

# BILL SUMMARY

## HB 1385 BY \*JONES.

Drugs, Prescription - As introduced, creates the "Koozer-Kuhn Medical Cannabis Act". - Amends TCA Title 4, Chapter 29; Title 4, Chapter 3, Part 2; Title 39; Title 43; Title 53, Chapter 11; Title 63 and Title 68.

### Fiscal Summary

Not Available

### Bill Summary

Under present law, it is a criminal offense for any person to manufacture, deliver, or sell cannabis (marijuana) except as provided in the Tennessee Legend Drug and Controlled Substance Research Act of 1984. The classification of the offense and severity of the offense depends on the amount of cannabis involved, as well as numerous aggravating and mitigating factors.

Generally, this bill decriminalizes the use of medical cannabis by a qualifying patient who is enrolled in the safe access program established by this bill and described below.

Under this bill, a qualifying patient is any Tennessee resident who has been diagnosed as having a qualifying medical condition, including:

- (1) Cancer, glaucoma, multiple sclerosis, positive status for HIV, acquired immune deficiency syndrome, Hepatitis C, amyotrophic lateral sclerosis, Crohn's disease, post-traumatic stress disorder, or Alzheimer's disease or the treatment of these conditions;
- (2) A chronic or debilitating disease or medical condition or its treatment that produces one or more of the following: cachexia or wasting syndrome; severe, debilitating, chronic pain; severe nausea; seizures; severe and

persistent muscle spasms;

(3) Any medical condition for which a patient receives hospice services; or

(4) Any other medical condition or its treatment as prescribed by a practitioner and approved by the health department.

## SAFE ACCESS PROGRAM

This bill establishes the safe access program. To enroll in the program:

(1) A nurse practitioner, physician assistant or physician (a "practitioner") with whom the patient has a bona fide patient-practitioner relationship, must assess the patient's medical history;

(2) The practitioner must state that in the practitioner's professional opinion the potential benefits of the medical use of cannabis would likely outweigh the health risks for the qualifying patient; and

(3) The certification and safe access program enrollment completed at the participating pharmacy or regulated dispensary must specify the qualifying patient's debilitating medical condition.

The program must issue safe access program identification cards to patients who receive a certification for medical cannabis and complete the program enrollment process at a participating pharmacy or regulated dispensary. The card would expire one year after issuance. The program may not issue a registry identification card to a qualifying patient under 18 years of age unless:

(1) The qualifying patient's practitioner has explained the potential risks and benefits of the medical use of cannabis to the qualifying patient and to a parent, guardian or person having legal custody of the qualifying patient; and

(2) A parent or guardian having legal custody consents in writing to allow the qualifying patient's medical use of cannabis and control the acquisition of the cannabis, the dosage, and the frequency of the medical use of cannabis by the qualifying patient.

The program must approve or deny an application or renewal within 30 days of receiving it. The program may deny a safe access program application or renewal only if the applicant did not provide the required information or if the program determines that the information provided was falsified.

Rejection of a safe access program application or renewal is considered a final program action, subject to judicial review in chancery court.

A qualifying patient who has been issued a program identification card must notify his or her practitioner of any change in the qualifying patient's name or address or if the qualifying patient ceases to have the qualifying medical condition within 30 days of the change. A registered qualifying patient who fails to notify his or her practitioner of any of these changes would be subject to a civil penalty imposed by the department of health of up to \$25.00. When a qualifying patient notifies the practitioner of any such changes, the practitioner must issue the patient a new prescription that will be used to update safe access program information at the time it is filled. No more than one prescription from one practitioner will be allowed for program participants. If a cardholder willfully violates any provision of this bill as determined by the program, the person's program identification card may be revoked.

Program identification cards and supporting information submitted by qualifying patients, including information regarding their practitioners, would be confidential and protected under federal HIPPA law. Under this bill, it is a Class B misdemeanor, punishable solely by a \$1,000 fine, for any person, including an employee or official of the program or its licensees or another state agency or local government, to knowingly breach the confidentiality of information obtained pursuant to this bill. Notwithstanding this bill's confidentiality requirement, program employees may notify law enforcement about falsified or fraudulent information submitted to the program.

By January 1 of each odd numbered year, the program must report to each member of the general assembly on the performance of the program. This bill details the information that must be included in the report.

