

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.)

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/CS/SB 1134

INTRODUCER: Appropriations Committee; Health Policy Committee; and Senator Rouson and others

SUBJECT: Department of Health Responsibilities Related to the Medical Use of Marijuana

DATE: February 28 , 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Looke</u>	<u>Stovall</u>	<u>HP</u>	<u>Fav/CS</u>
2.	<u>Loe</u>	<u>Hansen</u>	<u>AP</u>	<u>Fav/CS</u>
3.	<u>Looke</u>	<u>Phelps</u>	<u>RC</u>	<u>Pre-meeting</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1134 amends the Department of Health’s (DOH) responsibilities under s. 381.986, F.S., relating to the medical use of marijuana. The bill:

- Requires the DOH to adopt rules that allow qualified patients to change qualified physicians while remaining registered with the Medical Marijuana Use Registry.
- Eliminates the requirement that an applicant be a member of the Black Farmers and Agriculturists Association – Florida Chapter (BFAA-FC) for the one Medical Marijuana Treatment Center (MMTC) license designated to be issued to a recognized class member of *Pigford v. Glickman*¹ or *In Re Black Farmers Litigation*.²
- Requires all applicants for the one Recognized Class Member License be registered to do business in Florida for five consecutive years before applying for the license.
- Strikes an obsolete date by which such license was to be issued.

The bill has no impact on state revenues or expenditures.

The bill is effective upon becoming law.

¹ 185 F.R.D. 82 (D.D.C. 1999).

² 856 F. Supp. 2d 1 (D.D.C. 2011).

II. Present Situation:

On November 4, 2016, Amendment 2 was voted into law and established Article X, s. 29 of the State Constitution. This section of the constitution became effective on January 3, 2017, and created 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
- MMTCs, their agents, and employees for actions or conduct under the amendment and in compliance with DOH rules.

Physician Certifications

The Legislature passed chapter 2017-232, L.O.F., during the 2017 Special Session A to implement Amendment 2. The law established a system to allow qualified physicians who have successfully completed the required training and examination to issue physician certifications to qualified patients. Prior to issuing a physician certification, the law requires that each qualified physician check the Medical Marijuana Use Registry to ensure that the patient does not have an active physician certification from another physician.³ The law also requires that a physician deactivate his or her patient's registration on the Medical Marijuana Use Registry when the physician no longer recommends the medical use of marijuana for the patient.⁴ However, the law does not include any provisions to allow a qualified patient to deactivate his or her own registration or remove a physician relationship from the registry. As established, a qualified physician may prevent a qualified patient from switching to a different qualified physician for treatment with medical marijuana by refusing to deactivate the physician certification for that qualified patient.

Medical Marijuana Treatment Centers

The law requires the DOH to license a number of MMTCs including:

- All dispensing organizations that were licensed under the Compassionate Medical Cannabis Act.⁵
- Ten additional MMTCs, as follows:
 - By August 1, 2017, any denied dispensing organization applicant whose application was scored by DOH and had one or more administrative or legal challenges pending as of January 1, 2017, or had a final ranking within one point of the highest final ranking applicant in its region, and proves to the DOH that it has the infrastructure and ability to begin cultivating marijuana within 30 days after registration as an MMTC;

³ Section 381.986(4)(a)6., F.S.

⁴ Section 381.986(4)(a)7.c., F.S.

⁵ The Compassionate Medical Cannabis Act (Act) was the precursor to the full-strength medical marijuana program established by Amendment 2 and ch. 2017-232, L.O.F. The Act allowed the use of low-THC cannabis to treat cancer and epilepsy disorders and the use of full-strength medical cannabis for the treatment of terminal patients. The Act required the DOH to license five dispensing organizations to grow, process, and dispense low-THC and medical cannabis and three additional dispensing organizations upon the registration of 250,000 active qualified patients in the compassionate use registry. The Act required one of the three additional dispensing organizations to be owned and operated by 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. See s. 381.986(5)(c), F.S. (2016).

