

Detailed Summary of the S.C. Compassionate Care Act — 2023

The S.C. Compassionate Care Act would create a well-regulated medical cannabis program to allow seriously ill individuals to register with DHEC to use medical cannabis when recommended by their physicians and dispensed by a therapeutic cannabis pharmacy. Thirty-seven states — including Alabama, Arkansas, Florida, Louisiana, and Mississippi — give their residents this medical freedom.

The Compassionate Care Act does **not** allow cannabis smoking, home cultivation, or raw (flower or leaf) cannabis.

Qualifying for the Program. To qualify, patients must have at least one qualifying medical condition, a written certification issued by a physician with whom they have a bona fide relationship, and a registration card from the health department.

- **Qualifying Conditions.** The bill's qualifying conditions are cancer; multiple sclerosis; a neurological disease or disorder (including epilepsy); sickle cell anemia; PTSD; autism; Crohn's disease; ulcerative colitis; cachexia; a condition causing a person to be homebound that includes severe or persistent nausea; terminal illness; a chronic medical condition causing severe and persistent muscle spasms; or a chronic medical condition for which an opioid is or could be prescribed based on standards of care.
 - Special documentation is required for PTSD and alternatives to opioids.
 - If the condition is one for which an opioid is currently or could be prescribed, the physician must either (1) attest that they have reviewed objective proof of the etiology of the patient's pain, such as an MRI or X-ray, or (2) attest that the patient has been diagnosed with a specific medical condition or disease that causes the patient severe pain, including complex regional pain syndrome, residual limb pain, rheumatoid arthritis, spinal cord disease, spinal cord injury, fibromyalgia, shingles, or trigeminal neuralgia. For option (2), the physician must have either diagnosed the debilitating disease or have verified the diagnosis with the treating physician.
 - If the condition is PTSD, the physician must have verified evidence of trauma required by DHEC, such as proof of military service in an active combat zone, that the patient was the victim of a violent or sexual crime, or that they were a first responder.
 - The condition must also be debilitating to the individual patient.
- **Advisory board.** The bill would create a Medical Cannabis Advisory Board to consider petitions to add or delete qualifying conditions.
 - The board will be composed of the director of DHEC; the following appointees of the governor: two doctors who do not authorize medical cannabis, two doctors who authorize medical cannabis, one doctor who is board-certified in addiction medicine, one research scientist with expertise in the field of cannabinoid medicine, four pharmacists (two who dispense medical cannabis and two who do not), one medical cannabis patient, and one parent of a minor qualifying patient; and two appointees from each the Senate president and the speaker of the House that fit one of the other categories.
- **Expiration.** ID cards typically must be renewed annually. If the patient is expected to recover within a year, or no longer needs cannabis, the physician must make a notation, so the ID expires earlier.
- **Younger patients.** Patients under the age of 18 only qualify if their parent or guardian submits the application and agrees to determine the frequency and route of administration of

cannabis products (or to designate another adult caregiver to do so). Patients between the ages of 18-23 must have certifications from two physicians.

Certifying Physicians

- **Physician requirements.** Only South Carolina-licensed MDs and DOs could certify patients for the program. Prior to issuing any certifications, physicians must register with DHEC.
 - Certifying physicians must annually complete a three-hour, cannabis-specific continuing medical education course.
 - DHEC will create the written certification form, which physicians must complete for a patient to apply to use medical cannabis.
- **Thorough evaluation.** To certify a patient, physicians must conduct a thorough in-person evaluation, including a history of illness, social history, past medical history, alcohol and substance use history, family history with an emphasis on addiction, mental illness, and psychotic disorders, and documentation of therapies with inadequate response.
- **Treatment plan.** The physician must also attest they have developed a written treatment plan that includes a review of other measures attempted to ease the patient's suffering, advice about other treatment options, information about the potential risks of medical cannabis products (including the risk of cannabis use disorder), adverse events and other risks, including falls or fractures, risks of using cannabis products during pregnancy or breastfeeding, and the need to safeguard all cannabis products from children and pets or other domestic animals.
- **Follow-up.** Physicians must schedule a follow-up appointment within six months and at least annually thereafter.
- **No conflict of interest.** Certifying physicians may not receive or accept any remuneration from a therapeutic cannabis pharmacy. They also cannot examine patients at a therapeutic cannabis pharmacy, refer patients to one, or invest in a therapeutic cannabis pharmacy.

