

# HOUSE RESEARCH

## Bill Summary

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### Overview

This bill allows for the medical use of marijuana. It provides regulation of the medical use of marijuana by setting limits for allowable amounts of marijuana and requiring qualifying patients and caregivers to possess registry identification cards, which are issued by the commissioner.

#### Section

**1 Medical use of marijuana data.** Amends § 13.3806 by adding subd. 21. States that data collected by the Commissioner of Health on the medical use of marijuana is classified as confidential, according to section 152.25, subdivision 5.

**2 Definitions.** Adds § 152.22. Defines key terms used in this legislation.

**Subd. 1. Applicability.** States that these definitions apply to terms in sections 152.22 to 152.31.

**Subd. 2. Allowable amount of marijuana.** (a) States that the allowable amount of marijuana for a patient is 2.5 ounces of usable marijuana and 6 plants under certain conditions, including that the patient is authorized to cultivate marijuana.

(b) States that a primary caregiver may have 2.5 ounces of usable marijuana 6 plants under certain conditions, including that the primary caregiver is authorized to cultivate marijuana.

(c) States that a registered organization may have 6 plants and any amount of the other parts of the plant.

**Subd. 3. Commissioner.** Refers to the commissioner of health.

**Subd. 4. Debilitating medical condition.** Lists the medical conditions that qualify as debilitating, including, but not limited to, the following: cancer, glaucoma, chronic diseases for which treatments cause certain other conditions, HIV, and other

commissioner-approved conditions.

**Subd. 5. Department.** Refers to the state Department of Health.

**Subd. 6. Medical use.** States the activities that are considered medical use, including: possession, delivery, and use of marijuana or paraphernalia.

**Subd. 7. Practitioner.** Refers to a doctor of medicine, doctor of osteopathy, a physician assistant, or an advance practice registered nurse.

**Subd. 8. Primary caregiver.** Refers to a person of at least 21 years who assists no more than five patients with their medical use of marijuana.

**Subd. 9. Qualifying patient.** Refers to a person diagnosed as having a debilitating medical condition.

**Subd. 10. Registry identification card.** Refers to a document issued by the commissioner that identifies a qualifying patient or primary caregiver.

**Subd. 11. Usable marijuana.** Refers to the dried leaves and flowers of the marijuana plant.

**Subd. 12. Written certification.** States that the statement is signed and dated by a practitioner to certify that the benefits of marijuana use would likely outweigh the health risks for the patient. States that the statement specifies the patient's debilitating medical condition. Requires that a written certification is reviewed by the practitioner annually and can be made only in the course of a practitioner-patient relationship that includes a physical examination and full assessment of the patient's medical history.

**3 Protections for medical use of marijuana.** Adds § 152.23. Describes certain legal protections associated with the medical use of marijuana.

**Subd. 1. Qualifying patient.** Provides legal protection for patients with a registry identification card, who engage in the medical use of marijuana. States that these persons shall not be arrested, prosecuted, or subjected to civil or disciplinary action, so long as they do not possess more than an allowable amount of marijuana.

**Subd. 2. Primary caregiver.** Provides protection for caregivers with a registry identification card, who assist in the medical use of marijuana. States that these persons shall not be arrested, prosecuted, or subjected to civil or disciplinary action, so long as they do not possess more than an allowable amount of marijuana.

**Subd. 3. Dismissal of charges.** States that a qualifying patient or primary caregiver, who is not in possession of a registry identification card and is arrested for possession of marijuana, must be released from custody and charges must be dismissed when the person produces his or her valid registry identification card.

**Subd. 4. Discrimination prohibited.** (a) Prohibits schools and landlords from discriminating against persons solely based on their status as qualifying patients or primary caregivers.

(b) States that for the purposes of medical care, the medical use of marijuana shall not

be considered the “use of an illicit substance,” and shall be the equivalent of an authorized medication.

(c) Prohibits employers from discriminating against a person for his or her status as a registered qualifying patient or a registered primary caregiver, or for a registered qualifying patient’s positive drug test. This provision does not apply to patients who use, possess, or are impaired by marijuana at their place of employment.

(d) Provides certain legal protections for registered qualifying patients and primary caregivers in child custody cases.

