal Bureau of Investigation's nation retained print arrest notification program, where that program is operational.

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<sup>57</sup> Related to perjury.

<sup>58</sup> Related to racketeering and illegal debts.

<sup>59</sup> Related to financial transactions.

## Preemption

The regulation of cultivation, processing, and delivery of marijuana is preempted to the state except that a MMTC cultivation or processing facility may not be located within 500 feet of the real property of a public or private elementary, middle, or secondary school. An MMTC dispensing facility may not be located within 500 feet of a school unless the city or county approves the location through a formal proceeding in which the city or county determines that the location promotes the public health, safety, and general welfare of the community.

A county or municipality may ban MMTC dispensing facilities from being located within its borders. However, if a county or municipality allows MMTC dispensing facilities within its borders, it may not restrict the number of dispensing facilities allowed within its borders, may not enact ordinances regulating MMTC dispensing facilities that are more restrictive than its ordinances regulating pharmacies, and may not charge an MMTC a license or permit fee in an amount greater than the fee charged to pharmacies.

The bill specifies that nothing prohibits a local jurisdiction from enforcing the Florida Building Code, the Florida Fire Prevention Code, or any local amendments to such codes.

## Penalties

The bill adds additional penalties to those currently established in s. 381.986, F.S., as follows:

- A qualified patient or caregiver in possession of marijuana or a marijuana delivery device who fails or refuses to present his or her marijuana use registry identification card upon the request of a law enforcement officer commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, F.S., unless it can be determined through the medical marijuana use registry that the person is authorized to be in possession of that marijuana or marijuana delivery device.
  - A person charged with a violation of this paragraph may not be convicted if, before or at the time of his or her court or hearing appearance, the person produces in court or to the clerk of the court in which the charge is pending a medical marijuana use registry identification card issued to him or her which is valid at the time of his or her arrest. The clerk of the court is authorized to dismiss such case at any time before the defendant's appearance in court. The clerk of the court may assess a fee of \$5 for dismissing the case under this paragraph.
- A person or entity that cultivates, processes, distributes, sells, or dispenses marijuana, as defined in s. 29(b)(4), Art. X of the State Constitution, and is not licensed as a medical marijuana treatment center violates s. 893.13, F.S., and is subject to the penalties provided therein.
- A person who manufactures, distributes, sells, gives, or possesses with the intent to manufacture, distribute, sell, or give marijuana or a marijuana delivery device that he or she holds out to have originated from a licensed medical marijuana treatment center but that is counterfeit commits a felony of the third degree, punishable as provided in ss. 775.082, 775.083, or 775.084, F.S. For the purposes of this paragraph, the term "counterfeit" means marijuana; a marijuana delivery device; or a marijuana or marijuana delivery device container, seal, or label which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, or device, or any likeness thereof, of a licensed medical

marijuana treatment center and which thereby falsely purports or is represented to be the product of, or to have been distributed by, that licensed medical marijuana treatment facility.

- Any person who possesses or manufactures a blank, forged, stolen, fictitious, fraudulent, counterfeit, or otherwise unlawfully issued medical marijuana use registry identification card commits a felony of the third degree, punishable as provided in ss. 775.082, 775.083, or 775.084, F.S.

### **Unlicensed Activity**

If the DOH has probable cause to believe that a person or entity that is not registered or licensed has violated the provisions of s. 381.986, F.S., the DOH may issue the person or entity a cease and desist order, impose an administrative penalty of up to \$5,000 per day, and seek a civil penalty in circuit court of between \$5,000 and \$10,000. The DOH is also entitled to recover the costs of investigation and prosecution in addition to any fines levied. Any state attorney may also bring action against the violator for an injunction to restrain the unlicensed activity and the DOH must notify law enforcement of such activity.

### **Applicability**

The bill specifies that:

- The section does not limit the ability of an employer to establish, continue, or enforce a drug-free workplace program or policy;
- The section does not require an employer to accommodate the medical use of marijuana in any workplace or any employee working while under the influence of marijuana;
- The section does not create a cause of action against an employer for wrongful discharge or discrimination.
- Marijuana, as defined in this section, is not reimbursable under ch. 440, F.S.<sup>60</sup>

**Sections 4 and 5** amend ss. 458.331 and 459.015, F.S., to include issuing physician certifications in a manner that does not comply with s. 381.986, F.S., within the grounds for licensure action for physicians licensed under chs. 458 and 459, F.S.

**Section 6** creates s. 381.988, F.S., to establish a certification program for medical marijuana testing laboratories. To be certified as a testing laboratory an applicant may not be controlled by an MMTC, must complete an application as established in rule by the DOH, must submit proof of accreditation by a certification or accreditation organization approved by the DOH, and must have all owners and managers pass a level 2 background screening with the additional offenses as detailed above. The applicant must also meet the standards for certification established by the DOH including, at a minimum:

- Security standards.
- Minimum standards for personnel.
- Sample collection method and process standards.
- Proficiency testing for tetrahydrocannabinol potency, concentration of cannabidiol, and contaminants unsafe for human consumption, as determined by department rule.
- Reporting content, format, and frequency.

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<sup>60</sup> Related to worker's compensation.

- Audits and onsite inspections.
- Quality assurance.
- Equipment and methodology.
- Chain of custody.
- Any other standard the department deems necessary to ensure the health and safety of the public.

The bill also establishes acts that constitute grounds for disciplinary actions against certified marijuana testing laboratories and allows the DOH to assess penalties for violations including fines, suspending, revoking, or refusing to renew a license.

**Section 7** creates s. 381.989, F.S., to establish public education campaigns. The bill requires DOH to implement a statewide marijuana education and illicit use prevention campaign regarding the health effects of marijuana use, particularly on minors and young adults, the legal requirements for legal use and possession of marijuana and the safe use of marijuana, including preventing access by minors and those who are not qualified patients. The DOH must contract for an annual evaluation of the campaign for impact and efficacy.

The bill requires the DHSMV to implement a statewide marijuana impaired driving education campaign to raise awareness of and prevent marijuana impaired driving. The DHSMV must annually evaluate the campaign's efficacy, and may contract for that service.

**Section 15** of the bill creates a new unnumbered section of law to require the Department of Law Enforcement to develop training available to all law enforcement agencies that covers the legal parameters of marijuana-related activities by qualified patients, caregivers, MMTCs, and medical marijuana testing labs.

**Section 11** creates s. 1004.4351, F.S., to create the Medical Marijuana Research and Education Act. The act:

- Establishes the Coalition for Medicinal Cannabis Research and Education (Coalition) within the H. Lee Moffitt Cancer Center and Research Institute, Inc. (MCCRI) and provides that the Coalition's purpose is to conduct rigorous scientific research, provide education, disseminate research, and to guide policy development for the adoption of a statewide policy on ordering and dosing practices for the medicinal use of cannabis.
  - Beginning January 15, 2018, the DOH must submit quarterly to the Medicinal Cannabis Research and Education Board (Board) or coalition information for each patient registered with the compassionate use registry, including the patient's debilitating medical condition, the amount and duration of the patient's marijuana recommendation, the method of marijuana administration and any delivery device, and the patient's certifying physician.
  - The coalition must review these data and determine whether state law and rules should be modified to address abuse or fraud of the system established in Article X, section 29 of the State Constitution, and state law and rules, and if so, must include recommendations to address such abuse or fraud.
- Creates the board to direct the Coalition's operations. Additionally, the bill specifies Board membership requirements and requires the Board to:

- Advise the Board of Governors, the State Surgeon General, the Governor, and the Legislature with respect to medicinal cannabis research and education in Florida.
- Explore methods of implementing and enforcing medicinal cannabis laws in relation to cancer control, research, treatment, and education.
- Annually adopt a plan for medicinal cannabis research, known as the Medicinal Cannabis Research and Education Plan (Plan) in accordance with state law, and must include recommendations for the coordination and integration of medical, nursing, paramedical, community, and other resources connected with the treatment of debilitating medical conditions, research related to the treatment of such conditions, and education.
- Issue an annual report, by February 15, to the Governor, the President of the Senate, and the Speaker of the House Representatives on research projects, community outreach initiatives, and future plans for the Coalition.
- Provides that the Coalition must be administered by a director who, subject to Board approval, must:
  - Propose a budget.
  - Foster the collaboration of scientists, researchers, and other appropriate personnel.
  - Identify and prioritize the Coalition's research.
  - Prepare the Plan for submission to the Board.
  - Apply for grants to obtain funding for the Coalition's research.
  - Perform other Board specified duties.
- Requires the MCCRI to allocate staff, information, and assistance to assist the Board.

**Section 13** amends s. 1006.062, F.S., to require each school board to adopt a policy and procedure for allowing a student who is a qualified patient to medically use his or her marijuana in school.

**Section 14** creates a new unnumbered section of law.

### **Implementation/Rulemaking**

The bill grants DOH and the applicable boards limited emergency rulemaking authority in order for DOH to meet the rulemaking deadlines imposed by s. 29, Art. X of the State Constitution. The bill allows DOH and the applicable boards to adopt emergency rules necessary to implement the bill. The bill allows DOH and the applicable boards to adopt emergency rules to replace any emergency rules that were held to be an invalid delegation of legislative authority or unconstitutional. However, the bill prohibits DOH and the applicable boards from adopting emergency rules to replace those emergency rules if they are also held to be an invalid delegation of legislative authority or unconstitutional. The bill requires DOH and the applicable boards to begin replacing the emergency rules by January 1, 2018.

The bill also exempts DOH and the applicable boards from the statement of regulatory costs requirements and the emergency rulemaking requirement that there is an immediate danger to the public health, safety, or welfare which requires emergency action. The bill also exempts the emergency rules from the 90 day effective date and allows the emergency rules to remain in effect until replaced through non-emergency rulemaking procedures by DOH and the applicable boards.

### **Cause of Action**

The bill also establishes the Circuit Court in and for Leon County as the venue for any cause of action brought under s. 29, Art. X of the State Constitution due to DOH's failure to meet the rulemaking deadlines imposed by s. 29, Art. X of the State Constitution. The bill specifies that the judicial relief for such cause of action shall be an action for a declaratory judgment pursuant to ch. 86, F.S. The bill also provides affirmative defenses to DOH for a cause of action brought under s. 29, Art. X of the State Constitution due to DOH's failure to meet the rulemaking deadlines.

**Section 17** creates a new unnumbered section of law to specify that the provisions of the act are severable.

**Section 18** creates a new unnumbered section of law to direct the Division of Law Revision and Information to replace the phrase "the effective date of this act" with the actual effective date.

**Section 19** creates a new unnumbered section of law to establish specific appropriations as follows:

The bill appropriates 55 full-time equivalent (FTE) positions, \$3,500,000 in nonrecurring funds from the General Revenue Fund and \$4,055,292 in recurring and \$1,238,148 in nonrecurring funds from the Grants and Donations Trust Fund to the DOH for the purpose of implementing the requirements of this act. Of these funds, \$3,158,572 in recurring and \$1,238,148 in nonrecurring funds from the Grants and Donations Trust Fund and 27 FTE positions are placed in reserve. The DOH may submit a budget amendment requesting release of these funds contingent upon need and demonstrating fee collections to support the budget authority.

The bill appropriates \$500,000 in nonrecurring funds from the General Revenue Fund to the DOH to implement the statewide marijuana education and use prevention campaign.

The bill appropriates \$5,000,000 in nonrecurring funds from the Highway Safety Operating Trust Fund to the DHSMV to implement the impaired driving education campaign.

The bill appropriates \$100,000 in recurring funds from the Highway Safety Operating Trust Fund to the DHSMV for the purpose of training additional law enforcement officers as drug recognition experts.

The bill also appropriates \$750,000 in nonrecurring General Revenue funds for the Coalition to conduct medical cannabis research.

**Sections 8, 9, 10, 12, and 16** make conforming changes to ss. 385.211, 499.0295, 893.02, 1004.441, and 385.212, F.S., respectively.

**Section 20** of the bill specifies that the provisions in the act take effect upon becoming law.

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

MMTCs will likely incur costs associated with licensure and meeting the regulatory standards required by the bill. Marijuana testing laboratories may incur additional costs to become certified by DOH.

MMTCs and marijuana testing laboratories will incur costs associated with the required background screenings. The total cost for a state and national criminal history record check with fingerprint retention for 5 years by FDLE is \$60.

## C. Government Sector Impact:

The DOH and other state agencies will likely incur an indeterminate negative fiscal impact related to the implementation of the provisions of the bill and the regulatory requirements of the bill. These costs will likely be offset or eliminated through licensure fees for MMTCs and through fees assessed for issuing ID cards.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 212.08, 381.986, 458.331, 459.015, 385.211, 499.0295, 893.02, 1004.441, 1006.062, and 385.212.

This bill creates the following sections of the Florida Statutes: 381.988, 381.989, 1004.4351 and six new unnumbered sections of Florida law.

**IX. Additional Information:**

- A. **Committee Substitute – Statement of Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

**Barcode 606998 by Health Policy**

This is a technical title amendment to accurately reflect the substance of the bill. It removes reference to expiration of the sales tax exemption.

**Barcode 501070 by Health Policy**

Specifies that cash deposited with the DOH (in lieu of the \$5 million bond that MMTC license holders are required to post) must be deposited in the Grants and Donations Trust Fund and specifies that any interest earned on such deposits must be used by the DOH for the administration of the medical marijuana program.

**Barcode 633510 by Health Policy**

Requires, rather than merely authorizing, the DOH to contract with a vendor to issue qualified patient and caregiver registration identification cards.



633510

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
06/08/2017	.	
Floor: 1/AD/2R	.	
06/08/2017 05:27 PM	.	
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The Committee on Health Policy (Bradley) recommended the following:

**Senate Amendment**

Delete line 658  
and insert:  
marijuana on minority communities. The department shall contract



682216

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
06/08/2017	.	
	.	
	.	
	.	

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The Committee on Health Policy (Powell) recommended the following:

**Senate Amendment**

Delete line 704

and insert:

b. As soon as practicable, but no later than August 1,



136390

LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
06/08/2017	.	
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The Committee on Health Policy (Bradley) recommended the following:

**Senate Amendment**

Delete lines 862 - 877  
and insert:  
of certified financial statements to the department. Upon approval, the applicant must post a \$5 million performance bond issued by an authorized surety insurance company rated in one of the three highest rating categories by a nationally recognized rating service. However, a medical marijuana treatment center serving at least 1,000 qualified patients is only required to



136390

11 maintain a \$2 million performance bond.



501070

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
06/08/2017	.	
Floor: 2/AD/2R	.	
06/08/2017 05:27 PM	.	
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The Committee on Health Policy (Bradley) recommended the following:

**Senate ~~Substitute for Amendment (136390)~~**

Delete lines 874 - 877

and insert:

the department shall deposit the cash in the Grants and Donations Trust Fund within the Department of Health, subject to the same conditions as the bond regarding requirements for the applicant to forfeit ownership of the funds. If the funds deposited under this sub-subparagraph generate interest, the amount of that interest shall be used by the department for the



501070

11 administration of this section.



606998

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
06/08/2017	.	
Floor: 3/AD/2R	.	
06/08/2017 05:28 PM	.	
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The Committee on Health Policy (Bradley) recommended the following:

**Senate Amendment**

In title, delete line 7  
and insert:  
amending s.

By Senator Bradley

5-00003C-17A

20178A\_\_

1                                   A bill to be entitled  
2       An act relating to medical use of marijuana; providing  
3       legislative intent; amending s. 212.08, F.S.;  
4       providing an exemption from the state tax on sales,  
5       use, and other transactions for marijuana and  
6       marijuana delivery devices used for medical purposes;  
7       providing for expiration of the exemption; amending s.  
8       381.986, F.S.; providing, revising, and deleting  
9       definitions; providing qualifying medical conditions  
10      for a patient to be eligible to receive marijuana or a  
11      marijuana delivery device; providing requirements for  
12      designating a qualified physician or medical director;  
13      providing criteria for certification of a patient for  
14      medical marijuana treatment by a qualified physician;  
15      providing for certain patients registered with the  
16      medical marijuana use registry to be deemed qualified;  
17      requiring the Department of Health to monitor  
18      physician registration and certifications in the  
19      medical marijuana use registry; requiring the Board of  
20      Medicine and the Board of Osteopathic Medicine to  
21      create a physician certification pattern review panel;  
22      providing rulemaking authority to the department and  
23      the boards; requiring the department to establish a  
24      medical marijuana use registry; specifying entities  
25      and persons who have access to the registry; providing  
26      requirements for registration of, and maintenance of  
27      registered status by, qualified patients and  
28      caregivers; providing criteria for nonresidents to  
29      prove residency for registration as a qualified

5-00003C-17A

20178A\_\_

30 patient; defining the term "seasonal resident";  
31 authorizing the department to suspend or revoke the  
32 registration of a patient or caregiver under certain  
33 circumstances; providing requirements for the issuance  
34 of medical marijuana use registry identification  
35 cards; requiring the department to issue licenses to a  
36 certain number of medical marijuana treatment centers;  
37 providing for license renewal and revocation;  
38 providing conditions for change of ownership;  
39 providing for continuance of certain entities  
40 authorized to dispense low-THC cannabis, medical  
41 cannabis, and cannabis delivery devices; requiring a  
42 medical marijuana treatment center to comply with  
43 certain standards in the production and distribution  
44 of edibles; requiring the department to establish,  
45 maintain, and control a computer seed-to-sale  
46 marijuana tracking system; requiring background  
47 screening of owners, officers, board members, and  
48 managers of medical marijuana treatment centers;  
49 requiring the department to establish protocols and  
50 procedures for operation, conduct periodic  
51 inspections, and restrict location of medical  
52 marijuana treatment centers; providing a limit on  
53 county and municipal permit fees; authorizing counties  
54 and municipalities to determine the location of  
55 medical marijuana treatment centers by ordinance under  
56 certain conditions; providing penalties; authorizing  
57 the department to impose sanctions on persons or  
58 entities engaging in unlicensed activities; providing

5-00003C-17A

20178A\_\_

59 that a person is not exempt from prosecution for  
60 certain offenses and is not relieved from certain  
61 requirements of law under certain circumstances;  
62 providing for certain school personnel to possess  
63 marijuana pursuant to certain established policies and  
64 procedures; providing that certain research  
65 institutions may possess, test, transport, and dispose  
66 of marijuana subject to certain conditions; providing  
67 applicability; amending ss. 458.331 and 459.015, F.S.;  
68 providing additional acts by a physician or an  
69 osteopathic physician which constitute grounds for  
70 denial of a license or disciplinary action to which  
71 penalties apply; creating s. 381.988, F.S.; providing  
72 for the establishment of medical marijuana testing  
73 laboratories; requiring the Department of Health, in  
74 collaboration with the Department of Agriculture and  
75 Consumer Services and the Department of Environmental  
76 Protection, to develop certification standards and  
77 rules; providing limitations on the acquisition and  
78 distribution of marijuana by a testing laboratory;  
79 providing an exception for transfer of marijuana under  
80 certain conditions; requiring a testing laboratory to  
81 use a department-selected computer tracking system;  
82 providing grounds for disciplinary and administrative  
83 action; authorizing the department to refuse to issue  
84 or renew, or suspend or revoke, a testing laboratory  
85 license; creating s. 381.989, F.S.; defining terms;  
86 directing the department and the Department of Highway  
87 Safety and Motor Vehicles to institute public

5-00003C-17A

20178A\_\_

88 education campaigns relating to cannabis and marijuana  
89 and impaired driving; requiring evaluations of public  
90 education campaigns; authorizing the department and  
91 the Department of Highway Safety and Motor Vehicles to  
92 contract with vendors to implement and evaluate the  
93 campaigns; amending ss. 385.211, 499.0295, and 893.02,  
94 F.S.; conforming provisions to changes made by the  
95 act; creating s. 1004.4351, F.S.; providing a short  
96 title; providing legislative findings; defining terms;  
97 establishing the Coalition for Medical Marijuana  
98 Research and Education within the H. Lee Moffitt  
99 Cancer Center and Research Institute, Inc.; providing  
100 a purpose for the coalition; establishing the Medical  
101 Marijuana Research and Education Board to direct the  
102 operations of the coalition; providing for the  
103 appointment of board members; providing for terms of  
104 office, reimbursement for certain expenses, and  
105 meetings of the board; authorizing the board to  
106 appoint a coalition director; prescribing the duties  
107 of the coalition director; requiring the board to  
108 advise specified entities and officials regarding  
109 medical marijuana research and education in this  
110 state; requiring the board to annually adopt a Medical  
111 Marijuana Research and Education Plan; providing  
112 requirements for the plan; requiring the board to  
113 issue an annual report to the Governor and the  
114 Legislature by a specified date; requiring the  
115 Department of Health to submit reports to the board  
116 containing specified data; specifying responsibilities

5-00003C-17A

20178A\_\_

117 of the H. Lee Moffitt Cancer Center and Research  
118 Institute, Inc.; amending s. 1004.441, F.S.; revising  
119 definition; amending s. 1006.062, F.S.; requiring  
120 district school boards to adopt policies and  
121 procedures for access to medical marijuana by  
122 qualified patients who are students; providing  
123 emergency rulemaking authority; providing for venue  
124 for a cause of action against the department;  
125 providing for defense against certain causes of  
126 action; directing the Department of Law Enforcement to  
127 develop training for law enforcement officers and  
128 agencies; amending s. 385.212, F.S.; renaming the  
129 department's Office of Compassionate Use; providing  
130 severability; providing a directive to the Division of  
131 Law Revision and Information; providing  
132 appropriations; providing an effective date.