Limitations and Prohibitions

- **No smoking.** Smoking cannabis would remain illegal, as would raw cannabis and paraphernalia used to smoke cannabis. The same criminal penalties would apply as apply to non-patients. Upon a second violation, a patient's ID card can be revoked or suspended.
- **No home growing.** Patients and caregivers would not be allowed to grow their own cannabis.
- **Purchase limits.** A physician may specify the amount of cannabis products their patient could obtain in each 14-day period. Or the physician could choose to have a default limit of 1,600 milligrams of THC in ingested products (such as edibles), 8,200 milligrams in oils for vaporization, and 4,000 milligrams in topicals, such as lotions.
- **Diversion.** Diversion of cannabis products is a felony carrying up to five years and/or a fine of up to \$5,000.
- **Vaping and driving.** The bill creates a new misdemeanor for vaporizing cannabis while driving.
- **DUI.** Patients may not drive, operate a boat, train, or aircraft, or undertake any task that would be negligent or entail professional malpractice, while impaired by cannabis.
 - If there is probable cause to believe a patient is driving while impaired, and they refuse to submit to a blood test, the patient's license and registry ID card will be suspended for at least six months.
- **Restricted professions.** Patients cannot use medical cannabis — or receive an ID card to do so — if they hold a public safety, commercial transportation, or commercial machinery job, including a job where they: 1) carry a weapon, including a firearm; 2) must have a law

enforcement credential, commercial driver's license, charter boat license, or pilot's license; 3) are involved in the operation of trains, buses, or any form of public transportation; or 4) operate heavy machinery.

- **Penalties.** Cardholders and medical cannabis establishment staffers who break the law can have their ID cards revoked and, where applicable, face civil and/or criminal penalties.

Therapeutic Cannabis Pharmacies

- **Pharmacist-in-charge.** Medical cannabis products would be dispensed by therapeutic cannabis pharmacies, overseen by a pharmacist-in-charge and licensed by both the Board of Pharmacy and DHEC. A pharmacist must be physically on premises during dispensing hours.
- **Board of Pharmacy.** The S.C. Board of Pharmacy will promulgate regulations relating to the dispensing of cannabis, including for health, safety, and security; requirements for the pharmacist-in-charge; and requirements for consultations between a pharmacist and a patient, including when a medical cannabis product has not previously been dispensed to a patient.
 - All cannabis products must be obtained from within South Carolina.
 - A pharmacist who operates a non-therapeutic cannabis pharmacy must not be prohibited from obtaining a permit for a therapeutic cannabis pharmacy, provided they are in independent structures and are at least one quarter mile apart.
 - Therapeutic cannabis pharmacies may not distribute other controlled substances.
- **Cannabis education.** Pharmacists — and all pharmacy employees who assist the pharmacist or interact with patients — must complete continuing education on medical cannabis each year, including dosage based upon medical conditions or symptoms, modes of administration, side effects, therapeutic contraindications, potential interactions, and cannabinoid profiles.
- **Monitoring.** DHEC's Bureau of Drug Control will establish a secure, web-based monitoring program like the prescription drug monitoring program, which can be used to verify patient ID cards 24 hours a day and to ensure patients do not exceed their 14-day limit.

