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**HISTORY OF LEGISLATIVE ACTIONS**

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**VERSIONS OF THIS BILL**

[12/10/2015](file:///p:\pprever\2015-16\4550_20151210.docx)

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 20 TO CHAPTER 53, TITLE 44 SO AS TO ALLOW THE MEDICAL USE OF LOW‑THC CANNABIDIOL BY CERTAIN INDIVIDUALS WITH CERTAIN MEDICAL CONDITIONS, TO GRANT PHYSICIANS THE AUTHORITY TO ORDER LOW‑THC CANNABIDIOL FOR MEDICAL USE BY A PATIENT UNDER CERTAIN CIRCUMSTANCES, TO REQUIRE CREATION OF A COMPASSIONATE USE REGISTRY TO FACILITATE THE PURPOSES OF THE ARTICLE, TO REQUIRE ESTABLISHMENT OF DISPENSING ORGANIZATIONS TO DISPENSE LOW‑THC CANNABIDIOL FOR MEDICAL USE, TO PROTECT QUALIFYING PATIENTS, DESIGNATED CAREGIVERS, AND PHYSICIANS FROM ARREST, PROSECUTION, AND CERTAIN PENALTIES FOR CONDUCT PERMITTED BY THE PROVISIONS OF THE ARTICLE, TO ESTABLISH CRIMINAL PENALTIES, AND FOR OTHER PURPOSES; TO AMEND SECTION 44‑53‑110, AS AMENDED, RELATING TO DEFINITIONS OF TERMS, SO AS TO CHANGE THE DEFINITION OF MARIJUANA; AND FOR OTHER PURPOSES.

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

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

“Article 20

Low‑THC Cannabidiol for Medical Use

Section 44‑53‑2010. As used in this article:

(1) ‘Department’ means the South Carolina Department of Health and Environmental Control.

(2) ‘Designated caregiver’ means a person who provides informal or formal care to a qualifying patient, with or without compensation, on a temporary or permanent or full‑time or part‑time basis and includes a relative, household member, day care personnel, and personnel of a public or private institution or facility.

(3) ‘Low‑THC cannabidiol’ means an extract from a cannabis plant or a mixture or preparation containing cannabis plant material that:

(a) is composed of no more than three‑tenths percent tetrahydrocannabinol by weight;

(b) is composed of at least ten percent cannabidiol by weight; and

(c) contains no other psychoactive substance.

(4) ‘Medical use’ means the administration of an ordered amount of low‑THC cannabidiol in accordance with a physician’s instructions.

(5) ‘Physician’ means a physician licensed in good standing to practice medicine in this State pursuant to Chapter 47, Title 40 who possesses a registration from the United States Drug Enforcement Administration to prescribe controlled substances.

(6) ‘Qualifying condition’ means:

(a) cancer, glaucoma, positive status for human immunodeficiency virus, acquired immune deficiency syndrome, hepatitis C currently receiving antiviral treatment, amyotrophic lateral sclerosis, muscular dystrophy, Crohn’s disease, agitation of Alzheimer’s disease, multiple sclerosis, chronic pancreatitis, spinal cord injury or disease, traumatic brain injury, or an injury that significantly interferes with daily activities as documented by the patient’s physician;

(b) a severely debilitating or terminal medical condition or its treatment that has produced elevated intraocular pressure, cachexia, chemotherapy‑induced anorexia, wasting syndrome, severe pain that has not responded to previously prescribed medication or surgical measures or for which other treatment options produced serious side effects, constant or severe nausea, moderate to severe vomiting, seizures, or severe, persistent muscle spasms; and

(c) any other medical condition not included in subitems (a) or (b) that the department determines is severely debilitating or terminal.

(7) ‘Qualifying patient’ means a resident of this State who has been diagnosed by a physician as having a qualifying medical condition and who has been added to the compassionate use registry by the physician.

