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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-FIRST SESSION

H. F. No. **766**

02/07/2019 Authored by Edelson, Hamilton, Lien, Garofalo, Moran and others
The bill was read for the first time and referred to the Committee on Health and Human Services Policy

- 1.1 A bill for an act
- 1.2 relating to health; modifying medical cannabis requirements; appropriating money;
- 1.3 amending Minnesota Statutes 2018, sections 152.23; 152.27, subdivision 4; 152.28,
- 1.4 subdivision 1; 152.29, subdivisions 1, 3; 152.33, subdivision 1; 290.0132, by
- 1.5 adding a subdivision; 290.0134, by adding a subdivision; proposing coding for
- 1.6 new law in Minnesota Statutes, chapter 152.
- 1.7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:
- 1.8 Section 1. Minnesota Statutes 2018, section 152.23, is amended to read:
- 1.9 **152.23 LIMITATIONS.**
- 1.10 (a) Nothing in sections 152.22 to 152.37 permits any person to engage in and does not
- 1.11 prevent the imposition of any civil, criminal, or other penalties for:
- 1.12 (1) undertaking any task under the influence of medical cannabis that would constitute
- 1.13 negligence or professional malpractice;
- 1.14 (2) possessing or engaging in the use of medical cannabis:
- 1.15 (i) on a school bus or van, except as permitted under section 152.345;
- 1.16 (ii) on the grounds of any preschool ~~or primary~~, elementary, or secondary school, except
- 1.17 as permitted under section 152.345;
- 1.18 (iii) in any correctional facility; or
- 1.19 (iv) on the grounds of any child care facility or home day care;
- 1.20 (3) vaporizing medical cannabis pursuant to section 152.22, subdivision 6:
- 1.21 (i) on any form of public transportation;

2.1 (ii) where the vapor would be inhaled by a nonpatient minor child; or

2.2 (iii) in any public place, including any indoor or outdoor area used by or open to the
2.3 general public or a place of employment as defined under section 144.413, subdivision 1b;
2.4 and

2.5 (4) operating, navigating, or being in actual physical control of any motor vehicle,
2.6 aircraft, train, or motorboat, or working on transportation property, equipment, or facilities
2.7 while under the influence of medical cannabis.

2.8 (b) Nothing in sections 152.22 to 152.37 require the medical assistance and
2.9 MinnesotaCare programs to reimburse an enrollee or a provider for costs associated with
2.10 the medical use of cannabis. Medical assistance and MinnesotaCare shall continue to provide
2.11 coverage for all services related to treatment of an enrollee's qualifying medical condition
2.12 if the service is covered under chapter 256B or 256L.

2.13 Sec. 2. Minnesota Statutes 2018, section 152.27, subdivision 4, is amended to read:

2.14 Subd. 4. **Registered designated caregiver.** (a) The commissioner shall register a
2.15 designated caregiver for a patient if the patient's health care practitioner has certified that
2.16 the patient, in the health care practitioner's medical opinion, is developmentally or physically
2.17 disabled and, as a result of that disability, the patient is unable to self-administer medication
2.18 or acquire medical cannabis from a distribution facility and the caregiver has agreed, in
2.19 writing, to be the patient's designated caregiver. As a condition of registration as a designated
2.20 caregiver, the commissioner shall require the person to:

2.21 (1) be at least 21 years of age;

2.22 (2) agree to only possess any medical cannabis for purposes of assisting the patient; and

2.23 (3) agree that if the application is approved, the person will not be a registered designated
2.24 caregiver for more than one patient, unless the patients reside in the same residence.

2.25 (b) The commissioner shall conduct a criminal background check on the designated
2.26 caregiver prior to registration to ensure that the person does not have a conviction for a
2.27 disqualifying felony offense. Any cost of the background check shall be paid by the person
2.28 seeking registration as a designated caregiver.

2.29 (c) A school nurse or other appropriate school personnel as designated by a school district
2.30 may be registered as a designated caregiver for a student who is a registered patient for the
2.31 purpose of section 152.345.

3.1 Sec. 3. Minnesota Statutes 2018, section 152.28, subdivision 1, is amended to read:

3.2 Subdivision 1. **Health care practitioner duties.** (a) Prior to a patient's enrollment in
3.3 the registry program, a health care practitioner shall:

3.4 (1) determine, in the health care practitioner's medical judgment, whether a patient suffers
3.5 from a qualifying medical condition, and, if so determined, provide the patient with a
3.6 certification of that diagnosis;

3.7 (2) determine whether a patient is developmentally or physically disabled and, as a result
3.8 of that disability, the patient is unable to self-administer medication or acquire medical
3.9 cannabis from a distribution facility, and, if so determined, include that determination on
3.10 the patient's certification of diagnosis;

3.11 (3) advise patients, registered designated caregivers, and parents or legal guardians who
3.12 are acting as caregivers of the existence of any nonprofit patient support groups or
3.13 organizations;

3.14 (4) provide explanatory information from the commissioner to patients with qualifying
3.15 medical conditions, including disclosure to all patients about the experimental nature of
3.16 therapeutic use of medical cannabis; the possible risks, benefits, and side effects of the
3.17 proposed treatment; the application and other materials from the commissioner; and provide
3.18 patients with the Tennessean warning as required by section 13.04, subdivision 2; and

3.19 (5) agree to continue treatment of the patient's qualifying medical condition and report
3.20 medical findings to the commissioner.