Medical Cannabis Business Licensing and Regulation

- **Commission.** DHEC will create a commission to assist in promulgating regulations. It will include the directors of DHEC, LLR, SLED, the Department of Agriculture, and the Board of Medical Examiners (or their designee), along with a patient representative, an industry representative, a CPA, someone chosen by S.C. Advocates for Epilepsy, a representative of the African American community, and representatives of MUSC and USC School of Medicine.
- **Licensed businesses.** After a merit-based, scored application process, DHEC will license 15 cultivation centers, 30 processing facilities, five testing laboratories, four transporters, and one therapeutic cannabis pharmacy for every 20 pharmacies in the state (about 65, which must also be licensed by the Board of Pharmacy). DHEC is required to license a variety of business models, including both independent applicants (holding a single license) and integrated licenses (holding a cultivation and processing license, plus one or more pharmacy licenses).
 - Processing facilities will make products such as oils, consumable medicines, and salves.
 - Independent testing laboratories will identify the amount of cannabinoids in cannabis
- **Licensing process.** The DHEC application review process will consider the suitability of the location (for pharmacies), background and qualifications, business plans and security plans.
 - Additional points will be issued to those who have operated the following business types in South Carolina for at least two years: an agricultural business, a production

- or manufacturing business, or a business applicant with 50% of principals who are residents of South Carolina.
 - Cultivation centers could not exceed two acres (or 87,120 square feet for indoor cultivation). Specifies that if a grower is multi-level, the square footage of each level counts toward the limit.
 - Therapeutic cannabis pharmacies must also have a Board of Pharmacy specialty pharmacy licenses.
- Requires DHEC to establish a limit on the number of businesses a person or entity can hold more than a 5% interest in — both statewide and regionally — to avoid excessive market concentration
- **Ethics.** Legislators and their immediate family members may not own, operate, work for, or receive payments from a medical cannabis business before July 2029, unless they recused themselves from voting on S. 150.
- **Staff.** Medical cannabis business staffers must be licensed by DHEC, after a background check that includes fingerprinting. Staff must be at least 21 and may not have a drug-related felony, unless the entire sentence, including probation, was served at least 10 years prior.
- **Regulations.** DHEC will create regulations, including for seed-to-sale tracking, odor mitigation, recordkeeping, oversight, security, health and safety, transportation, employee training, capital requirements, and packaging and labeling. Cultivation centers' security must include perimeter intrusion detection systems and a 24-hour surveillance system accessible to law enforcement and DHEC.
 - The Board of Pharmacy will also craft regulations for therapeutic cannabis pharmacies.
 - Edible cannabis preparations would be limited to 10 mg of THC per serving.
 - Cannabis could only be grown and processed by licensees in secure, enclosed facilities, with approved security plans and using a seed-to sale inventory tracking system that can conduct full product recalls.
 - Cannabis businesses must be maintained in a manner to prevent blight, deterioration, diminishment, or impairment of property values within the vicinity.
- **Security.** Medical cannabis businesses must employ a former or retired law enforcement officer in good standing, former or retired military personnel, or a security service agency with the ability to provide security.
- **Insurance.** Medical cannabis businesses must have at least \$1 million in liability insurance.
- **Warnings.** Cannabis will be dispensed with a safety information flyer, including advice about possible risks, the need to safeguard cannabis from children, and noting federal law.
 - Edibles must include labels indicating how long they take to take effect, ingredients and allergens, and a standard symbol to signify the package contains cannabis.
- **Vaporizers.** DHEC will consult with experts and promulgate regulations to foster the health and safety of patients using medical cannabis vaporization products, including by mandating stress tests, issuing standards for heavy metals, developing warning labels, and banning harmful additives. Cannabis vaporization cartridges cannot be capable of use with nicotine vaporization devices.
- **Inspections.** DHEC and law enforcement may inspect anywhere cannabis is grown, packaged, or processed.
- **Transfers.** Licenses may not be transferred until 36 months after licensing and 24 months after operations began.
- **Local control.** Localities may ban dispensaries or regulate the location, hours, and number of medical cannabis businesses.
 - DHEC must prevent an overconcentration.