133  
134 Be It Enacted by the Legislature of the State of Florida:

135  
136 Section 1. Legislative intent.—It is the intent of the  
137 Legislature to implement s. 29, Article X of the State  
138 Constitution by creating a unified regulatory structure. If s.  
139 29, Article X of the State Constitution is amended or a  
140 constitutional amendment related to cannabis or marijuana is  
141 adopted, this act shall expire 6 months after the effective date  
142 of such amendment.

143 Section 2. Present paragraph (1) of subsection (2) of  
144 section 212.08, Florida Statutes, is redesignated as paragraph  
145 (m), and a new paragraph (1) is added to that subsection, to

5-00003C-17A

20178A\_\_

146 read:

147 212.08 Sales, rental, use, consumption, distribution, and  
148 storage tax; specified exemptions.—The sale at retail, the  
149 rental, the use, the consumption, the distribution, and the  
150 storage to be used or consumed in this state of the following  
151 are hereby specifically exempt from the tax imposed by this  
152 chapter.

153 (2) EXEMPTIONS; MEDICAL.—

154 (1) Marijuana and marijuana delivery devices, as defined in  
155 s. 381.986, are exempt from the taxes imposed under this  
156 chapter.

157 Section 3. Section 381.986, Florida Statutes, is amended to  
158 read:

159 (Substantial rewording of section. See  
160 s. 381.986, F.S., for present text.)

161 381.986 Medical use of marijuana.—162 (1) DEFINITIONS.—As used in this section, the term:

163 (a) "Caregiver" means a resident of this state who has  
164 agreed to assist with a qualified patient's medical use of  
165 marijuana, has a caregiver identification card, and meets the  
166 requirements of subsection (6).

167 (b) "Chronic nonmalignant pain" means pain that is caused  
168 by a qualifying medical condition or that originates from a  
169 qualifying medical condition and persists beyond the usual  
170 course of that qualifying medical condition.

171 (c) "Close relative" means a spouse, parent, sibling,  
172 grandparent, child, or grandchild, whether related by whole or  
173 half blood, by marriage, or by adoption.

174 (d) "Edibles" means commercially produced food items made

5-00003C-17A

20178A\_\_

175 with marijuana oil, but no other form of marijuana, that are  
176 produced and dispensed by a medical marijuana treatment center.

177 (e) "Low-THC cannabis" means a plant of the genus *Cannabis*,  
178 the dried flowers of which contain 0.8 percent or less of  
179 tetrahydrocannabinol and more than 10 percent of cannabidiol  
180 weight for weight; the seeds thereof; the resin extracted from  
181 any part of such plant; or any compound, manufacture, salt,  
182 derivative, mixture, or preparation of such plant or its seeds  
183 or resin that is dispensed from a medical marijuana treatment  
184 center.

185 (f) "Marijuana" means all parts of any plant of the genus  
186 *Cannabis*, whether growing or not; the seeds thereof; the resin  
187 extracted from any part of the plant; and every compound,  
188 manufacture, salt, derivative, mixture, or preparation of the  
189 plant or its seeds or resin, including low-THC cannabis, which  
190 are dispensed from a medical marijuana treatment center for  
191 medical use by a qualified patient.

192 (g) "Marijuana delivery device" means an object used,  
193 intended for use, or designed for use in preparing, storing,  
194 ingesting, inhaling, or otherwise introducing marijuana into the  
195 human body, and which is dispensed from a medical marijuana  
196 treatment center for medical use by a qualified patient.

197 (h) "Marijuana testing laboratory" means a facility that  
198 collects and analyzes marijuana samples from a medical marijuana  
199 treatment center and has been certified by the department  
200 pursuant to s. 381.988.

201 (i) "Medical director" means a person who holds an active,  
202 unrestricted license as an allopathic physician under chapter  
203 458 or osteopathic physician under chapter 459 and is in

5-00003C-17A

20178A\_\_

204 compliance with the requirements of paragraph (3)(c).

205 (j) "Medical use" means the acquisition, possession, use,  
206 delivery, transfer, or administration of marijuana authorized by  
207 a physician certification. The term does not include:

208 1. Possession, use, or administration of marijuana that was  
209 not purchased or acquired from a medical marijuana treatment  
210 center.

211 2. Possession, use, or administration of marijuana in a  
212 form for smoking, in the form of commercially produced food  
213 items other than edibles, or of marijuana seeds or flower,  
214 except for flower in a sealed, tamper-proof receptacle for  
215 vaping.

216 3. Use or administration of any form or amount of marijuana  
217 in a manner that is inconsistent with the qualified physician's  
218 directions or physician certification.

219 4. Transfer of marijuana to a person other than the  
220 qualified patient for whom it was authorized or the qualified  
221 patient's caregiver on behalf of the qualified patient.

222 5. Use or administration of marijuana in the following  
223 locations:

224 a. On any form of public transportation, except for low-THC  
225 cannabis.

226 b. In any public place, except for low-THC cannabis.

227 c. In a qualified patient's place of employment, except  
228 when permitted by his or her employer.

229 d. In a state correctional institution, as defined in s.  
230 944.02, or a correctional institution, as defined in s. 944.241.

231 e. On the grounds of a preschool, primary school, or  
232 secondary school, except as provided in s. 1006.062.

5-00003C-17A

20178A\_\_

233 f. In a school bus, a vehicle, an aircraft, or a motorboat,  
234 except for low-THC cannabis.

235 (k) "Physician certification" means a qualified physician's  
236 authorization for a qualified patient to receive marijuana and a  
237 marijuana delivery device from a medical marijuana treatment  
238 center.

239 (l) "Qualified patient" means a resident of this state who  
240 has been added to the medical marijuana use registry by a  
241 qualified physician to receive marijuana or a marijuana delivery  
242 device for a medical use and who has a qualified patient  
243 identification card.

244 (m) "Qualified physician" means a person who holds an  
245 active, unrestricted license as an allopathic physician under  
246 chapter 458 or as an osteopathic physician under chapter 459 and  
247 is in compliance with the physician education requirements of  
248 subsection (3).

249 (n) "Smoking" means burning or igniting a substance and  
250 inhaling the smoke.

251 (o) "Terminal condition" means a progressive disease or  
252 medical or surgical condition that causes significant functional  
253 impairment, is not considered by a treating physician to be  
254 reversible without the administration of life-sustaining  
255 procedures, and will result in death within 1 year after  
256 diagnosis if the condition runs its normal course.

257 (2) QUALIFYING MEDICAL CONDITIONS.—A patient must be  
258 diagnosed with at least one of the following conditions to  
259 qualify to receive marijuana or a marijuana delivery device:

260 (a) Cancer.

261 (b) Epilepsy.

5-00003C-17A

20178A\_\_

- 262       (c) Glaucoma.
- 263       (d) Positive status for human immunodeficiency virus.
- 264       (e) Acquired immune deficiency syndrome.
- 265       (f) Post-traumatic stress disorder.
- 266       (g) Amyotrophic lateral sclerosis.
- 267       (h) Crohn's disease.
- 268       (i) Parkinson's disease.
- 269       (j) Multiple sclerosis.
- 270       (k) Medical conditions of the same kind or class as or  
 271 comparable to those enumerated in paragraphs (a)-(j).
- 272       (l) A terminal condition diagnosed by a physician other  
 273 than the qualified physician issuing the physician  
 274 certification.
- 275       (m) Chronic nonmalignant pain.
- 276       (3) QUALIFIED PHYSICIANS AND MEDICAL DIRECTORS.-
- 277       (a) Before being approved as a qualified physician, as  
 278 defined in paragraph (1)(m), and before each license renewal, a  
 279 physician must successfully complete a 2-hour course and  
 280 subsequent examination offered by the Florida Medical  
 281 Association or the Florida Osteopathic Medical Association which  
 282 encompass the requirements of this section and any rules adopted  
 283 hereunder. The course and examination shall be administered at  
 284 least annually and may be offered in a distance learning format,  
 285 including an electronic, online format that is available upon  
 286 request. The price of the course may not exceed \$500. A  
 287 physician who has met the physician education requirements of  
 288 former s. 381.986(4), Florida Statutes 2016, before the  
 289 effective date of this section, shall be deemed to be in  
 290 compliance with this paragraph from the effective date of this

5-00003C-17A

20178A\_\_

291 act until 90 days after the course and examination required by  
292 this paragraph become available.

293 (b) A qualified physician may not be employed by, or have  
294 any direct or indirect economic interest in, a medical marijuana  
295 treatment center or marijuana testing laboratory.

296 (c) Before being employed as a medical director, as defined  
297 in paragraph (1)(i), and before each license renewal, a medical  
298 director must successfully complete a 2-hour course and  
299 subsequent examination offered by the Florida Medical  
300 Association or the Florida Osteopathic Medical Association which  
301 encompass the requirements of this section and any rules adopted  
302 hereunder. The course and examination shall be administered at  
303 least annually and may be offered in a distance learning format,  
304 including an electronic, online format that is available upon  
305 request. The price of the course may not exceed \$500.

306 (4) PHYSICIAN CERTIFICATION.—

307 (a) A qualified physician may issue a physician  
308 certification only if the qualified physician:

309 1. Conducted a physical examination while physically  
310 present in the same room as the patient and a full assessment of  
311 the medical history of the patient.

312 2. Diagnosed the patient with at least one qualifying  
313 medical condition.

314 3. Determined that the medical use of marijuana would  
315 likely outweigh the potential health risks for the patient, and  
316 such determination must be documented in the patient's medical  
317 record. If a patient is younger than 18 years of age, a second  
318 physician must concur with this determination, and such  
319 concurrence must be documented in the patient's medical record.

5-00003C-17A

20178A\_\_

320 4. Determined whether the patient is pregnant and  
321 documented such determination in the patient's medical record. A  
322 physician may not issue a physician certification, except for  
323 low-THC cannabis, to a patient who is pregnant.

324 5. Reviewed the patient's controlled drug prescription  
325 history in the prescription drug monitoring program database  
326 established pursuant to s. 893.055.

327 6. Reviews the medical marijuana use registry and confirmed  
328 that the patient does not have an active physician certification  
329 from another qualified physician.

330 7. Registers as the issuer of the physician certification  
331 for the named qualified patient on the medical marijuana use  
332 registry in an electronic manner determined by the department,  
333 and:

334 a. Enters into the registry the contents of the physician  
335 certification, including the patient's qualifying condition and  
336 the dosage not to exceed the daily dose amount determined by the  
337 department, the amount and forms of marijuana authorized for the  
338 patient, and any types of marijuana delivery devices needed by  
339 the patient for the medical use of marijuana.

340 b. Updates the registry within 7 days after any change is  
341 made to the original physician certification to reflect such  
342 change.

343 c. Deactivates the registration of the qualified patient  
344 and the patient's caregiver when the physician no longer  
345 recommends the medical use of marijuana for the patient.

346 8. Obtains the voluntary and informed written consent of  
347 the patient for medical use of marijuana each time the qualified  
348 physician issues a physician certification for the patient,

5-00003C-17A

20178A\_\_

349 which shall be maintained in the patient's medical record. The  
350 patient, or the patient's parent or legal guardian if the  
351 patient is a minor, must sign the informed consent acknowledging  
352 that the qualified physician has sufficiently explained its  
353 content. The qualified physician must use a standardized  
354 informed consent form adopted in rule by the Board of Medicine  
355 and the Board of Osteopathic Medicine, which must include, at a  
356 minimum, information related to:

357 a. The Federal Government's classification of marijuana as  
358 a Schedule I controlled substance.

359 b. The approval and oversight status of marijuana by the  
360 Food and Drug Administration.

361 c. The current state of research on the efficacy of  
362 marijuana to treat the qualifying conditions set forth in this  
363 section.

364 d. The potential for addiction.

365 e. The potential effect that marijuana may have on a  
366 patient's coordination, motor skills, and cognition, including a  
367 warning against operating heavy machinery, operating a motor  
368 vehicle, or engaging in activities that require a person to be  
369 alert or respond quickly.

370 f. The potential side effects of marijuana use.

371 g. The risks, benefits, and drug interactions of marijuana.

372 h. That the patient's de-identified health information  
373 contained in the physician certification and medical marijuana  
374 use registry may be used for research purposes.

375 (b) If a qualified physician issues a physician  
376 certification for a qualified patient diagnosed with a  
377 qualifying medical condition pursuant to paragraph (2)(k), the

5-00003C-17A

20178A\_\_

378 physician must submit the following to the applicable board  
379 within 14 days after issuing the physician certification:

380 1. Documentation supporting the qualified physician's  
381 opinion that the medical condition is of the same kind or class  
382 as the conditions in paragraphs (2) (a)-(j).

383 2. Documentation that establishes the efficacy of marijuana  
384 as treatment for the condition.

385 3. Documentation supporting the qualified physician's  
386 opinion that the benefits of medical use of marijuana would  
387 likely outweigh the potential health risks for the patient.

388 4. Any other documentation as required by board rule.

389  
390 The department must submit such documentation to the Coalition  
391 for Medical Marijuana Research and Education established  
392 pursuant to s. 1004.4351.

393 (c) A qualified physician may not issue a physician  
394 certification for more than three 70-day supply limits of  
395 marijuana. The department shall quantify by rule a daily dose  
396 amount with equivalent dose amounts for each allowable form of  
397 marijuana dispensed by a medical marijuana treatment center. The  
398 department shall use the daily dose amount to calculate a 70-day  
399 supply.

400 1. A qualified physician may request an exception to the  
401 daily dose amount limit. The request shall be made  
402 electronically on a form adopted by the department in rule and  
403 must include, at a minimum:

404 a. The qualified patient's qualifying medical condition.

405 b. The dosage and route of administration that was  
406 insufficient to provide relief to the qualified patient.

5-00003C-17A

20178A\_\_

407 c. A description of how the patient will benefit from an  
408 increased amount.

409 d. The minimum daily dose amount of marijuana that would be  
410 sufficient for the treatment of the qualified patient's  
411 qualifying medical condition.

412 2. A qualified physician must provide the qualified  
413 patient's records upon the request of the department.

414 3. The department shall approve or disapprove the request  
415 within 14 days after receipt of the complete documentation  
416 required by this paragraph. The request shall be deemed approved  
417 if the department fails to act within this time period.

418 (d) A qualified physician must evaluate an existing  
419 qualified patient at least once every 30 weeks before issuing a  
420 new physician certification. A physician must:

421 1. Determine if the patient still meets the requirements to  
422 be issued a physician certification under paragraph (a).

423 2. Identify and document in the qualified patient's medical  
424 records whether the qualified patient experienced either of the  
425 following related to the medical use of marijuana:

426 a. An adverse drug interaction with any prescription or  
427 nonprescription medication; or

428 b. A reduction in the use of, or dependence on, other types  
429 of controlled substances as defined in s. 893.02.

430 3. Submit a report with the findings required pursuant to  
431 subparagraph 2. to the department. The department shall submit  
432 such reports to the Coalition for Medical Marijuana Research and  
433 Education established pursuant to s. 1004.4351.

434 (e) An active order for low-THC cannabis or medical  
435 cannabis issued pursuant to former s. 381.986, Florida Statutes

5-00003C-17A

20178A\_\_

436 2016, and registered with the compassionate use registry before  
437 the effective date of this section, is deemed a physician  
438 certification, and all patients possessing such orders are  
439 deemed qualified patients until the department begins issuing  
440 medical marijuana use registry identification cards.

441 (f) The department shall monitor physician registration in  
442 the medical marijuana use registry and the issuance of physician  
443 certifications for practices that could facilitate unlawful  
444 diversion or misuse of marijuana or a marijuana delivery device  
445 and shall take disciplinary action as appropriate.

446 (g) The Board of Medicine and the Board of Osteopathic  
447 Medicine shall jointly create a physician certification pattern  
448 review panel that shall review all physician certifications  
449 submitted to the medical marijuana use registry. The panel shall  
450 track and report the number of physician certifications and the  
451 qualifying medical conditions, dosage, supply amount, and form  
452 of marijuana certified. The panel shall report the data both by  
453 individual qualified physician and in the aggregate, by county,  
454 and statewide. The physician certification pattern review panel  
455 shall, beginning January 1, 2018, submit an annual report of its  
456 findings and recommendations to the Governor, the President of  
457 the Senate, and the Speaker of the House of Representatives.

458 (h) The department, the Board of Medicine, and the Board of  
459 Osteopathic Medicine may adopt rules pursuant to ss. 120.536(1)  
460 and 120.54 to implement this subsection.

461 (5) MEDICAL MARIJUANA USE REGISTRY.—

462 (a) The department shall create and maintain a secure,  
463 electronic, and online medical marijuana use registry for  
464 physicians, patients, and caregivers as provided under this

5-00003C-17A

20178A\_\_

465 section. The medical marijuana use registry must be accessible  
466 to law enforcement agencies, qualified physicians, and medical  
467 marijuana treatment centers to verify the authorization of a  
468 qualified patient or a caregiver to possess marijuana or a  
469 marijuana delivery device and record the marijuana or marijuana  
470 delivery device dispensed. The medical marijuana use registry  
471 must also be accessible to practitioners licensed to prescribe  
472 prescription drugs to ensure proper care for patients before  
473 medications that may interact with the medical use of marijuana  
474 are prescribed. The medical marijuana use registry must prevent  
475 an active registration of a qualified patient by multiple  
476 physicians.

477 (b) The department shall determine whether an individual is  
478 a resident of this state for the purpose of registration of  
479 qualified patients and caregivers in the medical marijuana use  
480 registry. To prove residency:

481 1. An adult resident must provide the department with a  
482 copy of his or her valid Florida driver license issued under s.  
483 322.18 or a copy of a valid Florida identification card issued  
484 under s. 322.051.

485 2. An adult seasonal resident who cannot meet the  
486 requirements of subparagraph 1. may provide the department with  
487 a copy of two of the following that show proof of residential  
488 address:

489 a. A deed, mortgage, monthly mortgage statement, mortgage  
490 payment booklet or residential rental or lease agreement.

491 b. One proof of residential address from the seasonal  
492 resident's parent, step-parent, legal guardian or other person  
493 with whom the seasonal resident resides and a statement from the

5-00003C-17A

20178A\_\_

494 person with whom the seasonal resident resides stating that the  
495 seasonal resident does reside with him or her.

496 c. A utility hookup or work order dated within 60 days  
497 before registration in the medical use registry.

498 d. A utility bill, not more than 2 months old.

499 e. Mail from a financial institution, including checking,  
500 savings, or investment account statements, not more than 2  
501 months old.

502 f. Mail from a federal, state, county, or municipal  
503 government agency, not more than 2 months old.

504 g. Any other documentation that provides proof of  
505 residential address as determined by department rule.

506 3. A minor must provide the department with a certified  
507 copy of a birth certificate or a current record of registration  
508 from a Florida K-12 school and must have a parent or legal  
509 guardian who meets the requirements of subparagraph 1.

510  
511 For the purposes of this paragraph, the term "seasonal resident"  
512 means any person who temporarily resides in this state for a  
513 period of at least 31 consecutive days in each calendar year,  
514 maintains a temporary residence in this state, returns to the  
515 state or jurisdiction of his or her residence at least one time  
516 during each calendar year, and is registered to vote or pays  
517 income tax in another state or jurisdiction.

518 (c) The department may suspend or revoke the registration  
519 of a qualified patient or caregiver if the qualified patient or  
520 caregiver:

521 1. Provides misleading, incorrect, false, or fraudulent  
522 information to the department;

5-00003C-17A

20178A\_\_

523 2. Obtains a supply of marijuana in an amount greater than  
524 the amount authorized by the physician certification;

525 3. Falsifies, alters, or otherwise modifies an  
526 identification card;

527 4. Fails to timely notify the department of any changes to  
528 his or her qualified patient status; or

529 5. Violates the requirements of this section or any rule  
530 adopted under this section.