(8) ‘Written order’ means a document dated and signed by a physician stating that the patient has been diagnosed with a qualifying medical condition not adequately treated by traditional medical therapies and the physician’s conclusion that the patient might benefit from the medical use of low‑THC cannabidiol.

Section 44‑53‑2020. A physician who has examined and is treating a patient suffering from a qualifying medical condition may order, for the patient’s medical use, low‑THC cannabidiol to treat the qualifying medical condition or to alleviate symptoms of the qualifying medical condition, if no other satisfactory alternative treatment options exist for that patient, and the physician:

(1) determines that the risks of ordering low‑THC cannabidiol are reasonable in light of the potential benefit for that patient; however, if a patient is younger than eighteen years of age, a second physician must concur with this determination, and the determination must be documented in the patient’s medical record;

(2) registers as the orderer of low‑THC cannabidiol for the named patient on the compassionate use registry maintained by the department, updates the registry to reflect the contents of the order, and deactivates the patient’s registration when treatment is discontinued;

(3) 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 cannabidiol;

(4) submits the patient treatment plan quarterly to the department for research on the safety and efficacy of low‑THC cannabidiol on patients; and

(5) obtains the voluntary informed consent of the patient or the patient’s legal guardian to treatment with low‑THC cannabidiol after sufficiently explaining the current state of knowledge in the medical community of the effectiveness of treatment of the patient’s condition with low‑THC cannabidiol, the medically acceptable alternatives, and the potential risks and side effects.

Section 44‑53‑2030. A person who fraudulently represents that he has a qualifying medical condition for the purpose of being ordered low‑THC cannabidiol by a physician is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars or imprisoned not more than thirty days.

Section 44‑53‑2040. A physician is not subject to arrest by state or local law enforcement, prosecution or penalty under state or local law, or the denial of a right or privilege including, but not limited to, disciplinary action by the South Carolina Board of Medicine or other occupational or professional licensing entity, for providing a written order for low‑THC cannabidiol for a patient pursuant to Section 44‑53‑2020; however, nothing prevents a professional licensing entity from sanctioning a physician for failing to properly evaluate or treat a patient’s medical condition.

Section 44‑53‑2050. (A) Notwithstanding any other provision of law, but subject to the requirements of this article, a qualifying patient and the qualifying patient’s designated caregiver may purchase and possess for the patient’s medical use up to the amount of low‑THC cannabidiol ordered for the patient.

(B) Notwithstanding any other provision of law, but subject to the requirements of this article, an approved dispensing organization and its owners, managers, and employees may manufacture, possess, sell, deliver, distribute, dispense, and lawfully dispose of reasonable quantities of low‑THC cannabidiol, in accordance with department regulation.

Section 44‑53‑2060. (A) A qualifying patient or designated caregiver is not subject to arrest by state or local law enforcement, prosecution or penalty under state or local law, or the denial of a right or privilege including, but not limited to, professional or occupational discipline for the medical use of low‑THC cannabidiol pursuant to the provisions of this article.

(B) Nothing in this article protects a qualifying patient or designated caregiver from arrest, prosecution, penalty, or the denial of a privilege for:

(1) using or possessing low‑THC cannabidiol for purposes other than for medical use or assisting with the medical use as permitted by this article;

(2) being under the influence of low‑THC cannabidiol while:

(a) operating a motor vehicle, commercial vehicle, boat, vessel, or another vehicle propelled or drawn by power other than muscular power;

(b) working in his place of employment without the written permission of the employer; or

(c) operating or handling heavy machinery or a dangerous instrumentality; or

(3) possessing low‑THC cannabidiol on the grounds of:

(a) a public or private preschool, elementary school, or secondary school;

(b) a public recreation center or youth center;

(c) an area designated as a drug‑free zone;

(d) a correctional facility; or

(e) a law enforcement facility.

Section 44‑53‑2070. A designated caregiver may receive compensation for costs, not including labor, associated with assisting a qualifying patient who has designated the caregiver to assist with the medical use of low‑THC cannabidiol. The compensation does not constitute the sale of a controlled substance.