Protecting Children from Exposure

- **No appealing to minors.** Cannabis products would have to be sold in child-resistant packaging, which could not be designed or likely to appeal to minors.
 - Labels and packaging cannot include cartoons, toys, animals, children, or any other likeness to images, characters, or phrases that are popularly used to advertise to children. They cannot include imitation of candy packaging or labeling.
 - Edible preparations may not be baked goods and could not resemble commercially sold candies or foods that are marketed to children. They cannot be shaped like cartoons, toys, animals, or people. DHEC must further regulate flavor, forms, and appearance to reduce the appeal to minors.
- **Buffer.** Medical cannabis businesses could not be located within 1,000 feet of a school, unless DHEC creates an exception because it is necessary to provide adequate access for patients.
- **Medical appearance.** DHEC will restrict advertising, logos, and signage and ensure businesses have discreet, medical appearances. Images of cannabis leaves and slang for cannabis are prohibited. Logos and signs must be submitted to DHEC for prior review.

Legal Protections

- **Caregivers.** Patients could apply to DHEC to designate a caregiver to assist them with the medical use of cannabis, such as by picking up their cannabis from a dispensary.
 - Caregivers must be at least 21 unless they are the parent of a minor patient.
 - Caregivers must pay for a criminal records background check and cannot qualify if they were convicted of a felony drug-related offense unless the entire sentence — including any probation — was completed at least 15 years prior.
 - The caregiver can be a facility, such as a nursing home, in which case additional requirements apply, and the facility must ensure proper handling and storage.
 - Except in the case of healthcare facilities, caregivers can only serve a single patient or — if they are a close relative — two patients.
- **Legal conduct.** The bill protects registered patients and caregivers, medical cannabis establishment staff, state-chartered banks, attorneys, accountants, pharmacists, and doctors from arrest, prosecution, or penalties for actions allowed by the bill.
- **Limited discrimination protections.** Registered patients are generally protected from discrimination in gun rights, child custody disputes, eligibility for organ transplants and medical care, enrollment in school, and housing.
- **Employers.** Private employers may continue to prohibit employees from working under the influence or using cannabis at or during work, along with enforcing a drug-free workplace policy.
 - A state or local agency or employer generally could not fire a registered patient for off-hours medical cannabis use if they would not be able to do so for prescription medications under the state disability law. This would not apply if a federal law, contract, or regulation would require otherwise.

Finances

- **Licensing fees.** DHEC will determine application and registration fees for cardholders and medical cannabis businesses, which will be set in an amount to cover expenses of the program without generating a surplus. Fees generated are in excess of what is needed to administer the program, future fees will be reduced so there is no surplus.

- **Taxation.** Does not create any medical cannabis-specific taxes. Does not create any exemptions for medical cannabis from standard taxes. Any generally applicable taxes — such as income taxes and sales taxes — would apply, as they do for other businesses and products.

Research and Reporting

- **DHEC reports.** DHEC must produce a report on the program each year, which will include the number of ID cards issued; the nature of the debilitating medical conditions of the qualifying patients by percentage; a breakdown of qualifying patients by specific age groups; the efficacy of, side effects reported, and satisfaction or dissatisfaction with medical cannabis products; the number of physicians providing written certifications and the ranges of patients physicians are providing certifications to; and the number and type of medical cannabis establishments by county.
 - DHEC is required to evaluate how independent vs. vertically integrated businesses are serving patients (in terms of pricing and variety of products) and to assess if the cap on how many licenses a person can hold or invest in should be revised.
- **Possible rescheduling.** After four years, DHEC will evaluate the efficacy of cannabis as medicine and make a recommendation with regard to the rescheduling of cannabis on a lower schedule in South Carolina.

Timeline

- **ID cards.** DHEC will begin accepting applications for registry ID cards within 90 days.
 - DHEC will grant or deny registry ID cards within 25 days of receiving application materials.
 - Until 90 days after DHEC starts accepting registry ID cards, a patient's valid, written certification will function as the patient's registry ID card. For a caregiver, a copy of the written certification must be accompanied by a notarized affidavit attesting that the person has significant responsibility for managing the well-being of the qualifying patient.
 - **Licensing.** Regulations for medical cannabis businesses must be created within a year, and applications would be accepted within 30 days of regulations being issued.
 - **Failure to act.** If DHEC fails to implement the act within two years, a qualifying patient can go to court to seek a court order.
 - **Sunset.** The law would expire eight years after the first therapeutic cannabis pharmacy opens unless the legislature re-enacts it.
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