**Subd. 5. Presumption.** Creates a presumption that a qualifying patient or primary caregiver is engaged in the medical use of marijuana if that person has a registry identification card and not more than the allowable amount of marijuana. States that this presumption may be rebutted with evidence that the conduct was not for the purpose of alleviating the patient’s medical condition or symptoms associated with the condition.

**Subd. 6. Caregiver’s reimbursement.** Provides that primary caregivers may be reimbursed for the costs associated with assisting the qualifying patient. States that this compensation is not the sale of controlled substances.

**Subd. 7. Practitioner.** Provides legal protection for practitioners for providing written certifications or stating that the benefits of medical use of marijuana likely outweigh the health risks to the patient.

**Subd. 8. Property rights.** States that interests in and rights to property associated with the medical use of marijuana are not forfeited.

**Subd. 9. Arrest and prosecution prohibited.** States that no person is subject to arrest or prosecution for offenses related to being in the presence of the medical use of marijuana or for assisting a qualifying patient with its use.

**Subd. 10. Nursing facilities.** Permits nursing facilities to restrict the use of medical marijuana and provides guidelines for these restrictions.

#### 4 **Registry identification cards; issuance.** Adds 152.25.

**Subd. 1. Requirements; issuance.** (a) Lists the information that must be provided to the commissioner by the qualifying patient, in order to receive a registry identification card.

(b) Provides situations in which the commissioner may issue a card to a person under the age of 18.

(c) Requires the commissioner to approve or deny an application within 15 days of receiving it. States that approval or denial is a final agency action and is subject to judicial review.

(d) Allows for up to two primary caregivers per qualifying patient and requires the commissioner to issue registry identification cards to those named on an approved application.

(e) Requires the commissioner to issue a card within five days of approval. States that the cards expire one year after issuance. Lists the information that must be contained on the cards.

**Subd. 2. Notification of changes; penalties.** (a) Requires a qualifying patient to notify the commissioner within 10 days of any change to the patient's personal information, primary caregiver or if the patient no longer has the debilitating medical condition.

(b) Provides for a fine of no more than \$150 for failing to notify the commissioner of a change. States that a person who no longer has the debilitating medical condition is liable for penalties for the non-medical use of marijuana.

(c) Requires the qualifying patient to notify the commissioner of any change as to who is allowed to cultivate marijuana plants for the patient.

(d) States that the commissioner shall issue a new card within 10 days of receiving the updated information and a \$15 fee.

(e) Requires the commissioner to notify a primary caregiver when a qualifying patient ceases to use the caregiver's assistance. States that the protections of the caregiver expire 10 days after notification.

**Subd. 3. Lost cards.** Allows for a patient or caregiver that loses a registry identification card to have a new card, with a new number, issued by the commissioner for a \$10 fee.

**Subd. 4. Card as probable cause.** States that possession of, or application for, a registry identification card does not constitute probable cause or reasonable suspicion to search the person or person's property.

**Subd. 5. Data practices.** (a) States that applications and information submitted by qualifying persons are private data on individuals or nonpublic data.

(b) Requires the commissioner to maintain a list of persons with registry identification cards. States that data in the list are private data on individuals or nonpublic data. Provides certain exceptions to the classification of these data, including that the commissioner must verify whether a card is valid upon request of law enforcement, and the commissioner may notify law enforcement of falsified or fraudulent information submitted.

**Subd. 6. Report.** Requires the commissioner to provide an annual report to the legislature as to the number of applications for registry identification cards, approvals and revocations, the nature of debilitating medical conditions, and the number of practitioners providing written certifications. Prohibits the commissioner from including identifying information on individuals in the report.

**Subd. 7. Submission of false records; criminal penalty.** Provides that it is a felony to knowingly submitting false records or documentation required by the commissioner of health for certification of a registered organization. Provides a sentence of imprisonment for up to five years, a fine of up to \$10,000, or both.

**Subd. 8. Criminal background check for primary caregivers.** Requires that before issuing a registry identification card to a primary caregiver, the commissioner must do a criminal background check on that person. Prohibits a person from serving as a primary caregiver if that person has been convicted of a drug felony, unless the commissioner determines the conviction was related to the medical use of marijuana.

**5 Construction.** Adds § 152.26. (a) States that this act does not permit persons to undertake certain tasks under the influence of marijuana. States that this act does not permit smoking marijuana in certain places, including in public transportation, schools, correctional facilities, and any public place.