531 (d) The department shall immediately suspend the  
532 registration of a qualified patient charged with a violation of  
533 chapter 893 until final disposition of any alleged offense.  
534 Thereafter, the department may extend the suspension, revoke the  
535 registration, or reinstate the registration.

536 (e) The department shall immediately suspend the  
537 registration of any caregiver charged with a violation of  
538 chapter 893 until final disposition of any alleged offense. The  
539 department shall revoke a caregiver registration if the  
540 caregiver does not meet the requirements of subparagraph  
541 (6) (b) 6.

542 (f) The department may revoke the registration of a  
543 qualified patient or caregiver who cultivates marijuana or who  
544 acquires, possesses, or delivers marijuana from any person or  
545 entity other than a medical marijuana treatment center.

546 (g) The department shall revoke the registration of a  
547 qualified patient, and the patient's associated caregiver, upon  
548 notification that the patient no longer meets the criteria of a  
549 qualified patient.

550 (h) The department may adopt rules pursuant to ss.  
551 120.536(1) and 120.54 to implement this subsection.

5-00003C-17A

20178A\_\_

552       (6) CAREGIVERS.—

553       (a) The department must register an individual as a  
554 caregiver on the medical marijuana use registry and issue a  
555 caregiver identification card if an individual designated by a  
556 qualified patient meets all of the requirements of this  
557 subsection and department rule.

558       (b) A caregiver must:

559       1. Not be a qualified physician and not be employed by or  
560 have an economic interest in a medical marijuana treatment  
561 center or a marijuana testing laboratory.

562       2. Be 21 years of age or older and a resident of this  
563 state.

564       3. Agree in writing to assist with the qualified patient's  
565 medical use of marijuana.

566       4. Be registered in the medical marijuana use registry as a  
567 caregiver for no more than one qualified patient, except as  
568 provided in this paragraph.

569       5. Successfully complete a caregiver certification course  
570 developed and administered by the department or its designee,  
571 which must be renewed biennially. The price of the course may  
572 not exceed \$100.

573       6. Pass a background screening pursuant to subsection (9),  
574 unless the patient is a close relative of the caregiver.

575       (c) A qualified patient may designate no more than one  
576 caregiver to assist with the qualified patient's medical use of  
577 marijuana, unless:

578       1. The qualified patient is a minor and the designated  
579 caregivers are parents or legal guardians of the qualified  
580 patient;

5-00003C-17A

20178A\_\_

581       2. The qualified patient is an adult who has an  
582 intellectual or developmental disability that prevents the  
583 patient from being able to protect or care for himself or  
584 herself without assistance or supervision and the designated  
585 caregivers are the parents or legal guardians of the qualified  
586 patient; or

587       3. The qualified patient is admitted to a hospice program.

588       (d) A caregiver may be registered in the medical marijuana  
589 use registry as a designated caregiver for no more than one  
590 qualified patient, unless:

591       1. The caregiver is a parent or legal guardian of more than  
592 one minor who is a qualified patient;

593       2. The caregiver is a parent or legal guardian of more than  
594 one adult who is a qualified patient and who has an intellectual  
595 or developmental disability that prevents the patient from being  
596 able to protect or care for himself or herself without  
597 assistance or supervision; or

598       3. All qualified patients the caregiver has agreed to  
599 assist are admitted to a hospice program and have requested the  
600 assistance of that caregiver with the medical use of marijuana;  
601 the caregiver is an employee of the hospice; and the caregiver  
602 provides personal care or other services directly to clients of  
603 the hospice in the scope of that employment.

604       (e) A caregiver may not receive compensation, other than  
605 actual expenses incurred, for any services provided to the  
606 qualified patient.

607       (f) If a qualified patient is younger than 18 years of age,  
608 only a caregiver may purchase or administer marijuana for  
609 medical use by the qualified patient. The qualified patient may

5-00003C-17A

20178A\_\_

610 not purchase marijuana.

611 (g) A caregiver must be in immediate possession of his or  
612 her medical marijuana use registry identification card at all  
613 times when in possession of marijuana or a marijuana delivery  
614 device and must present his or her medical marijuana use  
615 registry identification card upon the request of a law  
616 enforcement officer.

617 (h) The department may adopt rules pursuant to ss.  
618 120.536(1) and 120.54 to implement this subsection.

619 (7) IDENTIFICATION CARDS.—

620 (a) The department shall issue medical marijuana use  
621 registry identification cards for qualified patients and  
622 caregivers who are residents of this state, which must be  
623 renewed annually. The identification cards must be resistant to  
624 counterfeiting and tampering and must include, at a minimum, the  
625 following:

626 1. The name, address, and date of birth of the qualified  
627 patient or caregiver.

628 2. A full-face, passport-type, color photograph of the  
629 qualified patient or caregiver taken within the 90 days  
630 immediately preceding registration or the Florida driver license  
631 or Florida identification card photograph of the qualified  
632 patient or caregiver obtained directly from the Department of  
633 Highway Safety and Motor Vehicles.

634 3. Identification as a qualified patient or a caregiver.

635 4. The unique numeric identifier used for the qualified  
636 patient in the medical marijuana use registry.

637 5. For a caregiver, the name and unique numeric identifier  
638 of the caregiver and the qualified patient or patients that the

5-00003C-17A

20178A\_\_

639 caregiver is assisting.

640 6. The expiration date of the identification card.

641 (b) The department must receive written consent from a  
642 qualified patient's parent or legal guardian before it may issue  
643 an identification card to a qualified patient who is a minor.

644 (c) The department shall adopt rules pursuant to ss.  
645 120.536(1) and 120.54 establishing procedures for the issuance,  
646 renewal, suspension, replacement, surrender, and revocation of  
647 medical marijuana use registry identification cards pursuant to  
648 this section and shall begin issuing qualified patient  
649 identification cards by October 3, 2017.

650 (d) Applications for identification cards must be submitted  
651 on a form prescribed by the department. The department may  
652 charge a reasonable fee associated with the issuance,  
653 replacement, and renewal of identification cards. The department  
654 shall allocate \$10 of the identification card fee to the  
655 Division of Research at Florida Agricultural and Mechanical  
656 University for the purpose of educating minorities about  
657 marijuana for medical use and the impact of the unlawful use of  
658 marijuana on minority communities. The department may contract  
659 with a third-party vendor to issue identification cards. The  
660 vendor selected by the department must have experience  
661 performing similar functions for other state agencies.

662 (e) A qualified patient or caregiver shall return his or  
663 her identification card to the department within 5 business days  
664 after revocation.

665 (8) MEDICAL MARIJUANA TREATMENT CENTERS.—

666 (a) The department shall license medical marijuana  
667 treatment centers to ensure reasonable statewide accessibility

5-00003C-17A

20178A\_\_

668 and availability as necessary for qualified patients registered  
669 in the medical marijuana use registry and who are issued a  
670 physician certification under this section.

671 1. As soon as practicable, but no later than July 3, 2017,  
672 the department shall license as a medical marijuana treatment  
673 center any entity that holds an active, unrestricted license to  
674 cultivate, process, transport, and dispense low-THC cannabis,  
675 medical cannabis, and cannabis delivery devices, under former s.  
676 381.986, Florida Statutes 2016, before July 1, 2017, and which  
677 meets the requirements of this section. In addition to the  
678 authority granted under this section, these entities are  
679 authorized to dispense low-THC cannabis, medical cannabis, and  
680 cannabis delivery devices ordered pursuant to former s. 381.986,  
681 Florida Statutes 2016, which were entered into the compassionate  
682 use registry before July 1, 2017, and are authorized to begin  
683 dispensing marijuana under this section on July 3, 2017. The  
684 department may grant variances from the representations made in  
685 such an entity's original application for approval under former  
686 s. 381.986, Florida Statutes 2014, pursuant to paragraph (e).

687 2. The department shall license as medical marijuana  
688 treatment centers 10 applicants that meet the requirements of  
689 this section, under the following parameters:

690 a. As soon as practicable, but no later than August 1,  
691 2017, the department shall license any applicant whose  
692 application was reviewed, evaluated, and scored by the  
693 department and which was denied a dispensing organization  
694 license by the department under former s. 381.986, Florida  
695 Statutes 2014; which had one or more administrative or judicial  
696 challenges pending as of January 1, 2017, or had a final ranking

5-00003C-17A

20178A\_\_

697 within one point of the highest final ranking in its region  
698 under former s. 381.986, Florida Statutes 2014; which meets the  
699 requirements of this section; and which provides documentation  
700 to the department that it has the existing infrastructure and  
701 technical and technological ability to begin cultivating  
702 marijuana within 30 days after registration as a medical  
703 marijuana treatment center.

704 b. As soon as practicable, but no later than October 3,  
705 2017, the department shall license one applicant that is a  
706 recognized class member of *Pigford v. Glickman*, 185 F.R.D. 82  
707 (D.D.C. 1999), or *In Re Black Farmers Litig.*, 856 F. Supp. 2d 1  
708 (D.D.C. 2011) and is a member of the Black Farmers and  
709 Agriculturalists Association-Florida Chapter. An applicant  
710 licensed under this sub-subparagraph is exempt from the  
711 requirements of subparagraphs (b)1. and (b)2.

712 c. As soon as practicable, but no later than October 3,  
713 2017, the department shall license applicants that meet the  
714 requirements of this section in sufficient numbers to result in  
715 10 total licenses issued under this subparagraph, while  
716 accounting for the number of licenses issued under sub-  
717 subparagraphs a. and b.

718 3. For up to two of the licenses issued under subparagraph  
719 2., the department shall give preference to applicants that  
720 demonstrate in their applications that they own one or more  
721 facilities that are, or were, used for the canning,  
722 concentrating, or otherwise processing of citrus fruit or citrus  
723 molasses and will use or convert the facility or facilities for  
724 the processing of marijuana.

725 4. Within 6 months after the registration of 100,000 active

5-00003C-17A

20178A\_\_

726 qualified patients in the medical marijuana use registry, the  
727 department shall license four additional medical marijuana  
728 treatment centers that meet the requirements of this section.  
729 Thereafter, the department shall license four medical marijuana  
730 treatment centers within 6 months after the registration of each  
731 additional 100,000 active qualified patients in the medical  
732 marijuana use registry that meet the requirements of this  
733 section.

734 5. Dispensing facilities are subject to the following  
735 requirements:

736 a. A medical marijuana treatment center may not establish  
737 or operate more than a statewide maximum of 25 dispensing  
738 facilities, unless the medical marijuana use registry reaches a  
739 total of 100,000 active registered qualified patients. When the  
740 medical marijuana use registry reaches 100,000 active registered  
741 qualified patients, and then upon each further instance of the  
742 total active registered qualified patients increasing by  
743 100,000, the statewide maximum number of dispensing facilities  
744 that each licensed medical marijuana treatment center may  
745 establish and operate increases by five.

746 b. A medical marijuana treatment center may not establish  
747 more than the maximum number of dispensing facilities allowed in  
748 each of the Northwest, Northeast, Central, Southwest, and  
749 Southeast Regions. The department shall determine a medical  
750 marijuana treatment center's maximum number of dispensing  
751 facilities allowed in each region by calculating the percentage  
752 of the total statewide population contained within that region  
753 and multiplying that percentage by the medical marijuana  
754 treatment center's statewide maximum number of dispensing

5-00003C-17A

20178A\_\_

755 facilities established under sub-subparagraph a., rounded to the  
756 nearest whole number. The department shall ensure that such  
757 rounding does not cause a medical marijuana treatment center's  
758 total number of statewide dispensing facilities to exceed its  
759 statewide maximum. The department shall initially calculate the  
760 maximum number of dispensing facilities allowed in each region  
761 for each medical marijuana treatment center using county  
762 population estimates from the Florida Estimates of Population  
763 2016, as published by the Office of Economic and Demographic  
764 Research, and shall perform recalculations following the  
765 official release of county population data resulting from each  
766 United States Decennial Census. For the purposes of this  
767 subparagraph:

768 (I) The Northwest Region consists of Bay, Calhoun,  
769 Escambia, Franklin, Gadsden, Gulf, Holmes, Jackson, Jefferson,  
770 Leon, Liberty, Madison, Okaloosa, Santa Rosa, Taylor, Wakulla,  
771 Walton, and Washington Counties.

772 (II) The Northeast Region consists of Alachua, Baker,  
773 Bradford, Clay, Columbia, Dixie, Duval, Flagler, Gilchrist,  
774 Hamilton, Lafayette, Levy, Marion, Nassau, Putnam, St. Johns,  
775 Suwannee, and Union Counties.

776 (III) The Central Region consists of Brevard, Citrus,  
777 Hardee, Hernando, Indian River, Lake, Orange, Osceola, Pasco,  
778 Pinellas, Polk, Seminole, St. Lucie, Sumter, and Volusia  
779 Counties.

780 (IV) The Southwest Region consists of Charlotte, Collier,  
781 DeSoto, Glades, Hendry, Highlands, Hillsborough, Lee, Manatee,  
782 Okeechobee, and Sarasota Counties.

783 (V) The Southeast Region consists of Broward, Miami-Dade,

5-00003C-17A

20178A\_\_

784 Martin, Monroe, and Palm Beach Counties.

785 c. If a medical marijuana treatment center establishes a  
786 number of dispensing facilities within a region that is less  
787 than the number allowed for that region under sub-subparagraph  
788 b., the medical marijuana treatment center may sell one or more  
789 of its unused dispensing facility slots to other licensed  
790 medical marijuana treatment centers. For each dispensing  
791 facility slot that a medical marijuana treatment center sells,  
792 that medical marijuana treatment center's statewide maximum  
793 number of dispensing facilities, as determined under sub-  
794 subparagraph a., is reduced by one. The statewide maximum number  
795 of dispensing facilities for a medical marijuana treatment  
796 center that purchases an unused dispensing facility slot is  
797 increased by one per slot purchased. Additionally, the sale of a  
798 dispensing facility slot shall reduce the seller's regional  
799 maximum and increase the purchaser's regional maximum number of  
800 dispensing facilities, as determined in sub-subparagraph b., by  
801 one for that region. For any slot purchased under this sub-  
802 subparagraph, the regional restriction applied to that slot's  
803 location under sub-subparagraph b. before the purchase shall  
804 remain in effect following the purchase. A medical marijuana  
805 treatment center that sells or purchases a dispensing facility  
806 slot must notify the department within 3 days of sale.

807 d. This subparagraph shall expire on April 1, 2020.

808

809 If this subparagraph or its application to any person or  
810 circumstance is held invalid, the invalidity does not affect  
811 other provisions or applications of this act which can be given  
812 effect without the invalid provision or application, and to this

5-00003C-17A

20178A\_\_

813 end, the provisions of this subparagraph are severable.

814 (b) An applicant for licensure as a medical marijuana  
815 treatment center shall apply to the department on a form  
816 prescribed by the department and adopted in rule. The department  
817 shall adopt rules pursuant to ss. 120.536(1) and 120.54  
818 establishing a procedure for the issuance and biennial renewal  
819 of licenses, including initial application and biennial renewal  
820 fees sufficient to cover the costs of implementing and  
821 administering this section and ss. 381.989 and 1004.4351. The  
822 department shall identify applicants with strong diversity plans  
823 reflecting this state's commitment to diversity and implement  
824 training programs and other educational programs to enable  
825 minority persons and minority business enterprises, as defined  
826 in s. 288.703, and veteran business enterprises, as defined in  
827 s. 295.187, to compete for medical marijuana treatment center  
828 licensure and contracts. Subject to the requirements in  
829 subparagraphs (a)2.-4., the department shall issue a license to  
830 an applicant if the applicant meets the requirements of this  
831 section and pays the initial application fee. The department  
832 shall renew the licensure of a medical marijuana treatment  
833 center biennially if the licensee meets the requirements of this  
834 section and pays the biennial renewal fee. An individual may not  
835 be an applicant, owner, officer, board member, or manager on  
836 more than one application for licensure as a medical marijuana  
837 treatment center. An individual or entity may not be awarded  
838 more than one license as a medical marijuana treatment center.  
839 An applicant for licensure as a medical marijuana treatment  
840 center must demonstrate:

841 1. That, for the 5 consecutive years before submitting the

5-00003C-17A

20178A\_\_

842 application, the applicant has been registered to do business in  
843 in the state.

844 2. Possession of a valid certificate of registration issued  
845 by the Department of Agriculture and Consumer Services pursuant  
846 to s. 581.131.

847 3. The technical and technological ability to cultivate and  
848 produce marijuana, including, but not limited to, low-THC  
849 cannabis.

850 4. The ability to secure the premises, resources, and  
851 personnel necessary to operate as a medical marijuana treatment  
852 center.

853 5. The ability to maintain accountability of all raw  
854 materials, finished products, and any byproducts to prevent  
855 diversion or unlawful access to or possession of these  
856 substances.

857 6. An infrastructure reasonably located to dispense  
858 marijuana to registered qualified patients statewide or  
859 regionally as determined by the department.

860 7. The financial ability to maintain operations for the  
861 duration of the 2-year approval cycle, including the provision  
862 of certified financial statements to the department.

863 a. Upon approval, the applicant must post a \$5 million  
864 performance bond issued by an authorized surety insurance  
865 company rated in one of the three highest rating categories by a  
866 nationally recognized rating service. However, a medical  
867 marijuana treatment center serving at least 1,000 qualified  
868 patients is only required to maintain a \$2 million performance  
869 bond.

870 b. In lieu of the performance bond required under sub-

5-00003C-17A

20178A\_\_

871 subparagraph a., the applicant may provide an irrevocable letter  
872 of credit payable to the department or provide cash to the  
873 department. If provided with cash under this sub-subparagraph,  
874 the department shall deposit the cash with the state treasury  
875 for safekeeping. If the deposited funds generate interest, the  
876 amount of the interest shall be annually transferred to the  
877 department for the administration of this section.

878 8. That all owners, officers, board members, and managers  
879 have passed a background screening pursuant to subsection (9).

880 9. The employment of a medical director to supervise the  
881 activities of the medical marijuana treatment center.

882 10. A diversity plan that promotes and ensures the  
883 involvement of minority persons and minority business  
884 enterprises, as defined in s. 288.703, or veteran business  
885 enterprises, as defined in s. 295.187, in ownership, management,  
886 and employment. An applicant for licensure renewal must show the  
887 effectiveness of the diversity plan by including the following  
888 with his or her application for renewal:

889 a. Representation of minority persons and veterans in the  
890 medical marijuana treatment center's workforce;

891 b. Efforts to recruit minority persons and veterans for  
892 employment; and

893 c. A record of contracts for services with minority  
894 business enterprises and veteran business enterprises.

895 (c) A medical marijuana treatment center may not make a  
896 wholesale purchase of marijuana from, or a distribution of  
897 marijuana to, another medical marijuana treatment center, unless  
898 the medical marijuana treatment center seeking to make a  
899 wholesale purchase of marijuana submits proof of harvest failure

5-00003C-17A

20178A\_\_

900 to the department.

901 (d) The department shall establish, maintain, and control a  
902 computer software tracking system that traces marijuana from  
903 seed to sale and allows real-time, 24-hour access by the  
904 department to data from all medical marijuana treatment centers  
905 and marijuana testing laboratories. The tracking system must  
906 allow for integration of other seed-to-sale systems and, at a  
907 minimum, include notification of when marijuana seeds are  
908 planted, when marijuana plants are harvested and destroyed, and  
909 when marijuana is transported, sold, stolen, diverted, or lost.  
910 Each medical marijuana treatment center shall use the seed-to-  
911 sale tracking system established by the department or integrate  
912 its own seed-to-sale tracking system with the seed-to-sale  
913 tracking system established by the department. Each medical  
914 marijuana treatment center may use its own seed-to-sale system  
915 until the department establishes a seed-to-sale tracking system.  
916 The department may contract with a vendor to establish the seed-  
917 to-sale tracking system. The vendor selected by the department  
918 may not have a contractual relationship with the department to  
919 perform any services pursuant to this section other than the  
920 seed-to-sale tracking system. The vendor may not have a direct  
921 or indirect financial interest in a medical marijuana treatment  
922 center or a marijuana testing laboratory.