- By October 3, 2017, one license to an applicant that is a recognized class member of *Pigford v. Glickman* or *In Re Black Farmers Litigation*, and a member of the BFAA-FC. These applicants are exempt from the requirement to be a registered business in Florida for five consecutive years prior to applying and the requirement to possess a valid certificate of registration as a nursery issued by the Department of Agriculture and Consumer Services; and
- By October 3, 2017, all remaining ten licenses.
- Four additional licenses each time the total number of patients registered by the medical marijuana use registry increases by 100,000 patients.⁶

On September 22, 2017, Columbus Smith (Smith) filed a lawsuit challenging the requirement that a Recognized Class Member License applicant be a member of the BFAA-FC. Smith is a recognized class member of *Pigford v. Glickman*, or *In Re Black Farmers Litigation*, but is not a member of the Florida Black Farmers and Agriculturalists Association. According to Smith, he was denied membership in the BFAA-FC. Smith also sought an injunction to enjoin DOH from awarding a Recognized Class Member License, which the court granted on January 9, 2018, preventing the DOH from issuing the Recognized Class Member License. The DOH has delayed issuing any of the additional MMTC licenses that it was required to grant by October 3, 2017, due to this lawsuit.^{7, 8}

III. Effect of Proposed Changes:

Section 1 amends the DOH's responsibilities under s. 381.986, F.S. The bill:

- Requires the DOH to adopt rules to establish a process for qualified patients to change qualified physicians while remaining registered with the Medical Marijuana Use Registry. The system may not allow a qualified patient to exceed statutory limits on the supply of marijuana when changing their qualified physician.⁹
- Eliminates the requirement that an applicant be a member of the Black Farmers and Agriculturalists Association – Florida Chapter (BFAA-FC) for the one MMTC license designated to be issued to a recognized class member of *Pigford v. Glickman*¹⁰ or *In Re Black Farmers Litigation*.¹¹
- Requires all applicants for the Recognized Class Member License be registered to do business in Florida for five consecutive years before applying for the license by eliminating the exemption from this requirement. This change will ensure that any applicant for this license is a Florida-based applicant despite the elimination of the requirement that the applicant be a member of the BFAA-FC.
- Strikes an obsolete date by which such license was to be issued.

⁶ Section 381.986(8)(a), F.S.

⁷ *Smith v. Florida Department of Health*, case number 17-CA-1972, in the Circuit Court for the Second Judicial Circuit of Florida.

⁸ Letter from Christian Bax to Chair Dana Young, (September 29, 2017) (on file with the Senate Committee on Health Policy).

⁹ Section 381.986(4)(c), F.S., restricts a qualified physician from certifying a patient for more than three 70-day supplies of marijuana and 381.986(8)(e)13.b., F.S., restricts an MMTC from dispensing more than a 70-day supply to a qualified patient or caregiver. The effects of these provisions require that the patient or caregiver must return to an MMTC for a refill at least every 70 days and return to the physician for recertification at a minimum every 210 days.

¹⁰ 185 F.R.D. 82 (D.D.C. 1999).

¹¹ 856 F. Supp. 2d 1 (D.D.C. 2011).

Section 2 provides that the bill takes 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:

CS/CS/SB 1134 may have an indeterminate positive fiscal impact on an applicant for licensure as an MMTC that is a recognized class member of *Pigford v. Glickman* or *In Re Black Farmers Litigation*, but that is not a member of the BFAA-FC, if the applicant is chosen to receive a license to operate as an MMTC.

The bill may have an indeterminate negative fiscal impact on an applicant for licensure as an MMTC that is a recognized class member of *Pigford v. Glickman* or *In Re Black Farmers Litigation*, and a member of the BFAA-FC, if such applicant would have been chosen to receive the Recognized Class Member License to operate as an MMTC under current law but is not chosen to receive such license due to changes made by the bill.

The bill may have an indeterminate negative fiscal impact on Recognized Class Member License applicants that have not been registered businesses in Florida for the past five consecutive years and that, consequently, no longer qualify as an MMTC applicant due to changes made by the bill.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 381.986 of the Florida Statutes.

IX. Additional Information:

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

CS/CS by Appropriations on January 31, 2018:

The committee substitute provides that the bill takes effect upon becoming law.

CS by Health Policy on January 16, 2018:

The committee substitute:

- Requires the DOH to adopt rules that allow qualified patients to change qualified physicians while remaining registered with the Medical Marijuana Use Registry. The process may not allow a qualified patient to exceed statutory limits on the supply of marijuana.
- Requires all applicants for the Recognized Class Member License to be registered to do business in Florida for five consecutive years before applying for the license.

- B. **Amendments:**

None.