(b) States that this act does not require medical assistance programs to cover the costs associated with the medical use of marijuana or employers to accommodate such use in the workplace.

**6 Penalties.** Adds § 152.27. (a) Provides that it is a gross misdemeanor to provide law enforcement with fraudulent representations of fact or circumstances related to medical use of marijuana in order to avoid arrest or prosecution. States that if a qualifying patient or primary caregiver is convicted under this section, then that person is disqualified from further participation under this act and that person's registry card is void.

(b) Provides that it is a felony for a qualifying patient to sell, transfer, loan, or otherwise give another person the patient's registry card, or to sell, transfer, loan, or otherwise give another person marijuana obtained under this act. States that if a qualifying patient is convicted under this section, then that patient may be sentenced to imprisonment for not more than 2 years, and a fine of not more than \$3,000.

**7 Affirmative defense and dismissal for medical marijuana.** Adds § 152.29. (a) Allows a person to assert the medical use of marijuana as an affirmative defense. States that the defense is presumed valid if certain evidence is shown.

(b) Provides that a person may assert medical purpose for using marijuana in a motion to dismiss. States that charges must be dropped if the defendant shows the evidence listed in paragraph (a).

(c) States that interests in and rights to property associated with the medical use of marijuana are not forfeited if the person or the primary caregiver demonstrates a medical purpose under this section.

**8 Severability.** Adds 152.30. States that invalidity of a provision in sections 152.22 to 152.31 with regards any person or circumstance does not affect the application of the other provisions in this act that can be given full effect without the invalid provision.

**9 Registered organization.** Adds § 152.31.

**Subd. 1. Definition.** Defines a "registered organization" as a nonprofit registered with the commissioner that provides marijuana and related supplies to qualifying patients.

**Subd. 2. Registration requirements.** Requires the commissioner to issue a license within 20 days to any person who provides certain information. Requires the

commissioner to issue each agent of a registered organization a card for \$15 each.

**Subd. 3. Expiration.** States that licenses and registry identification cards expire one year after issuance.

**Subd. 4. Inspection.** Subjects registered organizations to reasonable inspection by the commissioner.

**Subd. 5. Organization requirements.** Provides requirements for registered organizations, including, but not limited to, the following:

- Requires registered organizations to be nonprofit entities and prohibits them from being located within 500 feet of schools and churches.
- Requires registered organizations to notify the commissioner when employees leave or new employees are hired.
- Provides certain legal protections for a registered organization and its employees, agents, and board members.
- Prohibits registered organizations from possessing or cultivating marijuana for any reason other than to assist registered qualifying patients.

**Subd. 6. Delivery; charging for services.** Permits a registered organization to deliver up to 2.5 ounces of usable marijuana to a qualifying patient. Permits a registered organization to charge a qualifying patient or primary caregiver for its services and states that this does not constitute sale of controlled substances.

**Subd. 7. Background checks; felony drug convictions.** Requires background checks for all employees, agents, and board members of registered organizations. Describes who will perform the checks. States that the purpose of the check, relating to medical marijuana, may not be disclosed to the F.B.I. Describes consequences for failed background checks, and for conviction of a drug felony. Prohibits registered organizations from knowingly and willfully allowing a person who has been convicted of a drug felony to be its employee, agent, or board member. Provides an exception for persons convicted for medical use of marijuana.

**Subd. 8. Penalty.** Provides for criminal penalties for a registered organization that possesses more than the allowable amount of marijuana or provides marijuana to persons other than a qualifying patient or the patient's primary caregiver.

- 10 Sunset.** Establishes an October 1, 2011, expiration date for the bill.
- 11 Implementation.** Requires the commissioner of health to begin issuing registry identification cards and registered organization licenses by October 1, 2009.
- 12 Fees.** States that fees raised under this act are appropriated and deposited in the SGSR fund.
- 13 Appropriations.** Appropriates \$436,000 for fiscal year 2010 and \$517,000 for fiscal year 2011 from the SGSR fund to the commissioner of health for implementation of this act. Provides that this is a onetime appropriation.

**14**      **Effective date.** Provides that sections 1 to 9 are effective August 1, 2009.