923 (e) A licensed medical marijuana treatment center shall  
924 cultivate, process, transport, and dispense marijuana for  
925 medical use. A licensed medical marijuana treatment center may  
926 not contract for services directly related to the cultivation,  
927 processing, and dispensing of marijuana or marijuana delivery  
928 devices, except that a medical marijuana treatment center

5-00003C-17A

20178A\_\_

929 licensed pursuant to subparagraph (a)1. may contract with a  
930 single entity for the cultivation, processing, transporting, and  
931 dispensing of marijuana and marijuana delivery devices. A  
932 licensed medical marijuana treatment center must, at all times,  
933 maintain compliance with the criteria demonstrated and  
934 representations made in the initial application and the criteria  
935 established in this subsection. Upon request, the department may  
936 grant a medical marijuana treatment center a variance from the  
937 representations made in the initial application. Consideration  
938 of such a request shall be based upon the individual facts and  
939 circumstances surrounding the request. A variance may not be  
940 granted unless the requesting medical marijuana treatment center  
941 can demonstrate to the department that it has a proposed  
942 alternative to the specific representation made in its  
943 application which fulfills the same or a similar purpose as the  
944 specific representation in a way that the department can  
945 reasonably determine will not be a lower standard than the  
946 specific representation in the application. A variance may not  
947 be granted from the requirements in subparagraph 2. and  
948 subparagraphs (b)1. and 2.

949 1. A licensed medical marijuana treatment center may  
950 transfer ownership to an individual or entity who meets the  
951 requirements of this section. A publicly traded corporation or  
952 publicly traded company that meets the requirements of this  
953 section is not precluded from ownership of a medical marijuana  
954 treatment center. To accommodate a change in ownership:

955 a. The licensed medical marijuana treatment center shall  
956 notify the department in writing at least 60 days before the  
957 anticipated date of the change of ownership.

5-00003C-17A

20178A\_\_

958       b. The individual or entity applying for initial licensure  
959 due to a change of ownership must submit an application that  
960 must be received by the department at least 60 days before the  
961 date of change of ownership.

962       c. Upon receipt of an application for a license, the  
963 department shall examine the application and, within 30 days  
964 after receipt, notify the applicant in writing of any apparent  
965 errors or omissions and request any additional information  
966 required.

967       d. Requested information omitted from an application for  
968 licensure must be filed with the department within 21 days after  
969 the department's request for omitted information or the  
970 application shall be deemed incomplete and shall be withdrawn  
971 from further consideration and the fees shall be forfeited.

972  
973 Within 30 days after the receipt of a complete application, the  
974 department shall approve or deny the application.

975       2. A medical marijuana treatment center, and any individual  
976 or entity who directly or indirectly owns, controls, or holds  
977 with power to vote 5 percent or more of the voting shares of a  
978 medical marijuana treatment center, may not acquire direct or  
979 indirect ownership or control of any voting shares or other form  
980 of ownership of any other medical marijuana treatment center.

981       3. A medical marijuana treatment center may not enter into  
982 any form of profit-sharing arrangement with the property owner  
983 or lessor of any of its facilities where cultivation,  
984 processing, storing, or dispensing of marijuana and marijuana  
985 delivery devices occurs.

986       4. All employees of a medical marijuana treatment center

5-00003C-17A

20178A\_\_

987 must be 21 years of age or older and have passed a background  
988 screening pursuant to subsection (9).

989 5. Each medical marijuana treatment center must adopt and  
990 enforce policies and procedures to ensure employees and  
991 volunteers receive training on the legal requirements to  
992 dispense marijuana to qualified patients.

993 6. When growing marijuana, a medical marijuana treatment  
994 center:

995 a. May use pesticides determined by the department, after  
996 consultation with the Department of Agriculture and Consumer  
997 Services, to be safely applied to plants intended for human  
998 consumption, but may not use pesticides designated as  
999 restricted-use pesticides pursuant to s. 487.042.

1000 b. Must grow marijuana within an enclosed structure and in  
1001 a room separate from any other plant.

1002 c. Must inspect seeds and growing plants for plant pests  
1003 that endanger or threaten the horticultural and agricultural  
1004 interests of the state in accordance with chapter 581 and any  
1005 rules adopted thereunder.

1006 d. Must perform fumigation or treatment of plants, or  
1007 remove and destroy infested or infected plants, in accordance  
1008 with chapter 581 and any rules adopted thereunder.

1009 7. Each medical marijuana treatment center must produce and  
1010 make available for purchase at least one low-THC cannabis  
1011 product.

1012 8. A medical marijuana treatment center that produces  
1013 edibles must hold a permit to operate as a food establishment  
1014 pursuant to chapter 500, the Florida Food Safety Act, and must  
1015 comply with all the requirements for food establishments

5-00003C-17A

20178A\_\_

1016 pursuant to chapter 500 and any rules adopted thereunder.  
1017 Edibles may not contain more than 200 milligrams of  
1018 tetrahydrocannabinol and a single serving portion of an edible  
1019 may not exceed 10 milligrams of tetrahydrocannabinol. Edibles  
1020 may have a potency variance of no greater than 15 percent.  
1021 Edibles may not be attractive to children; be manufactured in  
1022 the shape of humans, cartoons, or animals; be manufactured in a  
1023 form that bears any reasonable resemblance to products available  
1024 for consumption as commercially available candy; or contain any  
1025 color additives. To discourage consumption of edibles by  
1026 children, the department shall determine by rule any shapes,  
1027 forms, and ingredients allowed and prohibited for edibles.  
1028 Medical marijuana treatment centers may not begin processing or  
1029 dispensing edibles until after the effective date of the rule.  
1030 The department shall also adopt sanitation rules providing the  
1031 standards and requirements for the storage, display, or  
1032 dispensing of edibles.

1033 9. When processing marijuana, a medical marijuana treatment  
1034 center must:

1035 a. Process the marijuana within an enclosed structure and  
1036 in a room separate from other plants or products.

1037 b. Not use a hydrocarbon based solvent, such as butane,  
1038 hexane, or propane, to extract or separate resin from marijuana.

1039 c. Test the processed marijuana using a medical marijuana  
1040 testing laboratory before it is dispensed. Results must be  
1041 verified and signed by two medical marijuana treatment center  
1042 employees. Before dispensing, the medical marijuana treatment  
1043 center must determine that the test results indicate that low-  
1044 THC cannabis meets the definition of low-THC cannabis, the

5-00003C-17A

20178A\_\_

1045 concentration of tetrahydrocannabinol meets the potency  
1046 requirements of this section, the labeling of the concentration  
1047 of tetrahydrocannabinol and cannabidiol is accurate, and all  
1048 marijuana is safe for human consumption and free from  
1049 contaminants that are unsafe for human consumption. The  
1050 department shall determine by rule which contaminants must be  
1051 tested for and the maximum levels of each contaminant which are  
1052 safe for human consumption. The Department of Agriculture and  
1053 Consumer Services shall assist the department in developing the  
1054 testing requirements for contaminants that are unsafe for human  
1055 consumption in edibles. The department shall also determine by  
1056 rule the procedures for the treatment of marijuana that fails to  
1057 meet the testing requirements of this section, s. 381.988, or  
1058 department rule. The department may select a random sample from  
1059 edibles available for purchase in a dispensing facility that  
1060 shall be tested by the department to determine that the edible  
1061 meets the potency requirements of this section, is safe for  
1062 human consumption, and the labeling of the tetrahydrocannabinol  
1063 and cannabidiol concentration is accurate. A medical marijuana  
1064 treatment center may not require payment from the department for  
1065 the sample. A medical marijuana treatment center must recall  
1066 edibles, including all edibles made from the same batch of  
1067 marijuana, which fail to meet the potency requirements of this  
1068 section, which are unsafe for human consumption, or for which  
1069 the labeling of the tetrahydrocannabinol and cannabidiol  
1070 concentration is inaccurate. The medical marijuana treatment  
1071 center must retain records of all testing and samples of each  
1072 homogenous batch of marijuana for at least 9 months. The medical  
1073 marijuana treatment center must contract with a marijuana

5-00003C-17A

20178A\_\_

1074 testing laboratory to perform audits on the medical marijuana  
1075 treatment center's standard operating procedures, testing  
1076 records, and samples and provide the results to the department  
1077 to confirm that the marijuana or low-THC cannabis meets the  
1078 requirements of this section and that the marijuana or low-THC  
1079 cannabis is safe for human consumption. A medical marijuana  
1080 treatment center shall reserve two processed samples from each  
1081 batch and retain such samples for at least 9 months for the  
1082 purpose of such audits. A medical marijuana treatment center may  
1083 use a laboratory that has not been certified by the department  
1084 under s. 381.988 until such time as at least one laboratory  
1085 holds the required certification, but in no event later than  
1086 July 1, 2018.

1087 d. Package the marijuana in compliance with the United  
1088 States Poison Prevention Packaging Act of 1970, 15 U.S.C. ss.  
1089 1471 et seq.

1090 e. Package the marijuana in a receptacle that has a firmly  
1091 affixed and legible label stating the following information:

1092 (I) The marijuana or low-THC cannabis meets the  
1093 requirements of sub-subparagraph c.

1094 (II) The name of the medical marijuana treatment center  
1095 from which the marijuana originates.

1096 (III) The batch number and harvest number from which the  
1097 marijuana originates and the date dispensed.

1098 (IV) The name of the physician who issued the physician  
1099 certification.

1100 (V) The name of the patient.

1101 (VI) The product name, if applicable, and dosage form,  
1102 including concentration of tetrahydrocannabinol and cannabidiol.

5-00003C-17A

20178A\_\_

1103 The product name may not contain wording commonly associated  
1104 with products marketed by or to children.

1105 (VII) The recommended dose.

1106 (VIII) A warning that it is illegal to transfer medical  
1107 marijuana to another person.

1108 (IX) A marijuana universal symbol developed by the  
1109 department.

1110 10. The medical marijuana treatment center shall include in  
1111 each package a patient package insert with information on the  
1112 specific product dispensed related to:

1113 a. Clinical pharmacology.

1114 b. Indications and use.

1115 c. Dosage and administration.

1116 d. Dosage forms and strengths.

1117 e. Contraindications.

1118 f. Warnings and precautions.

1119 g. Adverse reactions.

1120 11. Each edible shall be individually sealed in plain,  
1121 opaque wrapping marked only with the marijuana universal symbol.  
1122 Where practical, each edible shall be marked with the marijuana  
1123 universal symbol. In addition to the packaging and labeling  
1124 requirements in subparagraphs 9. and 10., edible receptacles  
1125 must be plain, opaque, and white without depictions of the  
1126 product or images other than the medical marijuana treatment  
1127 center's department-approved logo and the marijuana universal  
1128 symbol. The receptacle must also include a list all of the  
1129 edible's ingredients, storage instructions, an expiration date,  
1130 a legible and prominent warning to keep away from children and  
1131 pets, and a warning that the edible has not been produced or

5-00003C-17A

20178A\_\_

1132 inspected pursuant to federal food safety laws.

1133 12. When dispensing marijuana or a marijuana delivery  
1134 device, a medical marijuana treatment center:

1135 a. May dispense any active, valid order for low-THC  
1136 cannabis, medical cannabis and cannabis delivery devices issued  
1137 pursuant to former s. 381.986, Florida Statutes 2016, which was  
1138 entered into the medical marijuana use registry before July 1,  
1139 2017.

1140 b. May not dispense more than a 70-day supply of marijuana  
1141 to a qualified patient or caregiver.

1142 c. Must have the medical marijuana treatment center's  
1143 employee who dispenses the marijuana or a marijuana delivery  
1144 device enter into the medical marijuana use registry his or her  
1145 name or unique employee identifier.

1146 d. Must verify that the qualified patient and the  
1147 caregiver, if applicable, each has an active registration in the  
1148 medical marijuana use registry and an active and valid medical  
1149 marijuana use registry identification card, the amount and type  
1150 of marijuana dispensed matches the physician certification in  
1151 the medical marijuana use registry for that qualified patient,  
1152 and the physician certification has not already been filled.

1153 e. May not dispense marijuana to a qualified patient who is  
1154 younger than 18 years of age. If the qualified patient is  
1155 younger than 18 years of age, marijuana may only be dispensed to  
1156 the qualified patient's caregiver.

1157 f. May not dispense or sell any other type of cannabis,  
1158 alcohol, or illicit drug-related product, including pipes,  
1159 bongs, or wrapping papers, other than a marijuana delivery  
1160 device required for the medical use of marijuana and which is

5-00003C-17A

20178A\_\_

1161 specified in a physician certification.

1162 g. Must, upon dispensing the marijuana or marijuana  
1163 delivery device, record in the registry the date, time,  
1164 quantity, and form of marijuana dispensed; the type of marijuana  
1165 delivery device dispensed; and the name and medical marijuana  
1166 use registry identification number of the qualified patient or  
1167 caregiver to whom the marijuana delivery device was dispensed.

1168 h. Must ensure that patient records are not visible to  
1169 anyone other than the qualified patient, his or her caregiver,  
1170 and authorized medical marijuana treatment center employees.

1171 (f) To ensure the safety and security of premises where the  
1172 cultivation, processing, storing, or dispensing of marijuana  
1173 occurs, and to maintain adequate controls against the diversion,  
1174 theft, and loss of marijuana or marijuana delivery devices, a  
1175 medical marijuana treatment center shall:

1176 1.a. Maintain a fully operational security alarm system  
1177 that secures all entry points and perimeter windows and is  
1178 equipped with motion detectors; pressure switches; and duress,  
1179 panic, and hold-up alarms; and

1180 b. Maintain a video surveillance system that records  
1181 continuously 24 hours a day and meets the following criteria:

1182 (I) Cameras are fixed in a place that allows for the clear  
1183 identification of persons and activities in controlled areas of  
1184 the premises. Controlled areas include grow rooms, processing  
1185 rooms, storage rooms, disposal rooms or areas, and point-of-sale  
1186 rooms.

1187 (II) Cameras are fixed in entrances and exits to the  
1188 premises, which shall record from both indoor and outdoor, or  
1189 ingress and egress, vantage points.

5-00003C-17A

20178A\_\_

1190 (III) Recorded images must clearly and accurately display  
1191 the time and date.

1192 (IV) Retain video surveillance recordings for at least 45  
1193 days or longer upon the request of a law enforcement agency.

1194 2. Ensure that the medical marijuana treatment center's  
1195 outdoor premises have sufficient lighting from dusk until dawn.

1196 3. Ensure that the indoor premises where dispensing occurs  
1197 includes a waiting area with sufficient space and seating to  
1198 accommodate qualified patients and caregivers and at least one  
1199 private consultation area that is isolated from the waiting area  
1200 and area where dispensing occurs. A medical marijuana treatment  
1201 center may not display products or dispense marijuana or  
1202 marijuana delivery devices in the waiting area.

1203 4. Not dispense from its premises marijuana or a marijuana  
1204 delivery device between the hours of 9 p.m. and 7 a.m., but may  
1205 perform all other operations and deliver marijuana to qualified  
1206 patients 24 hours a day.

1207 5. Store marijuana in a secured, locked room or a vault.

1208 6. Require at least two of its employees, or two employees  
1209 of a security agency with whom it contracts, to be on the  
1210 premises at all times where cultivation, processing, or storing  
1211 of marijuana occurs.

1212 7. Require each employee or contractor to wear a photo  
1213 identification badge at all times while on the premises.

1214 8. Require each visitor to wear a visitor pass at all times  
1215 while on the premises.

1216 9. Implement an alcohol and drug-free workplace policy.

1217 10. Report to local law enforcement within 24 hours after  
1218 the medical marijuana treatment center is notified or becomes

5-00003C-17A

20178A\_\_

1219 aware of the theft, diversion, or loss of marijuana.

1220 (g) To ensure the safe transport of marijuana and marijuana  
1221 delivery devices to medical marijuana treatment centers,  
1222 marijuana testing laboratories, or qualified patients, a medical  
1223 marijuana treatment center must:

1224 1. Maintain a marijuana transportation manifest in any  
1225 vehicle transporting marijuana. The marijuana transportation  
1226 manifest must be generated from a medical marijuana treatment  
1227 center's seed-to-sale tracking system and include the:

1228 a. Departure date and approximate time of departure.

1229 b. Name, location address, and license number of the  
1230 originating medical marijuana treatment center.

1231 c. Name and address of the recipient of the delivery.

1232 d. Quantity and form of any marijuana or marijuana delivery  
1233 device being transported.

1234 e. Arrival date and estimated time of arrival.

1235 f. Delivery vehicle make and model and license plate  
1236 number.

1237 g. Name and signature of the medical marijuana treatment  
1238 center employees delivering the product.

1239 (I) A copy of the marijuana transportation manifest must be  
1240 provided to each individual, medical marijuana treatment center,  
1241 or marijuana testing laboratory that receives a delivery. The  
1242 individual, or a representative of the center or laboratory,  
1243 must sign a copy of the marijuana transportation manifest  
1244 acknowledging receipt.

1245 (II) An individual transporting marijuana or a marijuana  
1246 delivery device must present a copy of the relevant marijuana  
1247 transportation manifest and his or her employee identification

5-00003C-17A

20178A\_\_

1248 card to a law enforcement officer upon request.

1249 (III) Medical marijuana treatment centers and marijuana  
1250 testing laboratories must retain copies of all marijuana  
1251 transportation manifests for at least 3 years.

1252 2. Ensure only vehicles in good working order are used to  
1253 transport marijuana.

1254 3. Lock marijuana and marijuana delivery devices in a  
1255 separate compartment or container within the vehicle.

1256 4. Require employees to have possession of their employee  
1257 identification card at all times when transporting marijuana or  
1258 marijuana delivery devices.

1259 5. Require at least two persons to be in a vehicle  
1260 transporting marijuana or marijuana delivery devices, and  
1261 require at least one person to remain in the vehicle while the  
1262 marijuana or marijuana delivery device is being delivered.

1263 6. Provide specific safety and security training to  
1264 employees transporting or delivering marijuana and marijuana  
1265 delivery devices.

1266 (h) A medical marijuana treatment center may not engage in  
1267 advertising that is visible to members of the public from any  
1268 street, sidewalk, park, or other public place, except:

1269 1. The dispensing location of a medical marijuana treatment  
1270 center may have a sign that is affixed to the outside or hanging  
1271 in the window of the premises which identifies the dispensary by  
1272 the licensee's business name, a department-approved trade name,  
1273 or a department-approved logo. A medical marijuana treatment  
1274 center's trade name and logo may not contain wording or images  
1275 commonly associated with marketing targeted toward children or  
1276 which promote recreational use of marijuana.

5-00003C-17A

20178A\_\_

1277 2. A medical marijuana treatment center may engage in  
1278 Internet advertising and marketing under the following  
1279 conditions:

1280 a. All advertisements must be approved by the department.

1281 b. An advertisement may not have any content that  
1282 specifically targets individuals under the age of 18, including  
1283 cartoon characters or similar images.

1284 c. An advertisement may not be an unsolicited pop-up  
1285 advertisement.

1286 d. Opt-in marketing must include an easy and permanent opt-  
1287 out feature.

1288 (i) Each medical marijuana treatment center that dispenses  
1289 marijuana and marijuana delivery devices shall make available to  
1290 the public on its website:

1291 1. Each marijuana and low-THC product available for  
1292 purchase, including the form, strain of marijuana from which it  
1293 was extracted, cannabidiol content, tetrahydrocannabinol  
1294 content, dose unit, total number of doses available, and the  
1295 ratio of cannabidiol to tetrahydrocannabinol for each product.

1296 2. The price for a 30-day, 50-day, and 70-day supply at a  
1297 standard dose for each marijuana and low-THC product available  
1298 for purchase.

1299 3. The price for each marijuana delivery device available  
1300 for purchase.

1301 4. If applicable, any discount policies and eligibility  
1302 criteria for such discounts.

1303 (j) Medical marijuana treatment centers are the sole source  
1304 from which a qualified patient may legally obtain marijuana.

1305 (k) The department may adopt rules pursuant to ss.

5-00003C-17A

20178A\_\_

1306 120.536(1) and 120.54 to implement this subsection.

1307 (9) BACKGROUND SCREENING.-An individual required to undergo  
1308 a background screening pursuant to this section must pass a  
1309 level 2 background screening as provided under chapter 435,  
1310 which, in addition to the disqualifying offenses provided in s.  
1311 435.04, shall exclude an individual who has an arrest awaiting  
1312 final disposition for, has been found guilty of, regardless of  
1313 adjudication, or has entered a plea of nolo contendere or guilty  
1314 to an offense under chapter 837, chapter 895, or chapter 896 or  
1315 similar law of another jurisdiction.

1316 (a) Such individual must submit a full set of fingerprints  
1317 to the department or to a vendor, entity, or agency authorized  
1318 by s. 943.053(13). The department, vendor, entity, or agency  
1319 shall forward the fingerprints to the Department of Law  
1320 Enforcement for state processing, and the Department of Law  
1321 Enforcement shall forward the fingerprints to the Federal Bureau  
1322 of Investigation for national processing.