#### EFFECT OF ENROLLMENT IN THE PROGRAM

A qualifying patient who has possession of a program identification card and is enrolled in the program would not be subject to arrest, prosecution, or

penalty in any manner or denied any right or privilege by state authorities, for the medical use of cannabis. A school, employer or landlord may not refuse to enroll, employ, or lease to or otherwise penalize a person solely for the person's status as a cardholder. Registered qualifying patients would be allowed to possess a reasonable amount of cannabis, not to exceed one month's supply, as determined by the patient's practitioner. Any interest in or right to property that is possessed, owned, or used in connection with the medical use of cannabis, or acts incidental to such use, may not be forfeited. For the purposes of medical care, including organ transplants, a registered qualifying patient's authorized use of cannabis would be considered the equivalent of the authorized use of any other medication and would not constitute the use of an illicit substance. A rebuttable presumption would exist that a qualifying patient is engaged in the medical use of cannabis if the qualifying patient possesses a program identification card and possesses an amount of cannabis that does not exceed a one-month supply.

A practitioner would not be subject to arrest, prosecution, or penalty in any manner or denied any right or privilege solely for providing written certifications of eligibility for the program or for otherwise stating that, in the practitioner's professional opinion, the potential benefits of the medical cannabis would likely outweigh the health risks for a qualifying patient. A practitioner, nurse, or pharmacist would not be subject to arrest, prosecution or penalty in any manner or denied any right or privilege solely for discussing the benefits or health risks of medical cannabis or its interaction with other substances with a patient.

A person would not be subject to arrest or prosecution for constructive possession, conspiracy, aiding and abetting, being an accessory, or any other offense for simply being in the presence or vicinity of the medical use of cannabis or for assisting a registered program patient with using or administering medical cannabis.

A program identification card or its equivalent issued under the laws of another state, U.S. territory, or the District of Columbia to permit the medical use of cannabis by a patient with a debilitating medical condition, or to permit a person to assist with the medical use of cannabis by such a patient,

would not have the same force and effect as a safe access identification card issued by the program. Such an out-of-state patient must be evaluated and recommended for safe access program participation by a practitioner licensed and qualified to do so in Tennessee in order to obtain medical cannabis from the program.

This bill would not permit:

- (1) Any person to undertake any task under the influence of cannabis when doing so would constitute negligence or professional malpractice;
- (2) The ingestion of cannabis in a school bus or other form of public transportation; on school grounds; in a correctional facility; in any public place; in a licensed substance abuse treatment facility; or where exposure to cannabis smoke significantly adversely affects the health, safety, or welfare of children; or
- (3) Any person to operate, navigate, or be in actual physical control of any motor vehicle, aircraft, or motorboat while under the influence of cannabis. However, a registered qualifying patient may not be considered to be under the influence solely for having cannabis metabolites in the patient's system.

Fraudulent representation to a law enforcement official of any fact or circumstance relating to the medical use of cannabis to avoid arrest or prosecution would be a Class C misdemeanor.

## THE LICENSING OF CANNABIS PRODUCERS AND PROCESSORS AND THE REGULATION OF PARTICIPATING PHARMACIES AND REGULATED DISPENSARIES

Generally, this bill requires a person to obtain a certificate from the program to produce or process cannabis for medical purposes pursuant to this bill. A licensed producer or processor would be under the direct supervision of the department of agriculture, a participating pharmacy would be under the regulation of the board of pharmacy and a regulated dispensary would be under the regulation of the department of health.

Each application for a licensed producer or processor must include, among other things:

- (1) A non-refundable application fee paid to the program of \$250;
- (2) A description of the enclosed, locked facility that would be used in the cultivation of cannabis;
- (3) Proposed security and safety measures which must include at least one security alarm system for each location, planned measures to deter and prevent the unauthorized entrance into areas containing cannabis and the theft of cannabis; and
- (4) Proposed procedures to ensure accurate record keeping.

Any time a licensed producer or processor registration application is being considered, the program must allow for comment by the public and solicit input from registered qualifying patients, potential patients, practitioners and the towns or cities where the applicant would be located. This bill details the factors that would be used in granting a licensed producer or processor certificate.

After a licensed producer or processor is approved, but before such a producer or processor begins operations, the producer or processor must submit a fee paid to the program in the amount of \$1,000, along with other information, as detailed in this bill.