Section 44‑53‑2080. (A) A person entitled to custody of, or visitation or parenting time with, a minor must not be denied these rights for conduct allowed pursuant to this article.

(B) There is no presumption of child abuse or neglect for conduct allowed pursuant to this article.

Section 44‑53‑2090. For purposes of medical care, including organ transplants, a qualifying patient’s use of low‑THC cannabidiol pursuant to this article is considered the authorized use of a medication taken at the direction of a physician and does not constitute the use of an illegal substance.

Section 44‑53‑2100. Nothing in this article may be construed to require:

(1) a health insurance provider, health care plan, or medical assistance program to be liable for or reimburse a claim for the medical use of low‑THC cannabidiol;

(2) an individual or entity in lawful possession of property to allow a guest, client, customer, or other visitor to engage in the medical use of low‑THC cannabidiol while on the property;

(3) an employer to accommodate the medical use of low‑THC cannabidiol at his place of employment; or

(4) a jail, detention center, correctional facility, or other type of penal institution to allow the medical use of low‑THC cannabidiol on its premises.

Section 44‑53‑2110. Low‑THC cannabidiol that is possessed, owned, or used in connection with the medical use of low‑THC cannabidiol as allowed pursuant to this article or acts incidental to that use, must not be seized or forfeited if the basis for the seizure or forfeiture is activity authorized by and not subject to penalties pursuant to this article.

Section 44‑53‑2120. The department shall create a secure, electronic, and online compassionate use registry for the registration of physicians, qualifying patients, and designated caregivers pursuant to this article. The registry must be accessible to law enforcement agencies and to a dispensing organization in order to verify patient authorization for low‑THC cannabidiol and record the low‑THC cannabidiol dispensed. The registry must prevent an active registration of a patient by multiple physicians.

Section 44‑53‑2130. (A) The department shall authorize the establishment of low‑TCH cannabidiol dispensing organizations to ensure reasonable statewide accessibility and availability as necessary for patients registered in the compassionate use registry who are ordered low‑THC cannabidiol pursuant to this article.

(B) An applicant for approval as a low‑TCH cannabidiol dispensing organization must be able to demonstrate:

(1) the technical and technological ability to cultivate and produce low‑THC cannabidiol;

(2) the ability to secure the premises, resources, and personnel necessary to operate as a dispensing organization;

(3) 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;

(4) an infrastructure reasonably located to dispense low‑THC cannabidiol to registered patients statewide or regionally as determined by the department;

(5) the financial ability to maintain operations for the duration of the two‑year approval cycle, including the provision of certified financials to the department, and upon approval to post a five million dollar performance;

(6) that all owners, managers, and employees have undergone state and federal criminal background checks and have not been convicted of, or pled guilty or nolo contendere to, a felony drug‑related offense;

(7) the employment of a medical director who is a physician to supervise the activities of the dispensing organization;

(8) the possession of a valid certificate of registration issued by the Department of Agriculture pursuant to Section 46‑33‑90;

(9) the operation by a nurseryman as defined in Section 46‑33‑90; and

(10) the operation as a registered nursery in this State for at least thirty continuous years.

(C) The department shall monitor physician registration and ordering of low‑THC cannabidiol for ordering practices that could facilitate unlawful diversion or misuse of low‑THC cannabidiol and take disciplinary action as indicated.

Section 44‑53‑2140. Before dispensing low‑THC cannabidiol to a qualifying patient or the designated caregiver, a dispensing organization shall verify that the patient has an active registration in the compassionate use registry, the order presented matches the order contents as recorded in the registry, and the order has not already been filled. Upon dispensing the low‑THC cannabidiol, the dispensing organization shall record in the registry the date, time, quantity, and form of low‑THC cannabidiol dispensed.