1323 (b) Fees for state and federal fingerprint processing and  
1324 retention shall be borne by the individual. The state cost for  
1325 fingerprint processing shall be as provided in s. 943.053(3) (e)  
1326 for records provided to persons or entities other than those  
1327 specified as exceptions therein.

1328 (c) Fingerprints submitted to the Department of Law  
1329 Enforcement pursuant to this subsection shall be retained by the  
1330 Department of Law Enforcement as provided in s. 943.05(2) (g) and  
1331 (h) and, when the Department of Law Enforcement begins  
1332 participation in the program, enrolled in the Federal Bureau of  
1333 Investigation's national retained print arrest notification  
1334 program. Any arrest record identified shall be reported to the

5-00003C-17A

20178A\_\_

1335 department.

1336 (10) MEDICAL MARIJUANA TREATMENT CENTER INSPECTIONS;  
1337 ADMINISTRATIVE ACTIONS.-

1338 (a) The department shall conduct announced or unannounced  
1339 inspections of medical marijuana treatment centers to determine  
1340 compliance with this section or rules adopted pursuant to this  
1341 section.

1342 (b) The department shall inspect a medical marijuana  
1343 treatment center upon receiving a complaint or notice that the  
1344 medical marijuana treatment center has dispensed marijuana  
1345 containing mold, bacteria, or other contaminant that may cause  
1346 or has caused an adverse effect to human health or the  
1347 environment.

1348 (c) The department shall conduct at least a biennial  
1349 inspection of each medical marijuana treatment center to  
1350 evaluate the medical marijuana treatment center's records,  
1351 personnel, equipment, processes, security measures, sanitation  
1352 practices, and quality assurance practices.

1353 (d) The Department of Agriculture and Consumer Services and  
1354 the department shall enter into an interagency agreement to  
1355 ensure cooperation and coordination in the performance of their  
1356 obligations under this section and their respective regulatory  
1357 and authorizing laws. The department, the Department of Highway  
1358 Safety and Motor Vehicles, and the Department of Law Enforcement  
1359 may enter into interagency agreements for the purposes specified  
1360 in this subsection or subsection (7).

1361 (e) The department shall publish a list of all approved  
1362 medical marijuana treatment centers, medical directors, and  
1363 qualified physicians on its website.

5-00003C-17A

20178A\_\_

- 1364       (f) The department may impose reasonable fines not to  
1365 exceed \$10,000 on a medical marijuana treatment center for any  
1366 of the following violations:
- 1367       1. Violating this section or department rule.
  - 1368       2. Failing to maintain qualifications for approval.
  - 1369       3. Endangering the health, safety, or security of a  
1370 qualified patient.
  - 1371       4. Improperly disclosing personal and confidential  
1372 information of the qualified patient.
  - 1373       5. Attempting to procure medical marijuana treatment center  
1374 approval by bribery, fraudulent misrepresentation, or extortion.
  - 1375       6. Being convicted or found guilty of, or entering a plea  
1376 of guilty or nolo contendere to, regardless of adjudication, a  
1377 crime in any jurisdiction which directly relates to the business  
1378 of a medical marijuana treatment center.
  - 1379       7. Making or filing a report or record that the medical  
1380 marijuana treatment center knows to be false.
  - 1381       8. Willfully failing to maintain a record required by this  
1382 section or department rule.
  - 1383       9. Willfully impeding or obstructing an employee or agent  
1384 of the department in the furtherance of his or her official  
1385 duties.
  - 1386       10. Engaging in fraud or deceit, negligence, incompetence,  
1387 or misconduct in the business practices of a medical marijuana  
1388 treatment center.
  - 1389       11. Making misleading, deceptive, or fraudulent  
1390 representations in or related to the business practices of a  
1391 medical marijuana treatment center.
  - 1392       12. Having a license or the authority to engage in any

5-00003C-17A

20178A\_\_

1393 regulated profession, occupation, or business that is related to  
1394 the business practices of a medical marijuana treatment center  
1395 suspended, revoked, or otherwise acted against by the licensing  
1396 authority of any jurisdiction, including its agencies or  
1397 subdivisions, for a violation that would constitute a violation  
1398 under Florida law.

1399 13. Violating a lawful order of the department or an agency  
1400 of the state, or failing to comply with a lawfully issued  
1401 subpoena of the department or an agency of the state.

1402 (g) The department may suspend, revoke, or refuse to renew  
1403 a medical marijuana treatment center license if the medical  
1404 marijuana treatment center commits any of the violations in  
1405 paragraph (f).

1406 (h) The department may adopt rules pursuant to ss.  
1407 120.536(1) and 120.54 to implement this subsection.

1408 (11) PREEMPTION.—Regulation of cultivation, processing, and  
1409 delivery of marijuana by medical marijuana treatment centers is  
1410 preempted to the state except as provided in this subsection.

1411 (a) A medical marijuana treatment center cultivating or  
1412 processing facility may not be located within 500 feet of the  
1413 real property that comprises a public or private elementary  
1414 school, middle school, or secondary school.

1415 (b)1. A county or municipality may, by ordinance, ban  
1416 medical marijuana treatment center dispensing facilities from  
1417 being located within the boundaries of that county or  
1418 municipality. A county or municipality that does not ban  
1419 dispensing facilities under this subparagraph may not place  
1420 specific limits, by ordinance, on the number of dispensing  
1421 facilities that may locate within that county or municipality.

5-00003C-17A

20178A\_\_

1422       2. A municipality may determine by ordinance the criteria  
1423 for the location of, and other permitting requirements that do  
1424 not conflict with state law or department rule for, medical  
1425 marijuana treatment center dispensing facilities located within  
1426 the boundaries of that municipality. A county may determine by  
1427 ordinance the criteria for the location of, and other permitting  
1428 requirements that do not conflict with state law or department  
1429 rule for, all such dispensing facilities located within the  
1430 unincorporated areas of that county. Except as provided in  
1431 paragraph (c), a county or municipality may not enact ordinances  
1432 for permitting or for determining the location of dispensing  
1433 facilities which are more restrictive than its ordinances  
1434 permitting or determining the locations for pharmacies licensed  
1435 under chapter 465. A municipality or county may not charge a  
1436 medical marijuana treatment center a license or permit fee in an  
1437 amount greater than the fee charged by such municipality or  
1438 county to pharmacies. A dispensing facility location approved by  
1439 a municipality or county pursuant to former s. 381.986(8)(b),  
1440 Florida Statutes 2016, is not subject to the location  
1441 requirements of this subsection.

1442       (c) A medical marijuana treatment center dispensing  
1443 facility may not be located within 500 feet of the real property  
1444 that comprises a public or private elementary school, middle  
1445 school, or secondary school unless the county or municipality  
1446 approves the location through a formal proceeding open to the  
1447 public at which the county or municipality determines that the  
1448 location promotes the public health, safety, and general welfare  
1449 of the community.

1450       (d) This subsection does not prohibit any local

5-00003C-17A

20178A\_\_

1451 jurisdiction from ensuring medical marijuana treatment center  
1452 facilities comply with the Florida Building Code, the Florida  
1453 Fire Prevention Code, or any local amendments to the Florida  
1454 Building Code or the Florida Fire Prevention Code.

1455 (12) PENALTIES.—

1456 (a) A qualified physician commits a misdemeanor of the  
1457 first degree, punishable as provided in s. 775.082 or s.  
1458 775.083, if the qualified physician issues a physician  
1459 certification for the medical use of marijuana for a patient  
1460 without a reasonable belief that the patient is suffering from a  
1461 qualifying medical condition.

1462 (b) A person who fraudulently represents that he or she has  
1463 a qualifying medical condition to a qualified physician for the  
1464 purpose of being issued a physician certification commits a  
1465 misdemeanor of the first degree, punishable as provided in s.  
1466 775.082 or s. 775.083.

1467 (c) A qualified patient who uses marijuana, not including  
1468 low-THC cannabis, or a caregiver who administers marijuana, not  
1469 including low-THC cannabis, in plain view of or in a place open  
1470 to the general public; in a school bus, a vehicle, an aircraft,  
1471 or a boat; or on the grounds of a school except as provided in  
1472 s. 1006.062, commits a misdemeanor of the first degree,  
1473 punishable as provided in s. 775.082 or s. 775.083.

1474 (d) A qualified patient or caregiver who cultivates  
1475 marijuana or who purchases or acquires marijuana from any person  
1476 or entity other than a medical marijuana treatment center  
1477 violates s. 893.13 and is subject to the penalties provided  
1478 therein.

1479 (e)1. A qualified patient or caregiver in possession of

5-00003C-17A

20178A\_\_

1480 marijuana or a marijuana delivery device who fails or refuses to  
1481 present his or her marijuana use registry identification card  
1482 upon the request of a law enforcement officer commits a  
1483 misdemeanor of the second degree, punishable as provided in s.  
1484 775.082 or s. 775.083, unless it can be determined through the  
1485 medical marijuana use registry that the person is authorized to  
1486 be in possession of that marijuana or marijuana delivery device.

1487 2. A person charged with a violation of this paragraph may  
1488 not be convicted if, before or at the time of his or her court  
1489 or hearing appearance, the person produces in court or to the  
1490 clerk of the court in which the charge is pending a medical  
1491 marijuana use registry identification card issued to him or her  
1492 which is valid at the time of his or her arrest. The clerk of  
1493 the court is authorized to dismiss such case at any time before  
1494 the defendant's appearance in court. The clerk of the court may  
1495 assess a fee of \$5 for dismissing the case under this paragraph.

1496 (f) A caregiver who violates any of the applicable  
1497 provisions of this section or applicable department rules, for  
1498 the first offense, commits a misdemeanor of the second degree,  
1499 punishable as provided in s. 775.082 or s. 775.083 and, for a  
1500 second or subsequent offense, commits a misdemeanor of the first  
1501 degree, punishable as provided in s. 775.082 or s. 775.083.

1502 (g) A qualified physician who issues a physician  
1503 certification for marijuana or a marijuana delivery device and  
1504 receives compensation from a medical marijuana treatment center  
1505 related to the issuance of a physician certification for  
1506 marijuana or a marijuana delivery device is subject to  
1507 disciplinary action under the applicable practice act and s.  
1508 456.072 (1) (n).

5-00003C-17A

20178A\_\_

1509 (h) A person transporting marijuana or marijuana delivery  
1510 devices on behalf of a medical marijuana treatment center or  
1511 marijuana testing laboratory who fails or refuses to present a  
1512 transportation manifest upon the request of a law enforcement  
1513 officer commits a misdemeanor of the second degree, punishable  
1514 as provided in s. 775.082 or s. 775.083.

1515 (i) Persons and entities conducting activities authorized  
1516 and governed by this section and s. 381.988 are subject to ss.  
1517 456.053, 456.054, and 817.505, as applicable.

1518 (j) A person or entity that cultivates, processes,  
1519 distributes, sells, or dispenses marijuana, as defined in s.  
1520 29(b)(4), Art. X of the State Constitution, and is not licensed  
1521 as a medical marijuana treatment center violates s. 893.13 and  
1522 is subject to the penalties provided therein.

1523 (k) A person who manufactures, distributes, sells, gives,  
1524 or possesses with the intent to manufacture, distribute, sell,  
1525 or give marijuana or a marijuana delivery device that he or she  
1526 holds out to have originated from a licensed medical marijuana  
1527 treatment center but that is counterfeit commits a felony of the  
1528 third degree, punishable as provided in s. 775.082, s. 775.083,  
1529 or s. 775.084. For the purposes of this paragraph, the term  
1530 "counterfeit" means marijuana; a marijuana delivery device; or a  
1531 marijuana or marijuana delivery device container, seal, or label  
1532 which, without authorization, bears the trademark, trade name,  
1533 or other identifying mark, imprint, or device, or any likeness  
1534 thereof, of a licensed medical marijuana treatment center and  
1535 which thereby falsely purports or is represented to be the  
1536 product of, or to have been distributed by, that licensed  
1537 medical marijuana treatment facility.

5-00003C-17A

20178A\_\_

1538 (1) Any person who possesses or manufactures a blank,  
1539 forged, stolen, fictitious, fraudulent, counterfeit, or  
1540 otherwise unlawfully issued medical marijuana use registry  
1541 identification card commits a felony of the third degree,  
1542 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

1543 (13) UNLICENSED ACTIVITY.—

1544 (a) If the department has probable cause to believe that a  
1545 person or entity that is not registered or licensed with the  
1546 department has violated this section, s. 381.988, or any rule  
1547 adopted pursuant to this section, the department may issue and  
1548 deliver to such person or entity a notice to cease and desist  
1549 from such violation. The department also may issue and deliver a  
1550 notice to cease and desist to any person or entity who aids and  
1551 abets such unlicensed activity. The issuance of a notice to  
1552 cease and desist does not constitute agency action for which a  
1553 hearing under s. 120.569 or s. 120.57 may be sought. For the  
1554 purpose of enforcing a cease and desist order, the department  
1555 may file a proceeding in the name of the state seeking issuance  
1556 of an injunction or a writ of mandamus against any person or  
1557 entity who violates any provisions of such order.

1558 (b) In addition to the remedies under paragraph (a), the  
1559 department may impose by citation an administrative penalty not  
1560 to exceed \$5,000 per incident. The citation shall be issued to  
1561 the subject and must contain the subject's name and any other  
1562 information the department determines to be necessary to  
1563 identify the subject, a brief factual statement, the sections of  
1564 the law allegedly violated, and the penalty imposed. If the  
1565 subject does not dispute the matter in the citation with the  
1566 department within 30 days after the citation is served, the

5-00003C-17A

20178A\_\_

1567 citation shall become a final order of the department. The  
1568 department may adopt rules pursuant to ss. 120.536(1) and 120.54  
1569 to implement this section. Each day that the unlicensed activity  
1570 continues after issuance of a notice to cease and desist  
1571 constitutes a separate violation. The department shall be  
1572 entitled to recover the costs of investigation and prosecution  
1573 in addition to the fine levied pursuant to the citation. Service  
1574 of a citation may be made by personal service or by mail to the  
1575 subject at the subject's last known address or place of  
1576 practice. If the department is required to seek enforcement of  
1577 the cease and desist or agency order, it shall be entitled to  
1578 collect attorney fees and costs.

1579 (c) In addition to or in lieu of any other administrative  
1580 remedy, the department may seek the imposition of a civil  
1581 penalty through the circuit court for any violation for which  
1582 the department may issue a notice to cease and desist. The civil  
1583 penalty shall be no less than \$5,000 and no more than \$10,000  
1584 for each offense. The court may also award to the prevailing  
1585 party court costs and reasonable attorney fees and, in the event  
1586 the department prevails, may also award reasonable costs of  
1587 investigation and prosecution.

1588 (d) In addition to the other remedies provided in this  
1589 section, the department or any state attorney may bring an  
1590 action for an injunction to restrain any unlicensed activity or  
1591 to enjoin the future operation or maintenance of the unlicensed  
1592 activity or the performance of any service in violation of this  
1593 section.

1594 (e) The department must notify local law enforcement of  
1595 such unlicensed activity for a determination of any criminal

5-00003C-17A

20178A\_\_

1596 violation of chapter 893.

1597 (14) EXCEPTIONS TO OTHER LAWS.—

1598 (a) Notwithstanding s. 893.13, s. 893.135, s. 893.147, or  
1599 any other provision of law, but subject to the requirements of  
1600 this section, a qualified patient and the qualified patient's  
1601 caregiver may purchase from a medical marijuana treatment center  
1602 for the patient's medical use a marijuana delivery device and up  
1603 to the amount of marijuana authorized in the physician  
1604 certification, but may not possess more than a 70-day supply of  
1605 marijuana at any given time and all marijuana purchased must  
1606 remain in its original packaging.

1607 (b) Notwithstanding s. 893.13, s. 893.135, s. 893.147, or  
1608 any other provision of law, but subject to the requirements of  
1609 this section, an approved medical marijuana treatment center and  
1610 its owners, managers, and employees may manufacture, possess,  
1611 sell, deliver, distribute, dispense, and lawfully dispose of  
1612 marijuana or a marijuana delivery device as provided in this  
1613 section, s. 381.988, and by department rule. For the purposes of  
1614 this subsection, the terms "manufacture," "possession,"  
1615 "deliver," "distribute," and "dispense" have the same meanings  
1616 as provided in s. 893.02.

1617 (c) Notwithstanding s. 893.13, s. 893.135, s. 893.147, or  
1618 any other provision of law, but subject to the requirements of  
1619 this section, a certified marijuana testing laboratory,  
1620 including an employee of a certified marijuana testing  
1621 laboratory acting within the scope of his or her employment, may  
1622 acquire, possess, test, transport, and lawfully dispose of  
1623 marijuana as provided in this section, in s. 381.988, and by  
1624 department rule.

5-00003C-17A

20178A\_\_

1625 (d) A licensed medical marijuana treatment center and its  
1626 owners, managers, and employees are not subject to licensure or  
1627 regulation under chapter 465 or chapter 499 for manufacturing,  
1628 possessing, selling, delivering, distributing, dispensing, or  
1629 lawfully disposing of marijuana or a marijuana delivery device,  
1630 as provided in this section, s. 381.988, and by department rule.

1631 (e) This subsection does not exempt a person from  
1632 prosecution for a criminal offense related to impairment or  
1633 intoxication resulting from the medical use of marijuana or  
1634 relieve a person from any requirement under law to submit to a  
1635 breath, blood, urine, or other test to detect the presence of a  
1636 controlled substance.

1637 (f) Notwithstanding s. 893.13, s. 893.135, s. 893.147, or  
1638 any other provision of law, but subject to the requirements of  
1639 this section and pursuant to policies and procedures established  
1640 pursuant to s. 1006.62(8), school personnel may possess  
1641 marijuana that is obtained for medical use pursuant to this  
1642 section by a student who is a qualified patient.

1643 (g) Notwithstanding s. 893.13, s. 893.135, s. 893.147, or  
1644 any other provision of law, but subject to the requirements of  
1645 this section, a research institute established by a public  
1646 postsecondary educational institution, such as the H. Lee  
1647 Moffitt Cancer Center and Research Institute, Inc., established  
1648 under s. 1004.43, or a state university that has achieved the  
1649 preeminent state research university designation under s.  
1650 1001.7065 may possess, test, transport, and lawfully dispose of  
1651 marijuana for research purposes as provided by this section.

1652 (15) APPLICABILITY.—This section does not limit the ability  
1653 of an employer to establish, continue, or enforce a drug-free

5-00003C-17A

20178A\_\_

1654 workplace program or policy. This section does not require an  
1655 employer to accommodate the medical use of marijuana in any  
1656 workplace or any employee working while under the influence of  
1657 marijuana. This section does not create a cause of action  
1658 against an employer for wrongful discharge or discrimination.  
1659 Marijuana, as defined in this section, is not reimbursable under  
1660 chapter 440.

1661 (16) FINES AND FEES.—Fines and fees collected by the  
1662 department under this section shall be deposited in the Grants  
1663 and Donations Trust Fund within the Department of Health.

1664 Section 4. Paragraph (uu) is added to subsection (1) of  
1665 section 458.331, Florida Statutes, to read:

1666 458.331 Grounds for disciplinary action; action by the  
1667 board and department.—

1668 (1) The following acts constitute grounds for denial of a  
1669 license or disciplinary action, as specified in s. 456.072(2):

1670 (uu) Issuing a physician certification, as defined in s.  
1671 381.986, in a manner out of compliance with the requirements of  
1672 that section and rules adopted thereunder.

1673 Section 5. Paragraph (ww) is added to subsection (1) of  
1674 section 459.015, Florida Statutes, to read:

1675 459.015 Grounds for disciplinary action; action by the  
1676 board and department.—

1677 (1) The following acts constitute grounds for denial of a  
1678 license or disciplinary action, as specified in s. 456.072(2):

1679 (ww) Issuing a physician certification, as defined in s.  
1680 381.986, in a manner not in compliance with the requirements of  
1681 that section and rules adopted thereunder.

1682 Section 6. Section 381.988, Florida Statutes, is created to

5-00003C-17A

20178A\_\_

1683 read:

1684 381.988 Medical marijuana testing laboratories; marijuana  
1685 tests conducted by a certified laboratory.-

1686 (1) A person or entity seeking to be a certified marijuana  
1687 testing laboratory must:

1688 (a) Not be owned or controlled by a medical marijuana  
1689 treatment center.