The program must issue each principal officer, board member, agent, volunteer and employee of a licensed producer or processor a photo registry identification card or renewal card within 30 days of receipt of the person's name, address, and date of birth, and a fee in an amount established by the program. This bill specifies the information that such a card must contain. The program may not issue such a card to any such person who has been convicted of a felony drug offense. The program must conduct a criminal background check of such a person in order to verify whether such person has been convicted of a felony drug offense. The program may grant such a person a card if the program determines that the offense was for conduct that occurred prior to the enactment of this bill or that was prosecuted by an authority other than the state of Tennessee and for which this bill would otherwise have prevented a conviction.

A licensed producer or processor's registration would expire two years after

its registration certificate is issued. The licensed producer or processor may submit a renewal application beginning 60 days prior to the expiration of its registration certificate. The program must grant the renewal application within 30 days of its submission if the conditions detailed in this bill are met, including the payment of a \$1,000 fee.

Licensed producers and processors would be subject to reasonable inspection by the department of health, the department of agriculture and the board of pharmacy at any time. The department or board must give reasonable notice of the inspection. During an inspection, the department may review the licensed producer or processor's confidential records, including its dispensing records, which may track transactions according to qualifying patients' registry identification numbers to protect their confidentiality.

A licensed producer or processor may not be located within 500 feet of any preexisting school. All principal officers and board members of a licensed producer or processor must be residents of the state. The full text of this bill further specifies the requirements for licensed producers or processors.

For purposes of this bill, a regulated dispensary is any entity established by the department of health to dispense medical cannabis to patients in the safe access program in the event that no pharmacies participate in the program.

This bill prohibits:

- (1) A licensed producer from transferring cannabis to any person or entity other than a licensed processor;
- (2) A licensed processor from transferring medical cannabis to any person or entity other than a participating pharmacy or a registered dispensary;
- (3) A participating pharmacy or regulated dispensary from transferring medical cannabis other than to a program participant;
- (4) A person who has been convicted of a felony drug offense from being a principal officer, board member, agent, volunteer, or employee of a licensed producer or processor unless the program has determined that the person's conviction was for the medical use of cannabis or assisting with the medical use of cannabis and issues the person a registry identification card; and

(5) Any person found to have violated (1) - (3) from being an employee, agent, principal officer, or board member of any licensed producer or processor.

A person who knowingly violates(1) - (5), or knowingly fails to disclose a prior felony drug conviction, commits a class C misdemeanor punishable by a fine only of up to \$1,000. A subsequent offense is a class B misdemeanor.

Within 120 days of July 1, 2014, the safe access program will begin accepting applications for the operation of licensed producers, licensed processors, participating pharmacies and regulated dispensaries. Within 180 days of July 1, 2014, the program must provide for at least one public hearing on the granting of an application to at least one licensed producer, licensed processor and participating pharmacy or regulated dispensary. Within 210 days of July 1, 2014, the program must grant at least one certificate to a licensed producer, licensed processor and participating pharmacy or regulated dispensary, as long as at least one applicant in each category who meets the requirements of this bill has applied. After the initial round of certifications is completed, the program must begin accepting applications to provide registration certificates for additional licensed producers, licensed processors, participating pharmacies and regulated dispensaries twice a year for periods of approximately two weeks during the months of January and July. The program must solicit input from the public, and issue registration certificates if qualified applicants who are needed to serve the needs of program patients exist.

## SELECT OVERSIGHT COMMITTEE ON MEDICAL CANNABIS

This bill creates a 13-member medical cannabis advisory committee comprised of: the commissioner of agriculture, the commissioner of health, the executive director of the board of pharmacy, two physicians appointed by the governor, two additional persons who may be patient advocates appointed by the governor; one qualified patient appointed by the speaker of the senate, one nurse appointed by the speaker of the senate, one representative of law enforcement appointed by the speaker of the senate, one qualified patient appointed by the speaker of the house, one nurse

appointed by the speaker of the house, and one representative of law enforcement appointed by the speaker of the house.

The terms of initial appointees to the advisory committee will be staggered from two to three years and subsequent appointments will be for terms of four years.

The advisory committee must meet at least three times per year for the purpose of evaluating and making recommendations to the general assembly regarding:

- (1) Tennessee patients' access to medical cannabis;
- (2) Performance of licensed producers, licensed processors, participating pharmacies and regulated dispensaries;
- (3) Physician participation in the safe access program;
- (4) Additions to the list of qualifying medical conditions; and
- (5) Research studies relevant to medical cannabis

By January 31 of every even numbered year, beginning in 2016, the committee must report to the general assembly on its findings.