Section 44‑53‑2150. The department shall require the medical director of each approved dispensing organization operating pursuant to this article to complete successfully a two‑hour course and subsequent examination that encompasses appropriate safety procedures and knowledge of low‑THC cannabidiol.

Section 44‑53‑2160. (A) A dispensing organization shall conduct a state and federal criminal background check on a prospective employee or volunteer before employing or allowing the person to volunteer. The department shall fine an organization one thousand dollars for failure to comply with this section.

(B)(1) A prospective employee or volunteer shall consent in writing to undergo a state and federal criminal background check and a drug screen as a condition of employment or volunteering and shall provide annual criminal background checks to the organization and consent to periodic drug screens while employed or volunteering. A prospective or existing employee or volunteer shall pay the costs of the criminal background checks and drug screens.

(2) A dispensing organization shall maintain the results of criminal background checks and drug screens as part of the employee’s or volunteer’s personnel records.

Section 44‑53‑2170. A dispensing organization is subject to inspection by the department. During an inspection, the department may review the dispensing organization’s records, including its dispensing and data collection records.

Section 44‑53‑2180. (A) A dispensing organization must not be located in a residential district or within one thousand feet of the property line of a preexisting kindergarten, public or private elementary or secondary school, or a designated drug‑free school zone.

(B) Low‑THC cannabidiol and low‑THC cannabidiol paraphernalia must not be visible off the premises of a dispensing organization.

Section 44‑53‑2190. A dispensing organization shall implement appropriate security measures to deter and prevent the unauthorized entrance into areas containing low‑THC cannabidiol and low‑THC cannabidiol paraphernalia and the theft thereof and shall ensure that each location has an operational security alarm system.

Section 44‑53‑2200. Low‑THC cannabidiol dispensed by a dispensing organization must include a label specifying the weight of the low‑THC cannabidiol and any other information required by the department. The label also must state that the low‑THC cannabidiol is for medical use only and that diversion is a felony which, upon conviction, results in:

(1) revocation of the registry card;

(2) a fine of not more than five thousand dollars or imprisonment of not more than ten years, or both; and

(3) the possibility of other penalties allowed pursuant to law.

Section 44‑53‑2210. The department shall promulgate regulations to implement the provisions of this article and establish reasonable fees for operating a compassionate use registry and authorizing dispensing organizations.”

SECTION 2. Section 44‑53‑110(27)(b) of the 1976 Code, as last amended by Act 221 of 2014, is further amended to read:

“(b) ‘Marijuana’ does not mean:

(i) the mature stalks of the marijuana plant or fibers produced from these stalks;

(ii) oil or cake made from the seeds of the marijuana plant, including cannabidiol derived from the seeds of the marijuana plant;

(iii) any other compound, manufacture, salt, derivatives, mixture, or preparation of the mature stalks (except the resin extracted therefrom), including cannabidiol derived from mature stalks;

(iv) the sterilized seed of the marijuana plant which is incapable of germination;

(v) low‑THC cannabidiol, as defined in Section 44‑53‑2010;

(vi) for persons participating in a clinical trial or in an expanded access program related to administering cannabidiol for the treatment of severe forms of epilepsy pursuant to Article 18, Chapter 53, Title 44, a drug or substance approved for the use of those participants by the federal Food and Drug Administration; or

~~(vi)~~(vii) for persons, or the persons’ parents, legal guardians, or other caretakers, who have received a written ~~certification~~ order from a physician licensed in this State that the person has been diagnosed by a physician as having Lennox‑Gastaut Syndrome, Dravet Syndrome, also known as ‘severe myoclonic epilepsy of infancy’, or any other severe form of epilepsy that is not adequately treated by traditional medical therapies, the substance cannabidiol, a nonpsychoactive cannabinoid, or any compound, manufacture, salt, derivative, mixture, or preparation of any plant of the genus cannabis that contains nine‑tenths of one percent or less of tetrahydrocannabinol and more than fifteen percent of cannabidiol.”

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

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

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