1690 (b) Submit a completed application accompanied by an  
1691 application fee, as established by department rule.

1692 (c) Submit proof of an accreditation or a certification  
1693 approved by the department issued by an accreditation or a  
1694 certification organization approved by the department. The  
1695 department shall adopt by rule a list of approved laboratory  
1696 accreditations or certifications and accreditation or  
1697 certification organizations.

1698 (d) Require all owners and managers to submit to and pass a  
1699 level 2 background screening pursuant to s. 435.04 and shall  
1700 deny certification if the person or entity has been found guilty  
1701 of, or has entered a plea of guilty or nolo contendere to,  
1702 regardless of adjudication, any offense listed in chapter 837,  
1703 chapter 895, or chapter 896 or similar law of another  
1704 jurisdiction.

1705 1. Such owners and managers must submit a full set of  
1706 fingerprints to the department or to a vendor, entity, or agency  
1707 authorized by s. 943.053(13). The department, vendor, entity, or  
1708 agency shall forward the fingerprints to the Department of Law  
1709 Enforcement for state processing, and the Department of Law  
1710 Enforcement shall forward the fingerprints to the Federal Bureau  
1711 of Investigation for national processing.

5-00003C-17A

20178A\_\_

1712 2. Fees for state and federal fingerprint processing and  
1713 retention shall be borne by such owners or managers. The state  
1714 cost for fingerprint processing shall be as provided in s.  
1715 943.053(3)(e) for records provided to persons or entities other  
1716 than those specified as exceptions therein.

1717 3. Fingerprints submitted to the Department of Law  
1718 Enforcement pursuant to this paragraph shall be retained by the  
1719 Department of Law Enforcement as provided in s. 943.05(2)(g) and  
1720 (h) and, when the Department of Law Enforcement begins  
1721 participation in the program, enrolled in the Federal Bureau of  
1722 Investigation's national retained print arrest notification  
1723 program. Any arrest record identified shall be reported to the  
1724 department.

1725 (e) Demonstrate to the department the capability of meeting  
1726 the standards for certification required by this subsection, and  
1727 the testing requirements of s. 381.986 and this section and  
1728 rules adopted thereunder.

1729 (2) The department shall adopt rules pursuant to ss.  
1730 120.536(1) and 120.54 establishing a procedure for initial  
1731 certification and biennial renewal, including initial  
1732 application and biennial renewal fees sufficient to cover the  
1733 costs of administering this certification program. The  
1734 department shall renew the certification biennially if the  
1735 laboratory meets the requirements of this section and pays the  
1736 biennial renewal fee.

1737 (3) The department shall adopt rules pursuant to ss.  
1738 120.536(1) and 120.54 establishing the standards for  
1739 certification of marijuana testing laboratories under this  
1740 section. The Department of Agriculture and Consumer Services and

5-00003C-17A

20178A\_\_

1741 the Department of Environmental Protection shall assist the  
1742 department in developing the rule, which must include, but is  
1743 not limited to:

1744 (a) Security standards.

1745 (b) Minimum standards for personnel.

1746 (c) Sample collection method and process standards.

1747 (d) Proficiency testing for tetrahydrocannabinol potency,  
1748 concentration of cannabidiol, and contaminants unsafe for human  
1749 consumption, as determined by department rule.

1750 (e) Reporting content, format, and frequency.

1751 (f) Audits and onsite inspections.

1752 (g) Quality assurance.

1753 (h) Equipment and methodology.

1754 (i) Chain of custody.

1755 (j) Any other standard the department deems necessary to  
1756 ensure the health and safety of the public.

1757 (4) A marijuana testing laboratory may acquire marijuana  
1758 only from a medical marijuana treatment center. A marijuana  
1759 testing laboratory is prohibited from selling, distributing, or  
1760 transferring marijuana received from a marijuana treatment  
1761 center, except that a marijuana testing laboratory may transfer  
1762 a sample to another marijuana testing laboratory in this state.

1763 (5) A marijuana testing laboratory must properly dispose of  
1764 all samples it receives, unless transferred to another marijuana  
1765 testing laboratory, after all necessary tests have been  
1766 conducted and any required period of storage has elapsed, as  
1767 established by department rule.

1768 (6) A marijuana testing laboratory shall use the computer  
1769 software tracking system selected by the department under s.

5-00003C-17A

20178A\_\_

1770 381.986.

1771 (7) The following acts constitute grounds for which  
1772 disciplinary action specified in subsection (8) may be taken  
1773 against a certified marijuana testing laboratory:

1774 (a) Permitting unauthorized persons to perform technical  
1775 procedures or issue reports.

1776 (b) Demonstrating incompetence or making consistent errors  
1777 in the performance of testing or erroneous reporting.

1778 (c) Performing a test and rendering a report thereon to a  
1779 person or entity not authorized by law to receive such services.

1780 (d) Failing to file any report required under this section  
1781 or s. 381.986 or the rules adopted thereunder.

1782 (e) Reporting a test result if the test was not performed.

1783 (f) Failing to correct deficiencies within the time  
1784 required by the department.

1785 (g) Violating or aiding and abetting in the violation of  
1786 any provision of s. 381.986 or this section or any rules adopted  
1787 thereunder.

1788 (8) The department may refuse to issue or renew, or may  
1789 suspend or revoke, the certification of a marijuana testing  
1790 laboratory that is found to be in violation of this section or  
1791 any rules adopted hereunder. The department may impose fines for  
1792 violations of this section or rules adopted thereunder, based on  
1793 a schedule adopted in rule. In determining the administrative  
1794 action to be imposed for a violation, the department must  
1795 consider the following factors:

1796 (a) The severity of the violation, including the  
1797 probability of death or serious harm to the health or safety of  
1798 any person that may result or has resulted; the severity or

5-00003C-17A

20178A\_\_

1799 potential harm; and the extent to which s. 381.986 or this  
 1800 section were violated.

1801 (b) The actions taken by the marijuana testing laboratory  
 1802 to correct the violation or to remedy the complaint.

1803 (c) Any previous violation by the marijuana testing  
 1804 laboratory.

1805 (d) The financial benefit to the marijuana testing  
 1806 laboratory of committing or continuing the violation.

1807 (9) The department may adopt rules pursuant to ss.  
 1808 120.536(1) and 120.54 to implement this section.

1809 (10) Fees collected by the department under this section  
 1810 shall be deposited in the Grants and Donations Trust Fund within  
 1811 the Department of Health.

1812 Section 7. Section 381.989, Florida Statutes, is created to  
 1813 read:

1814 381.989 Public education campaigns.—

1815 (1) DEFINITIONS.—As used in this section, the term:

1816 (a) "Cannabis" has the same meaning as in s. 893.02.

1817 (b) "Department" means the Department of Health.

1818 (c) "Marijuana" has the same meaning as in s. 381.986.

1819 (2) STATEWIDE CANNABIS AND MARIJUANA EDUCATION AND ILLICIT  
 1820 USE PREVENTION CAMPAIGN.—

1821 (a) The department shall implement a statewide cannabis and  
 1822 marijuana education and illicit use prevention campaign to  
 1823 publicize accurate information regarding:

1824 1. The legal requirements for licit use and possession of  
 1825 marijuana in this state.

1826 2. Safe use of marijuana, including preventing access by  
 1827 persons other than qualified patients as defined in s. 381.986,

5-00003C-17A

20178A\_\_

1828 particularly children.

1829 3. The short-term and long-term health effects of cannabis  
1830 and marijuana use, particularly on minors and young adults.

1831 4. Other cannabis-related and marijuana-related education  
1832 determined by the department to be necessary to the public  
1833 health and safety.

1834 (b) The department shall provide educational materials  
1835 regarding the eligibility for medical use of marijuana by  
1836 individuals diagnosed with a terminal condition to individuals  
1837 that provide palliative care or hospice services.

1838 (c) The department may use television messaging, radio  
1839 broadcasts, print media, digital strategies, social media, and  
1840 any other form of messaging deemed necessary and appropriate by  
1841 the department to implement the campaign. The department may  
1842 work with school districts, community organizations, and  
1843 businesses and business organizations and other entities to  
1844 provide training and programming.

1845 (d) The department may contract with one or more vendors to  
1846 implement the campaign.

1847 (e) The department shall contract with an independent  
1848 entity to conduct annual evaluations of the campaign. The  
1849 evaluations shall assess the reach and impact of the campaign,  
1850 success in educating the citizens of the state regarding the  
1851 legal parameters for marijuana use, success in preventing  
1852 illicit access by adults and youth, and success in preventing  
1853 negative health impacts from the legalization of marijuana. The  
1854 first year of the program, the evaluator shall conduct surveys  
1855 to establish baseline data on youth and adult cannabis use, the  
1856 attitudes of youth and the general public toward cannabis and

5-00003C-17A

20178A\_\_

1857 marijuana, and any other data deemed necessary for long-term  
1858 analysis. By January 31 of each year, the department shall  
1859 submit to the Governor, the President of the Senate, and the  
1860 Speaker of the House of Representatives the annual evaluation of  
1861 the campaign.

1862 (3) STATEWIDE IMPAIRED DRIVING EDUCATION CAMPAIGN.—

1863 (a) The Department of Highway Safety and Motor Vehicles  
1864 shall implement a statewide impaired driving education campaign  
1865 to raise awareness and prevent marijuana-related and cannabis-  
1866 related impaired driving and may contract with one or more  
1867 vendors to implement the campaign. The Department of Highway  
1868 Safety and Motor Vehicles may use television messaging, radio  
1869 broadcasts, print media, digital strategies, social media, and  
1870 any other form of messaging deemed necessary and appropriate by  
1871 the department to implement the campaign.

1872 (b) At a minimum, the Department of Highway Safety and  
1873 Motor Vehicles or a contracted vendor shall establish baseline  
1874 data on the number of marijuana-related citations for driving  
1875 under the influence, marijuana-related traffic arrests,  
1876 marijuana-related traffic accidents, and marijuana-related  
1877 traffic fatalities, and shall track these measures annually  
1878 thereafter. The Department of Highway Safety and Motor Vehicles  
1879 or a contracted vendor shall annually evaluate and compile a  
1880 report on the efficacy of the campaign based on those measures  
1881 and other measures established by the Department of Highway  
1882 Safety and Motor Vehicles. By January 31 of each year, the  
1883 Department of Highway Safety and Motor Vehicles shall submit the  
1884 report on the evaluation of the campaign to the Governor, the  
1885 President of the Senate, and the Speaker of the House of

5-00003C-17A

20178A\_\_

1886 Representatives.

1887 Section 8. Subsection (1) of section 385.211, Florida  
1888 Statutes, is amended to read:

1889 385.211 Refractory and intractable epilepsy treatment and  
1890 research at recognized medical centers.—

1891 (1) As used in this section, the term “low-THC cannabis”  
1892 means “low-THC cannabis” as defined in s. 381.986 that is  
1893 dispensed only from a dispensing organization as defined in  
1894 former s. 381.986, Florida Statutes 2016, or a medical marijuana  
1895 treatment center as defined in s. 381.986.

1896 Section 9. Paragraphs (b) through (e) of subsection (2) of  
1897 section 499.0295, Florida Statutes, are redesignated as  
1898 paragraphs (a) through (d), respectively, and present paragraphs  
1899 (a) and (c) of that subsection, and subsection (3) of that  
1900 section are amended, to read:

1901 499.0295 Experimental treatments for terminal conditions.—

1902 (2) As used in this section, the term:

1903 ~~(a) “Dispensing organization” means an organization~~  
1904 ~~approved by the Department of Health under s. 381.986(5) to~~  
1905 ~~cultivate, process, transport, and dispense low-THC cannabis,~~  
1906 ~~medical cannabis, and cannabis delivery devices.~~

1907 (b)(e) “Investigational drug, biological product, or  
1908 device” means:

1909 ~~1.~~ a drug, biological product, or device that has  
1910 successfully completed phase 1 of a clinical trial but has not  
1911 been approved for general use by the United States Food and Drug  
1912 Administration and remains under investigation in a clinical  
1913 trial approved by the United States Food and Drug  
1914 Administration; ~~or~~

5-00003C-17A

20178A\_\_

1915 ~~2. Medical cannabis that is manufactured and sold by a~~  
 1916 ~~dispensing organization.~~

1917 (3) Upon the request of an eligible patient, a manufacturer  
 1918 ~~may, or upon a physician's order pursuant to s. 381.986, a~~  
 1919 ~~dispensing organization may:~~

1920 (a) Make its investigational drug, biological product, or  
 1921 device available under this section.

1922 (b) Provide an investigational drug, biological product, or  
 1923 ~~device, or cannabis delivery device as defined in s. 381.986 to~~  
 1924 an eligible patient without receiving compensation.

1925 (c) Require an eligible patient to pay the costs of, or the  
 1926 costs associated with, the manufacture of the investigational  
 1927 drug, biological product, or device, ~~or cannabis delivery device~~  
 1928 ~~as defined in s. 381.986.~~

1929 Section 10. Subsection (3) of section 893.02, Florida  
 1930 Statutes, is amended to read:

1931 893.02 Definitions.—The following words and phrases as used  
 1932 in this chapter shall have the following meanings, unless the  
 1933 context otherwise requires:

1934 (3) "Cannabis" means all parts of any plant of the genus  
 1935 *Cannabis*, whether growing or not; the seeds thereof; the resin  
 1936 extracted from any part of the plant; and every compound,  
 1937 manufacture, salt, derivative, mixture, or preparation of the  
 1938 plant or its seeds or resin. The term does not include  
 1939 "marijuana," ~~"low-THC cannabis,"~~ as defined in s. 381.986, if  
 1940 manufactured, possessed, sold, purchased, delivered,  
 1941 distributed, or dispensed, in conformance with s. 381.986.

1942 Section 11. Section 1004.4351, Florida Statutes, is created  
 1943 to read:

5-00003C-17A

20178A\_\_

1944        1004.4351 Medical marijuana research and education.-  
1945        (1) SHORT TITLE.-This section shall be known and may be  
1946 cited as the "Medical Marijuana Research and Education Act."  
1947        (2) LEGISLATIVE FINDINGS.-The Legislature finds that:  
1948        (a) The present state of knowledge concerning the use of  
1949 marijuana to alleviate pain and treat illnesses is limited  
1950 because permission to perform clinical studies on marijuana is  
1951 difficult to obtain, with access to research-grade marijuana so  
1952 restricted that little or no unbiased studies have been  
1953 performed.  
1954        (b) Under the State Constitution, marijuana is available  
1955 for the treatment of certain debilitating medical conditions.  
1956        (c) Additional clinical studies are needed to ensure that  
1957 the residents of this state obtain the correct dosing,  
1958 formulation, route, modality, frequency, quantity, and quality  
1959 of marijuana for specific illnesses.  
1960        (d) An effective medical marijuana research and education  
1961 program would mobilize the scientific, educational, and medical  
1962 resources that presently exist in this state to determine the  
1963 appropriate and best use of marijuana to treat illness.  
1964        (3) DEFINITIONS.-As used in this section, the term:  
1965        (a) "Board" means the Medical Marijuana Research and  
1966 Education Board.  
1967        (b) "Coalition" means the Coalition for Medical Marijuana  
1968 Research and Education.  
1969        (c) "Marijuana" has the same meaning as provided in s. 29,  
1970 Art. X of the State Constitution.  
1971        (4) COALITION FOR MEDICAL MARIJUANA RESEARCH AND  
1972 EDUCATION.-

5-00003C-17A

20178A\_\_

1973       (a) There is established within the H. Lee Moffitt Cancer  
1974 Center and Research Institute, Inc., the Coalition for Medical  
1975 Marijuana Research and Education. The purpose of the coalition  
1976 is to conduct rigorous scientific research, provide education,  
1977 disseminate research, and guide policy for the adoption of a  
1978 statewide policy on ordering and dosing practices for the  
1979 medical use of marijuana. The coalition shall be physically  
1980 located at the H. Lee Moffitt Cancer Center and Research  
1981 Institute, Inc.

1982       (b) The Medical Marijuana Research and Education Board is  
1983 established to direct the operations of the coalition. The board  
1984 shall be composed of seven members appointed by the chief  
1985 executive officer of the H. Lee Moffitt Cancer Center and  
1986 Research Institute, Inc. Board members must have experience in a  
1987 variety of scientific and medical fields, including, but not  
1988 limited to, oncology, neurology, psychology, pediatrics,  
1989 nutrition, and addiction. Members shall be appointed to 4-year  
1990 terms and may be reappointed to serve additional terms. The  
1991 chair shall be elected by the board from among its members to  
1992 serve a 2-year term. The board shall meet at least semiannually  
1993 at the call of the chair or, in his or her absence or  
1994 incapacity, the vice chair. Four members constitute a quorum. A  
1995 majority vote of the members present is required for all actions  
1996 of the board. The board may prescribe, amend, and repeal a  
1997 charter governing the manner in which it conducts its business.  
1998 A board member shall serve without compensation but is entitled  
1999 to be reimbursed for travel expenses by the coalition or the  
2000 organization he or she represents in accordance with s. 112.061.

2001       (c) The coalition shall be administered by a coalition

5-00003C-17A

20178A\_\_

2002 director, who shall be appointed by and serve at the pleasure of  
2003 the board. The coalition director shall, subject to the approval  
2004 of the board:

2005 1. Propose a budget for the coalition.

2006 2. Foster the collaboration of scientists, researchers, and  
2007 other appropriate personnel in accordance with the coalition's  
2008 charter.

2009 3. Identify and prioritize the research to be conducted by  
2010 the coalition.

2011 4. Prepare the Medical Marijuana Research and Education  
2012 Plan for submission to the board.

2013 5. Apply for grants to obtain funding for research  
2014 conducted by the coalition.

2015 6. Perform other duties as determined by the board.

2016 (d) The board shall advise the Board of Governors, the  
2017 State Surgeon General, the Governor, and the Legislature with  
2018 respect to medical marijuana research and education in this  
2019 state. The board shall explore methods of implementing and  
2020 enforcing medical marijuana laws in relation to cancer control,  
2021 research, treatment, and education.

2022 (e) The board shall annually adopt a plan for medical  
2023 marijuana research, known as the "Medical Marijuana Research and  
2024 Education Plan," which must be in accordance with state law and  
2025 coordinate with existing programs in this state. The plan must  
2026 include recommendations for the coordination and integration of  
2027 medical, pharmacological, nursing, paramedical, community, and  
2028 other resources connected with the treatment of debilitating  
2029 medical conditions; research related to the treatment of such  
2030 medical conditions; and education.

5-00003C-17A

20178A\_\_

2031 (f) By February 15 of each year, the board shall issue a  
2032 report to the Governor, the President of the Senate, and the  
2033 Speaker of the House of Representatives on research projects,  
2034 community outreach initiatives, and future plans for the  
2035 coalition.

2036 (g) Beginning January 15, 2018, and quarterly thereafter,  
2037 the Department of Health shall submit to the board a data set  
2038 that includes, for each patient registered in the medical  
2039 marijuana use registry, the patient's qualifying medical  
2040 condition and the daily dose amount and forms of marijuana  
2041 certified for the patient.

2042 (5) RESPONSIBILITIES OF THE H. LEE MOFFITT CANCER CENTER  
2043 AND RESEARCH INSTITUTE, INC.—The H. Lee Moffitt Cancer Center  
2044 and Research Institute, Inc., shall allocate staff and provide  
2045 information and assistance, as the coalition's budget permits,  
2046 to assist the board in fulfilling its responsibilities.

2047 Section 12. Subsection (1) of section 1004.441, Florida  
2048 Statutes, is amended to read:

2049 1004.441 Refractory and intractable epilepsy treatment and  
2050 research.—

2051 (1) As used in this section, the term "low-THC cannabis"  
2052 means "low-THC cannabis" as defined in s. 381.986 that is  
2053 dispensed only from a dispensing organization as defined in  
2054 former s. 381.986, Florida Statutes 2016, or a medical marijuana  
2055 treatment center as defined in s. 381.986.

2056 Section 13. Subsection (8) is added to section 1006.062,  
2057 Florida Statutes, to read:

2058 1006.062 Administration of medication and provision of  
2059 medical services by district school board personnel.—

5-00003C-17A

20178A\_\_

2060       (8) Each district school board shall adopt a policy and a  
2061 procedure for allowing a student who is a qualified patient, as  
2062 defined in s. 381.986, to use marijuana obtained pursuant to  
2063 that section. Such policy and procedure shall ensure access by  
2064 the qualified patient; identify how the marijuana will be  
2065 received, accounted for, and stored; and establish processes to  
2066 prevent access by other students and school personnel whose  
2067 access would be unnecessary for the implementation of the  
2068 policy.

2069       Section 14. Department of Health; authority to adopt rules;  
2070 cause of action.-

2071       (1) EMERGENCY RULEMAKING.-

2072       (a) The Department of Health and the applicable boards  
2073 shall adopt emergency rules pursuant to s. 120.54(4), Florida  
2074 Statutes, and this section necessary to implement ss. 381.986  
2075 and 381.988, Florida Statutes. If an emergency rule adopted  
2076 under this section is held to be unconstitutional or an invalid  
2077 exercise of delegated legislative authority, and becomes void,  
2078 the department or the applicable boards may adopt an emergency  
2079 rule pursuant to this section to replace the rule that has  
2080 become void. If the emergency rule adopted to replace the void  
2081 emergency rule is also held to be unconstitutional or an invalid  
2082 exercise of delegated legislative authority and becomes void,  
2083 the department and the applicable boards must follow the  
2084 nonemergency rulemaking procedures of the Administrative  
2085 Procedures Act to replace the rule that has become void.

2086       (b) For emergency rules adopted under this section, the  
2087 department and the applicable boards need not make the findings  
2088 required by s. 120.54(4)(a), Florida Statutes. Emergency rules

5-00003C-17A

20178A\_\_

2089 adopted under this section are exempt from ss. 120.54(3)(b) and  
2090 120.541, Florida Statutes. The department and the applicable  
2091 boards shall meet the procedural requirements in s. 120.54(a),  
2092 Florida Statutes, if the department or the applicable boards  
2093 have, before the effective date of this act, held any public  
2094 workshops or hearings on the subject matter of the emergency  
2095 rules adopted under this subsection. Challenges to emergency  
2096 rules adopted under this subsection are subject to the time  
2097 schedules provided in s. 120.56(5), Florida Statutes.

2098 (c) Emergency rules adopted under this section are exempt  
2099 from s. 120.54(4)(c), Florida Statutes, and shall remain in  
2100 effect until replaced by rules adopted under the nonemergency  
2101 rulemaking procedures of the Administrative Procedures Act. By  
2102 January 1, 2018, the department and the applicable boards shall  
2103 initiate nonemergency rulemaking pursuant to the Administrative  
2104 Procedures Act to replace all emergency rules adopted under this  
2105 section by publishing a notice of rule development in the  
2106 Florida Administrative Register. Except as provided in paragraph  
2107 (a), after January 1, 2018, the department and applicable boards  
2108 may not adopt rules pursuant to the emergency rulemaking  
2109 procedures provided in this section.

2110 (2) CAUSE OF ACTION.—

2111 (a) As used in s. 29(d)(3), Article X of the State  
2112 Constitution, the term:

2113 1. "Issue regulations" means the filing by the department  
2114 of a rule or emergency rule for adoption with the Department of  
2115 State.

2116 2. "Judicial relief" means an action for declaratory  
2117 judgment pursuant to chapter 86, Florida Statutes.

5-00003C-17A

20178A\_\_

2118 (b) The venue for actions brought against the department  
2119 pursuant to s. 29(d)(3), Article X of the State Constitution  
2120 shall be in the circuit court in and for Leon County.

2121 (c) If the department is not issuing patient and caregiver  
2122 identification cards or licensing medical marijuana treatment  
2123 centers by October 3, 2017, the following shall be a defense to  
2124 a cause of action brought under s. 29(d)(3), Article X of the  
2125 State Constitution:

2126 1. The department is unable to issue patient and caregiver  
2127 identification cards or license medical marijuana treatment  
2128 centers due to litigation challenging a rule as an invalid  
2129 exercise of delegated legislative authority or unconstitutional.

2130 2. The department is unable to issue patient or caregiver  
2131 identification cards or license medical marijuana treatment  
2132 centers due to a rule being held as an invalid exercise of  
2133 delegated legislative authority or unconstitutional.

2134 Section 15. Department of Law Enforcement; training related  
2135 to medical use of marijuana.-The Department of Law Enforcement  
2136 shall develop a 4-hour online initial training course, and a 2-  
2137 hour online continuing education course, which shall be made  
2138 available for use by all law enforcement agencies in this state.  
2139 Such training shall cover the legal parameters of marijuana-  
2140 related activities governed by ss. 381.986 and 381.988, Florida  
2141 Statutes, relating to criminal laws governing marijuana.

2142 Section 16. Section 385.212, Florida Statutes, is amended  
2143 to read:

2144 385.212 Powers and duties of the Department of Health;  
2145 Office of ~~Medical Marijuana~~ Compassionate Use.-

2146 (1) The Department of Health shall establish an Office of

5-00003C-17A

20178A\_\_

2147 Medical Marijuana ~~Compassionate~~ Use under the direction of the  
2148 Deputy State Health Officer.

2149 (2) The Office of Medical Marijuana ~~Compassionate~~ Use may  
2150 enhance access to investigational new drugs for Florida patients  
2151 through approved clinical treatment plans or studies. The Office  
2152 of Medical Marijuana ~~Compassionate~~ Use may:

2153 (a) Create a network of state universities and medical  
2154 centers recognized pursuant to s. 381.925.

2155 (b) Make any necessary application to the United States  
2156 Food and Drug Administration or a pharmaceutical manufacturer to  
2157 facilitate enhanced access to medical ~~compassionate~~ use of  
2158 marijuana for Florida patients.

2159 (c) Enter into any agreements necessary to facilitate  
2160 enhanced access to medical ~~compassionate~~ use of marijuana for  
2161 Florida patients.

2162 (3) The department may adopt rules necessary to implement  
2163 this section.

2164 (4) The Office of Medical Marijuana Use shall administer  
2165 and enforce s. 381.986.

2166 Section 17. If any provision of this act or its application  
2167 to any person or circumstance is held invalid, the invalidity  
2168 does not affect other provisions or applications of this act  
2169 which can be given effect without the invalid provision or  
2170 application, and to this end the provisions of this act are  
2171 severable.

2172 Section 18. The Division of Law Revision and Information is  
2173 directed to replace the phrase "the effective date of this act"  
2174 wherever it occurs in this act with the date the act becomes a  
2175 law.

5-00003C-17A

20178A\_\_

2176           Section 19. (1) For the 2017-2018 fiscal year, 55 full-time  
2177 equivalent positions, with associated salary rate of 2,198,860,  
2178 are authorized and the sums of \$3.5 million in nonrecurring  
2179 funds from the General Revenue Fund and \$4,055,292 in recurring  
2180 funds and \$1,238,148 in nonrecurring funds from the Grants and  
2181 Donations Trust Fund are appropriated to the Department of  
2182 Health for the purpose of implementing the requirements of this  
2183 act. Of the funds appropriated, \$3,158,572 in recurring funds  
2184 and \$1,238,148 in nonrecurring funds from the Grants and  
2185 Donations Trust Fund and 27 full-time equivalent positions shall  
2186 be placed in reserve. The Department of Health is authorized to  
2187 submit budget amendments requesting the release of funds being  
2188 held in reserve pursuant to chapter 216, Florida Statutes  
2189 contingent upon need and demonstration of fee collections to  
2190 support the budget authority.

2191           (2) For the 2017-2018 fiscal year, the sum of \$500,000 in  
2192 nonrecurring funds from the General Revenue Fund is appropriated  
2193 to the Department of Health to implement the statewide cannabis  
2194 and marijuana education and illicit use prevention campaign  
2195 established under s. 381.989, Florida Statutes.

2196           (3) For the 2017-2018 fiscal year, the sum of \$5 million in  
2197 nonrecurring funds from the Highway Safety Operating Trust Fund  
2198 are appropriated to the Department of Highway Safety and Motor  
2199 Vehicles to implement the statewide impaired driving education  
2200 campaign established under s. 381.989, Florida Statutes.

2201           (4) For the 2017-2018 fiscal year, the sum of \$100,000 in  
2202 recurring funds from the Highway Safety Operating Trust Fund is  
2203 appropriated to the Department of Highway Safety and Motor  
2204 Vehicles for the purpose of training additional law enforcement

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2205 officers as drug recognition experts.

2206 (5) For the 2017-2018 fiscal year, the sum of \$750,000 in  
2207 nonrecurring funds from the General Revenue Fund is provided for  
2208 the Coalition for Medicinal Cannabis Research and Education at  
2209 the H. Lee Moffitt Cancer Center and Research Institute, Inc.,  
2210 to conduct medical cannabis research.

2211 Section 20. This act shall take effect upon becoming a law.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

8 June 17

Meeting Date

8A

Bill Number (if applicable)

Topic Medical marijuana

Amendment Barcode (if applicable)

Name Barney Bishop

Job Title Pres & CEO

Address 204 S. Monroe  
Street

Phone 850.510.9922

Tall FL 32303  
City State Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing FLA. Smart Justice Alliance

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

6/8/17  
Meeting Date

8A  
Bill Number (if applicable)

Topic Med. Marijuana

Amendment Barcode (if applicable)

Name JAMIE WILSON

Job Title V.P.

Address 12902 Magnolia Dr. NBC-GR  
Street

Phone 813-745-1524

Tampa FL 33646  
City State Zip

Email jamie.wilson@  
moffitt.org

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing MOFFITT CANCER CENTER

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

8  
Bill Number (if applicable)

Meeting Date \_\_\_\_\_

Topic Medical Marijuana Research

Name Susan Goldstein

Job Title Consultant, Advocate

Address 3158 Inverness Phone \_\_\_\_\_  
Street Weston FL 33332 Email \_\_\_\_\_  
City State Zip

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
*(The Chair will read this information into the record.)*

Representing CannaPharmacy Sciences, LLC

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

8

Meeting Date \_\_\_\_\_

Bill Number (if applicable) \_\_\_\_\_

Topic MEDICAL CANNABIS

Amendment Barcode (if applicable) \_\_\_\_\_

Name GARY STEIN

Job Title MPH

Address 7035 BELT LINE LOOP

Phone (917) 305-8280

Street

WESLEY CHAPEL FL 33595

Email GSTEINMPH@ME.COM

City

State

Zip

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing SELF, PATIENTS, DOCTORS

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

6/8/17

Meeting Date

SB A-8

Bill Number (if applicable)

Topic medical cannabis

Amendment Barcode (if applicable)

Name John Hightower

Job Title Paralegal

Address 2807 Sweetbriar Dr

Phone 850 519 0363

Tallahassee FL 32312

Email \_\_\_\_\_

City

State

Zip

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing self

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.



606998

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
06/08/2017	.	
Floor: 3/AD/2R	.	
06/08/2017 05:28 PM	.	
	.	

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The Committee on Health Policy (Bradley) recommended the following:

1           **Senate Amendment**  
2  
3           In title, delete line 7  
4 and insert:  
5           amending s.



633510

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
06/08/2017	.	
Floor: 1/AD/2R	.	
06/08/2017 05:27 PM	.	
	.	

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The Committee on Health Policy (Bradley) recommended the following:

**Senate Amendment**

Delete line 658  
and insert:  
marijuana on minority communities. The department shall contract



501070

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
06/08/2017	.	
Floor: 2/AD/2R	.	
06/08/2017 05:27 PM	.	
	.	

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The Committee on Health Policy (Bradley) recommended the following:

**Senate ~~Substitute for Amendment (136390)~~**

Delete lines 874 - 877

and insert:

the department shall deposit the cash in the Grants and Donations Trust Fund within the Department of Health, subject to the same conditions as the bond regarding requirements for the applicant to forfeit ownership of the funds. If the funds deposited under this sub-subparagraph generate interest, the amount of that interest shall be used by the department for the



501070

11 administration of this section.

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Health Policy

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BILL: SB 6-A

INTRODUCER: Senator Bradley

SUBJECT: Public Records/Medical Marijuana Use Registry/Physician Certification for Marijuana and Dispensing/Department of Health

DATE: June 7, 2017

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stovall	Stovall	HP	<b>Favorable</b>
2.			AP	

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**I. Summary:**

SB 6-A expands the public records exemption for the medical marijuana use registry (registry), formerly the compassionate use registry, to conform its provisions to changes being made to section 381.986, Florida Statutes, regarding the medical use of marijuana by SB 8-A. The bill also protects certain personal identifying information that is held by the Department of Health (DOH) outside of the registry.

Specifically, the bill makes a qualifying patient's and a caregiver's personal identifying information and all personal identifying information pertaining to the physician certification for marijuana held by the department confidential and exempt from public records laws; restricts access to a patient's diagnosis when a law enforcement agency or medical marijuana treatment center accesses the registry to verify a qualifying patient's or caregiver's authorization under s. 381.986, F.S., to use or possess marijuana; and expands access to this confidential information to:

- Practitioners licensed to prescribe prescription drugs for purposes of patient care;
- Department employees for approval of exceptions to marijuana daily dosage limits; and
- The Coalition for Medical Marijuana Research and Education established in s. 1004.4351, F.S.

The bill also extends the open government sunset review date to October 2, 2022, includes the constitutionally required public necessity statement, and makes other conforming changes to provisions amended by SB 8-A.

The bill requires a two-thirds vote from each chamber for passage.

The bill has no impact on state revenues or expenditures.

The bill takes effect on the same date as SB 8-A, or other similar legislation, becomes a law, provided both are adopted in the same legislative session.

## II. Present Situation:

### Public Records Law

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.<sup>1</sup> This applies to the official business of any public body, officer or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.<sup>2</sup>

In addition to the Florida Constitution, the Florida Statutes provide that the public may access legislative and executive branch records.<sup>3</sup> Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.<sup>4</sup> The Public Records Act states that:

It is the policy of this state that all state, county and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.<sup>5</sup>

According to the Public Records Act, a public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.<sup>6</sup> The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate or formalize knowledge of some type.”<sup>7</sup> A violation of the Public Records Act may result in civil or criminal liability.<sup>8</sup>

The Legislature may create an exemption to public records requirements.<sup>9</sup> An exemption must pass by a two-thirds vote of the House and the Senate.<sup>10</sup> In addition, an exemption must explicitly lay out the public necessity justifying the exemption, and the exemption must be no

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<sup>1</sup> FLA. CONST., art. I, s. 24(a).

<sup>2</sup> *Id.*

<sup>3</sup> The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995). The Legislature’s records are public pursuant to s. 11.0431, F.S.

Public records exemptions for the Legislatures are primarily located in s. 11.0431(2)-(3), F.S.

<sup>4</sup> Public records laws are found throughout the Florida Statutes.

<sup>5</sup> Section 119.01(1), F.S.

<sup>6</sup> Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” Section 119.011(2), F.S., defines “agency” to mean as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

<sup>7</sup> *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

<sup>8</sup> Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

<sup>9</sup> FLA. CONST., art. I, s. 24(c).

<sup>10</sup> *Id.*

broader than necessary to accomplish the stated purpose of the exemption.<sup>11</sup> A statutory exemption that does not meet these criteria may be unconstitutional and may not be judicially saved.<sup>12</sup>

When creating a public records exemption, the Legislature may provide that a record is “confidential and exempt” or “exempt.”<sup>13</sup> Records designated as “confidential and exempt” may be released by the records custodian only under the circumstances defined by the Legislature. Records designated as “exempt” are not required to be made available for public inspection, but may be released at the discretion of the records custodian under certain circumstances.<sup>14</sup>

### **Open Government Sunset Review Act**

The Open Government Sunset Review Act (referred to hereafter as the “OGSR”) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.<sup>15</sup> The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.<sup>16</sup>

The OGSR provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.<sup>17</sup> An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;<sup>18</sup>
- Releasing sensitive personal information would be defamatory or would jeopardize an individual’s safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;<sup>19</sup> or
- It protects trade or business secrets.<sup>20</sup>

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<sup>11</sup> *Id.*

<sup>12</sup> *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So. 2d 567 (Fla. 1999). See also *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004).

<sup>13</sup> If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

<sup>14</sup> *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991).

<sup>15</sup> Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to section 119.15(2), F.S.

<sup>16</sup> Section 119.15(3), F.S.

<sup>17</sup> Section 119.15(6)(b), F.S.

<sup>18</sup> Section 119.15(6)(b)1., F.S.

<sup>19</sup> Section 119.15(6)(b)2., F.S.

<sup>20</sup> Section 119.15(6)(b)3., F.S.

The OGSR also requires specified questions to be considered during the review process.<sup>21</sup> In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.<sup>22</sup> If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.<sup>23</sup>

### Medical Marijuana in Florida

The Compassionate Medical Cannabis Act of 2014<sup>24</sup> (act) legalized a low tetrahydrocannabinol (THC) and high cannabidiol (CBD) form of cannabis (low-THC cannabis)<sup>25</sup> for medical use<sup>26</sup> by patients suffering from cancer or a physical medical condition that chronically produces symptoms of seizures or severe and persistent muscle spasms.

Chapter 2016-123, Laws of Florida, amended the act to expand the regulatory structure relating to dispensing low-THC cannabis and authorized approved dispensing organizations to cultivate and dispense medical cannabis to eligible patients as defined under the Right to Try Act (RTTA).<sup>27</sup> In conjunction with s. 381.986, F.S., the RTTA allows physicians to treat eligible patients with terminal conditions with medical cannabis by including medical cannabis<sup>28</sup> within the definition of an investigational drug, biological product, or device. Physicians must order the use of medical cannabis for those patients pursuant to the provisions of s. 381.986, F.S.

In November 2016, Florida voters approved Amendment 2 that added s. 29, Art. X to the State Constitution. This new constitutional provision approved the medical use of marijuana by certain

<sup>21</sup> Section 119.15(6)(a), F.S. The specified questions are:

1. What specific records or meetings are affected by the exemption?
2. Whom does the exemption uniquely affect, as opposed to the general public?
3. What is the identifiable public purpose or goal of the exemption?
4. Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
5. Is the record or meeting protected by another exemption?
6. Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

<sup>22</sup> FLA. CONST. art. I, s. 24(c).

<sup>23</sup> Section 119.15(7), F.S.

<sup>24</sup> Chapter 2014-157, Laws of Fla., codified in s. 381.986, F.S.

<sup>25</sup> Section 381.986(b), F.S., defines “low-THC cannabis,” as the dried flowers of the plant *Cannabis* which contain 0.8 percent or less of tetrahydrocannabinol and more than 10 percent of cannabidiol weight for weight, or the seeds, resin, or any compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin.

<sup>26</sup> Section 381.986(1)(c), F.S., defines “medical use” as administration of the ordered amount of low-THC cannabis; and the term does not include the possession, use, or administration by smoking, or the transfer of low-THC cannabis to a person other than the qualified patient for whom it was ordered or the qualified patient’s legal representative. Section 381.986(1)(e), F.S., defines “smoking” as burning or igniting a substance and inhaling the smoke; smoking does not include the use of a vaporizer.

<sup>27</sup> Section 499.0295, F.S.

<sup>28</sup> “Medical cannabis” means all parts of any plant of the genus *Cannabis*, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, sale, derivative, mixture, or preparation of the plant or its seeds or resin that is dispensed only from a DO for medical use by an eligible patient as defined in the Right to Try Act.

patients with debilitating medical conditions pursuant to a physician's certification. SB 8-A is proposed legislation that amends Florida's current low-THC and medical cannabis law to implement the provisions of s. 29, Art. X of the State Constitution. Along with other requirements, s. 29(d)(4), Art. X of the State Constitution requires that the DOH protect the confidentiality of all qualifying patients and makes all records containing the identity of qualifying patients confidential except for valid medical or law enforcement purposes.

For more details on current medical marijuana laws in Florida and other states, including details on Amendment 2, and s. 29, Art. X of the State Constitution, please see the analysis for SB 8-A.

### ***Compassionate Use Registry and Identification Cards***

Section 381.986, F.S., requires the DOH to create a secure, electronic, and online registry, for the registration of physicians and patients and for the verification of patient orders by dispensing organizations (DOs) that is accessible to law enforcement.<sup>29</sup> The registry must allow DOs to record the dispensing of low-THC cannabis, and must prevent an active registration of a patient by multiple physicians. Physicians must register qualified patients with the registry and DOs are required to verify that the patient has an active registration in the registry, that the order presented matches the order contents as recorded in the registry, and that the order has not already been filled before dispensing any low-THC cannabis. The DOs are also required to record in the registry the date, time, quantity, and form of low-THC cannabis dispensed.<sup>30</sup> The registry became operational on July 11, 2016.<sup>31</sup> As of June 1, 2017, there were 15,878 patients registered with the registry.<sup>32</sup>

On February 19, 2017, the DOH adopted Rule 64-4.011, F.A.C., which governs the issuance and renewal of registry identification cards (ID card). The rule requires patients and legal representatives to obtain ID cards to obtain low-THC cannabis, medical cannabis, or a cannabis delivery device. In order to obtain an ID card, a patient or legal representative must submit an application form<sup>33</sup> created by the DOH. The form requires the patient or legal representative to submit personal identifying information to the DOH including his or her name, address, social security number, telephone number, date of birth, a passport style photo, and proof of residency including a driver's license, utility bill, or voter registration card.

### ***Public Records Exemption for the Compassionate Use Registry***

Section 381.987, F.S., enacted in 2014, provides an exemption from the public records law for a patient's personal identifying information and all information pertaining to the physician's order held by the DOH in the compassionate use registry. An exemption is also established for a physician's identifying information held by the department in the compassionate use registry.

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<sup>29</sup> Section 381.986(5)(a), F.S.

<sup>30</sup> Section 381.986(6), F.S.

<sup>31</sup> Office of Compassionate Use, *Implementation Timeline* (October 2016) available at <http://www.floridahealth.gov/programs-and-services/office-of-compassionate-use/documents/ocu-timeline.pdf>, (last visited June 6, 2017).

<sup>32</sup> Email from the Legislative Affairs Director, Department of Health (June 1, 2017) (on file with the Senate Committee on Health Policy).

<sup>33</sup> For patients form DH8009-OCU-10/2016, available at <https://www.flrules.org/Gateway/reference.asp?No=Ref-07855>, (last visited on June 6, 2017) and for legal representatives form DH8010-OCU-10/2016 available at <https://www.flrules.org/Gateway/reference.asp?No=Ref-07856>, (last visited June 6, 2017).

Access to the registry, including the confidential and exempt information is authorized to:

- A law enforcement agency that is investigating a violation of law regarding cannabis in which the subject of the investigation claims an exception established under s. 381.986, F.S.
- A DO which is attempting to verify information prior to filling a patient's order issued pursuant to s. 381.986, F.S.
- A physician for the purpose of monitoring his or her patient's use of cannabis or before issuing an order to ensure another physician has not ordered cannabis for that patient.
- An employee of the department to maintain the registry and for period reporting.
- The department's regulatory boards if investigating a specific physician for a violation of s. 381.986, F.S.
- A person engaged in bona fide research if the person agrees to certain safeguards relating to the confidential information.

A person who willfully and knowingly violates these provisions commits a felony of the third degree.

### ***Medical Marijuana Use Registry and Identification Cards***

SB 8-A amends the section of law governing both the registry and issuing of ID cards<sup>34</sup> to conform terms to definitions provided in s. 29, Art. X of the State Constitution (such as changing the term "legal representative" to "caregiver") and to provide more statutory detail on qualifications for an ID card what is required to be on an ID card. SB 8-A requires that all patient and caregiver ID cards include, at a minimum:

- The name, address, and date of birth of the patient or caregiver, as appropriate;
- A full-face, passport-type, color photograph of the patient or caregiver, as appropriate, taken within 90 days immediately preceding registration or the Florida driver license or Florida identification care photograph of the qualified patient or caregiver obtained directly from the Department of Highway Safety and Motor Vehicles;
- A designation of the cardholder as a patient or caregiver;
- A unique numeric identifier for the patient or caregiver that is matched to the identifier used for such person in the DOH's registry. A caregiver's identification number and file in the registry must be linked to the file of the patient or patients the caregiver is assisting; and
- The expiration date, which shall be one year after issuance or the date treatment ends as provided in the patient's physician certification, whichever occurs first.

Additionally, SB 8-A requires the submission to the DOH of proof that an individual is a resident of this state for purposes of registration of qualified patients and caregivers in the registry. This includes various forms of information for adult residents, adult seasonal residents,<sup>35</sup> and minors.

An adult resident must provide the DOH with a copy of his or her valid Florida driver license or valid Florida identification card. An adult seasonal resident, who cannot provide either of these

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<sup>34</sup> Section 381.986, F.S.

<sup>35</sup> A "seasonal resident" is defined in SB 8-A as a person who temporarily resides in this state for at least 31 consecutive days in each calendar year; maintains a temporary residence in this state; returns to the state or jurisdiction of his or her residence at least one time during each calendar year; and is registered to vote or pays income tax in another state or jurisdiction.

forms of proof may provide the DOH with a copy of two of the following that show proof of residential address:

- A deed, mortgage, monthly mortgage statement, mortgage payment booklet or residential rental or lease agreement.
- One proof of residential address from the seasonal resident's parent, step-parent, legal guardian or other person with whom the seasonal resident resides and a statement from the person with whom the seasonal resident resides stating that the seasonal resident does reside with him or her.
- A utility hookup or work order dated within 60 days before registration in the medical use registry.
- A utility bill, not more than 2 months old.
- Mail from a financial institution, including checking, savings, or investment account statements, not more than 2 months old.
- Mail from a federal, state, county, or municipal government agency, not more than 2 months old.
- Any other documentation that provides proof of residential address as determined by department rule.

Specific information required for a patient who is a minor includes a copy of a birth certificate or a current record of registration from a Florida K-12 school.

#### ***Qualified Patient Medical Information Submitted to the DOH***

SB 8-A requires qualified physicians to submit specified medical documentation pertaining to certain patients to the DOH. Upon receipt, the DOH is required to submit this documentation to the Coalition for Medical Marijuana Research and Education that is established in s. 1004.4351, F.S. in SB 8-A.

If a qualified physician issues a physician certification for a qualified patient diagnosed with a qualifying medical condition that is of the same kind or class as or comparable to those enumerated in s. 29, Art. X of the State Constitution,<sup>36</sup> the physician must submit the following to the applicable board (medicine or osteopathic medicine) within 14 days after issuing the physician certification:

- Documentation supporting the qualified physician's opinion that the medical condition is of the same kind or class as the conditions enumerated in the State Constitution.
- Documentation that establishes the efficacy of marijuana as treatment for the condition.
- Documentation supporting the qualified physician's opinion that the benefits of medical use of marijuana would likely outweigh the potential health risks for the patient.
- Any other documentation as required by board rule.

Upon patient re-evaluation before issuing a new certification to a qualified patient, the physician must determine whether the patient experienced an adverse drug interaction with any prescription or nonprescription medication or a reduction in the use of, or dependence on, other types of controlled substances related to the medical use of marijuana.

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<sup>36</sup> The qualifying medical conditions enumerated in the State Constitution include: cancer, epilepsy, glaucoma, HIV, AIDS, post-traumatic stress disorder, ALS, Crohn's disease, Parkinson's disease, and multiple sclerosis.

### III. Effect of Proposed Changes:

The bill amends s. 381.987, F.S., to conform its provisions to changes made to s. 381.986, F.S., by SB 8-A. The bill renames the registry the medical marijuana use registry. This public records exemption bill protects personal identifying information relating to the medical use of marijuana that is held by the department, either in the medical marijuana use registry or outside of the registry.

#### Section 1 of the bill:

- Makes the following information confidential and exempt from public records laws:
  - A qualifying patient's or caregiver's personal identifying information, including the addition of a patient's or caregiver's date of birth, photograph, and personal identifying information collected for the purpose of issuing the registration ID card.
  - A qualified physician's Drug Enforcement Administration number, residential address, and government issued identification card.
  - All personal identifying information pertaining to the physician certification for marijuana and the dispensing thereof, including but not limited to information related to the patient's diagnosis, information submitted by a physician in support of a request for a qualified patient's exception to the daily dose amount limit, and information submitted about a qualified patient's experience with marijuana after a re-evaluation examination of a qualified patient for a new certification for marijuana.
- Restricts access to information in the registry related to a patient's diagnosis by:
  - A law enforcement agency when accessing the registry to investigate a violation of law relating to marijuana in which the subject claims an exception established under s. 381.986, F.S., or
  - A medical marijuana treatment center when verifying a physician certification prior to dispensing marijuana or a marijuana delivery device.
- Expands access to confidential information in the registry to:
  - Practitioner's licensed to prescribe prescription drugs to ensure proper care for patients before medications that may interact with the medical use of marijuana are prescribed,
  - An employee of the department to monitor qualified physician practices in issuing certifications for the medical use of marijuana, and
- Authorizes access to confidential information held by the DOH either in the registry or outside the registry to:
  - An employee of the department for the purpose of approving or disapproving a request for an exception to the daily dose amount limit for a qualified patient.
  - The Coalition for Medical Marijuana Research and Education established in s. 1004.4351, F.S.

The bill provides that the information released from the registry or the department pursuant to this act remains confidential and exempt when received by a person granted access to that information. A person who willfully and knowingly violates this law commits a felony of the third degree.

The bill also extends the open government sunset review date to October 2, 2022, and makes other conforming and technical changes.

**Section 2** of the bill provides legislative findings. The bill states that the Legislature finds it is a public necessity to protect identifying information of qualifying patients, caregivers, and physicians in the registry, including all personal identifying information pertaining to the physician's certification of marijuana for the patient, in order to protect their privacy. The Legislature finds that the public availability of registry information could make the public aware of a patient's medical diseases or conditions and may also expose patients and caregivers to embarrassment, humiliation, harassment, or discrimination for their use, or assisting with the use, of marijuana.

**Section 3** provides that the bill takes effect on the same date that SB 8-A, or similar legislation, becomes a law, provided both are adopted in the same legislative session.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

###### **Voting Requirement**

Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created public records or public meetings exemption. The bill creates a new public record exemption; thus, it requires a two-thirds vote for final passage.

###### **Public Necessity Statement**

Article I, s. 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public records or public meetings exemption. The bill creates a new public records exemption and includes a public necessity statement.

###### **Breadth of Exemption**

Article I, s. 24(c) of the Florida Constitution requires a newly created public records exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill exempts certain identifying information of caregivers that is held by the DOH within the registry. The public necessity for the exemption provides that it is necessary to protect patient and caregiver information from disclosure to protect their privacy and to protect them from potential discrimination. This bill appears to be no broader than necessary to accomplish the public necessity for this public records exemption.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 381.987 of the Florida Statutes.

This bill creates one undesignated section of law.

**IX. Additional Information:**

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

By Senator Bradley

5-00007B-17A

20176A\_\_

1                                   A bill to be entitled  
2       An act relating to public records; amending s.  
3       381.987, F.S.; exempting from public records  
4       requirements personal identifying information of  
5       patients, caregivers, and physicians held by the  
6       Department of Health in the medical marijuana use  
7       registry and personal identifying information related  
8       to the physician certification for marijuana and the  
9       dispensing thereof held by the department; authorizing  
10      specified persons and entities access to the exempt  
11      information; requiring that information released from  
12      the registry or the department remain confidential and  
13      exempt; providing a criminal penalty; providing for  
14      future legislative review and repeal of the exemption;  
15      providing a statement of public necessity; providing a  
16      contingent effective date.

17  
18 Be It Enacted by the Legislature of the State of Florida:

19  
20       Section 1. Section 381.987, Florida Statutes, is amended to  
21      read:

22       381.987 Public records exemption for personal identifying  
23      information relating to medical marijuana held by the department  
24      ~~in the compassionate use registry.~~

25       (1) The following information is confidential and exempt  
26      from s. 119.07(1) and s. 24(a), Art. I of the State  
27      Constitution:

28       (a) A patient's or caregiver's personal identifying  
29      information held by the department in the medical marijuana

5-00007B-17A

20176A\_\_

30 ~~compassionate~~ use registry established under s. 381.986,  
31 including, but not limited to, the patient's or caregiver's  
32 name, address, date of birth, photograph, and telephone number.

33 (b) All personal identifying information collected for the  
34 purpose of issuing a patient's or caregiver's medical marijuana  
35 use registry identification card described in s. 381.896. ~~and~~  
36 government-issued identification number, and

37 (c) All personal identifying information pertaining to the  
38 physician certification ~~physician's order for marijuana low-THC~~  
39 ~~cannabis~~ and the dispensing thereof held by the department,  
40 including, but not limited to, information related to the  
41 patient's diagnosis, exception requests to the daily dose amount  
42 limit, and the qualified patient's experience related to the  
43 medical use of marijuana are ~~confidential and exempt from s.~~  
44 119.07(1) and s. 24(a), Art. I of the State Constitution.

45 (d) ~~(2)~~ A qualified physician's ~~identifying information~~ Drug  
46 Enforcement Administration number, residential ~~held by the~~  
47 department in the compassionate use registry established under  
48 s. 381.986, including, but not limited to, the physician's name,  
49 address, and telephone number, government-issued identification  
50 card number, and Drug Enforcement Administration number, and all  
51 information pertaining to the physician's order for low-THC  
52 cannabis and the dispensing thereof are ~~confidential and exempt~~  
53 from s. 119.07(1) and s. 24(a), Art. I of the State  
54 Constitution.

55 (2) ~~(3)~~ The department shall allow access to the  
56 confidential and exempt information in the medical marijuana use  
57 registry, ~~including access to confidential and exempt~~  
58 information, to:

5-00007B-17A

20176A\_\_

59 (a) A law enforcement agency that is investigating a  
60 violation of law regarding marijuana ~~cannabis~~ in which the  
61 subject of the investigation claims an exception established  
62 under s. 381.986, except for information related to the  
63 patient's diagnosis.

64 (b) A medical marijuana treatment center ~~dispensing~~  
65 ~~organization~~ approved by the department pursuant to s. 381.986  
66 which is attempting to verify the authenticity of a physician  
67 certification ~~physician's order~~ for marijuana ~~low-THC cannabis~~,  
68 including whether the certification ~~order~~ had been previously  
69 filled and whether the certification ~~order~~ was issued ~~written~~  
70 for the person attempting to have it filled, except for  
71 information related to the patient's diagnosis.

72 (c) A physician who has issued a certification for  
73 marijuana ~~written an order for low-THC cannabis~~ for the purpose  
74 of monitoring the patient's use of such marijuana ~~cannabis~~ or  
75 for the purpose of determining, before issuing a certification  
76 for marijuana ~~an order for low-THC cannabis~~, whether another  
77 physician has issued a certification for ~~ordered~~ the patient's  
78 use of marijuana ~~low-THC cannabis~~. The physician may access the  
79 confidential and exempt information only for the patient for  
80 whom he or she has issued a certification ~~ordered~~ or is  
81 determining whether to issue a certification for ~~order~~ the use  
82 of marijuana ~~low-THC cannabis~~ pursuant to s. 381.986.

83 (d) A practitioner licensed to prescribe prescription  
84 medications to ensure proper care of a patient before  
85 prescribing medication to that patient which may interact with  
86 marijuana.

87 (e) ~~(d)~~ An employee of the department for the purposes of

5-00007B-17A

20176A\_\_

88 maintaining the registry and periodic reporting or disclosure of  
89 information that has been redacted to exclude personal  
90 identifying information.

91 (f) An employee of the department for the purposes of  
92 reviewing physician registration and the issuance of physician  
93 certifications to monitor practices that could facilitate  
94 unlawful diversion or the misuse of marijuana or a marijuana  
95 delivery device.

96 (g)~~(e)~~ The department's relevant health care regulatory  
97 boards responsible for the licensure, regulation, or discipline  
98 of a physician if he or she is involved in a specific  
99 investigation of a violation of s. 381.986. If a health care  
100 regulatory board's investigation reveals potential criminal  
101 activity, the board may provide any relevant information to the  
102 appropriate law enforcement agency.

103 (h) The Coalition for Medical Marijuana Research and  
104 Education established in s. 1004.4351(4).

105 (i)~~(f)~~ A person engaged in bona fide research if the person  
106 agrees:

107 1. To submit a research plan to the department which  
108 specifies the exact nature of the information requested and the  
109 intended use of the information;

110 2. To maintain the confidentiality of the records or  
111 information if personal identifying information is made  
112 available to the researcher;

113 3. To destroy any confidential and exempt records or  
114 information obtained after the research is concluded; and

115 4. Not to contact, directly or indirectly, for any purpose,  
116 a patient or physician whose information is in the registry.

5-00007B-17A

20176A\_\_

117       (3) The department shall allow access to the confidential  
118 and exempt information pertaining to the physician certification  
119 for marijuana and the dispensing thereof, whether in the  
120 registry or otherwise held by the department, to:

121       (a) An employee of the department for the purpose of  
122 approving or disapproving a request for an exception to the  
123 daily dose amount limit for a qualified patient; and

124       (b) The Coalition for Medical Marijuana Research and  
125 Education pursuant to s. 381.986 for the purpose of conducting  
126 research regarding the medical use of marijuana.

127       (4) All information released by the department ~~from the~~  
128 ~~registry~~ under subsections ~~subsection~~ (2) and (3) remains  
129 confidential and exempt, and a person who receives access to  
130 such information must maintain the confidential and exempt  
131 status of the information received.

132       (5) A person who willfully and knowingly violates this  
133 section commits a felony of the third degree, punishable as  
134 provided in s. 775.082 or, s. 775.083, ~~or s. 775.084.~~

135       (6) This section is subject to the Open Government Sunset  
136 Review Act in accordance with s. 119.15 and shall stand repealed  
137 on October 2, 2022 ~~2019~~, unless reviewed and saved from repeal  
138 through reenactment by the Legislature.

139       Section 2. The Legislature finds that it is a public  
140 necessity that personal identifying information of patients,  
141 caregivers, and physicians, including the name, residential  
142 address, date of birth, photograph, telephone number,  
143 government-issued identification card, Drug Enforcement  
144 Administration number, and other personal identifying  
145 information collected for purposes of issuing a medical

5-00007B-17A

20176A\_\_

146 marijuana use registry identification card issued under s.  
147 381.986, Florida Statutes, held by the Department of Health in  
148 the medical marijuana use registry established under s. 381.986,  
149 Florida Statutes, be made confidential and exempt from s.  
150 119.07(1), Florida Statutes, and s. 24(a), Article I of the  
151 State Constitution. The Legislature further finds that it is a  
152 public necessity to make confidential and exempt from s.  
153 119.07(1), Florida Statutes, and s. 24(a), Article I of the  
154 State Constitution all personal identifying information,  
155 including but not limited to information related to the  
156 qualified patient's diagnosis, exception requests to the daily  
157 dose amount limit, and the qualified patient's experience  
158 related to the medical use of marijuana, held in the medical  
159 marijuana use registry or by the department which pertains to a  
160 physician certification for marijuana and the dispensing thereof  
161 pursuant to s. 381.986, Florida Statutes. The choice made by a  
162 physician to certify, and by his or her patient to use,  
163 marijuana to treat the patient's medical condition or symptoms  
164 and the choice made by a caregiver to assist a qualifying  
165 patient with the medical use of marijuana is a personal and  
166 private matter between such parties. The availability of such  
167 information could make the public aware of both the patient's  
168 use of marijuana and the patient's diseases or other medical  
169 conditions for which the patient is using marijuana. The  
170 knowledge of the patient's use of marijuana, the knowledge that  
171 the physician certified the use of marijuana, the knowledge of  
172 the patient's diseases or other medical conditions, and the  
173 knowledge that a caregiver is assisting a patient with the  
174 medical use of marijuana could be used to embarrass, humiliate,

5-00007B-17A

20176A\_\_

175 harass, or discriminate against the patient, the caregiver, or  
176 the physician. This information could be used as a  
177 discriminatory tool by an employer who disapproves of the  
178 patient's use of marijuana, the caregiver's assistance in the  
179 use of marijuana, or the physician certification of such use.  
180 However, despite the potential hazards of collecting such  
181 information, maintaining the medical marijuana use registry  
182 established under s. 381.986, Florida Statutes, and collecting  
183 information pertaining to the physician certification for  
184 marijuana is necessary to prevent the diversion and nonmedical  
185 use of marijuana as well as to aid and improve research on the  
186 efficacy of marijuana. Therefore, the Legislature finds that it  
187 is a public necessity to make confidential and exempt from  
188 public records requirements the personal identifying information  
189 of patients, caregivers, and physicians held by the Department  
190 of Health in the medical marijuana use registry established  
191 under s. 381.986, Florida Statutes, and all personal identifying  
192 information held in the registry or by the department that  
193 pertains to a physician certification for marijuana and the  
194 dispensing thereof pursuant to s. 381.986, Florida Statutes.

195 Section 3. This act shall take effect on the same date that  
196 SB 8A or similar legislation takes effect, if such legislation  
197 is adopted in the same legislative session or an extension  
198 thereof and becomes a law.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

6/8/17

Meeting Date

SB A-6

Bill Number (if applicable)

Topic medical cannabis

Amendment Barcode (if applicable)

Name John Hightower

Job Title proctogal

Address 2807 Sweetwater Dr

Phone 860 519 0363

Street

Talia  
City

FL  
State

32312  
Zip

Email

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Self

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)