3.21 (b) Upon notification from the commissioner of the patient's enrollment in the registry
3.22 program, the health care practitioner shall:

3.23 (1) participate in the patient registry reporting system under the guidance and supervision
3.24 of the commissioner;

3.25 (2) report health records of the patient throughout the ongoing treatment of the patient
3.26 to the commissioner in a manner determined by the commissioner and in accordance with
3.27 subdivision 2;

3.28 (3) determine, on a yearly basis, if the patient continues to suffer from a qualifying
3.29 medical condition and, if so, issue the patient a new certification of that diagnosis; and

3.30 (4) otherwise comply with all requirements developed by the commissioner.

(c) A health care practitioner may conduct a patient assessment to issue a recertification as required under paragraph (b), clause (3), via telemedicine as defined under section 62A.671, subdivision 9.

~~(e)~~ (d) Nothing in this section requires a health care practitioner to participate in the registry program.

Sec. 4. Minnesota Statutes 2018, section 152.29, subdivision 1, is amended to read:

Subdivision 1. **Manufacturer; requirements.** (a) A manufacturer shall operate ~~four~~ eight distribution facilities, which may include the manufacturer's single location for cultivation, harvesting, manufacturing, packaging, and processing but is not required to include that location. ~~A manufacturer is required to begin distribution of medical cannabis from at least one distribution facility by July 1, 2015. All distribution facilities must be operational and begin distribution of medical cannabis by July 1, 2016. The distribution facilities shall be located~~ The commissioner shall designate the geographical service areas to be served by each manufacturer based on geographical need throughout the state to improve patient access. A manufacturer shall disclose the proposed locations for the distribution facilities to the commissioner during the registration process. A manufacturer shall not have more than two distribution facilities in each geographical service area assigned to the manufacturer by the commissioner. A manufacturer shall operate only one location where all cultivation, harvesting, manufacturing, packaging, and processing shall be conducted. ~~Any~~ This location may be one of the manufacturer's distribution facility sites. The additional distribution facilities may dispense medical cannabis and medical cannabis products but may not contain any medical cannabis in a form other than those forms allowed under section 152.22, subdivision 6, and the manufacturer shall not conduct any cultivation, harvesting, manufacturing, packaging, or processing at an additional the other ~~distribution facility site~~ sites. Any distribution facility operated by the manufacturer is subject to all of the requirements applying to the manufacturer under sections 152.22 to 152.37, including, but not limited to, security and distribution requirements.

(b) A medical cannabis manufacturer shall contract with a laboratory approved by the commissioner, subject to any additional requirements set by the commissioner, for purposes of testing medical cannabis manufactured by the medical cannabis manufacturer as to content, contamination, and consistency to verify the medical cannabis meets the requirements of section 152.22, subdivision 6. The cost of laboratory testing shall be paid by the manufacturer.

(c) The operating documents of a manufacturer must include:

5.1 (1) procedures for the oversight of the manufacturer and procedures to ensure accurate
5.2 record keeping; and

5.3 (2) procedures for the implementation of appropriate security measures to deter and
5.4 prevent the theft of medical cannabis and unauthorized entrance into areas containing medical
5.5 cannabis.

5.6 (d) A manufacturer shall implement security requirements, including requirements for
5.7 protection of each location by a fully operational security alarm system, facility access
5.8 controls, perimeter intrusion detection systems, and a personnel identification system.

5.9 (e) A manufacturer shall not share office space with, refer patients to a health care
5.10 practitioner, or have any financial relationship with a health care practitioner.

5.11 (f) A manufacturer shall not permit any person to consume medical cannabis on the
5.12 property of the manufacturer.

5.13 (g) A manufacturer is subject to reasonable inspection by the commissioner.

5.14 (h) For purposes of sections 152.22 to 152.37, a medical cannabis manufacturer is not
5.15 subject to the Board of Pharmacy licensure or regulatory requirements under chapter 151.

5.16 (i) A medical cannabis manufacturer may not employ any person who is under 21 years
5.17 of age or who has been convicted of a disqualifying felony offense. An employee of a
5.18 medical cannabis manufacturer must submit a completed criminal history records check
5.19 consent form, a full set of classifiable fingerprints, and the required fees for submission to
5.20 the Bureau of Criminal Apprehension before an employee may begin working with the
5.21 manufacturer. The bureau must conduct a Minnesota criminal history records check and
5.22 the superintendent is authorized to exchange the fingerprints with the Federal Bureau of
5.23 Investigation to obtain the applicant's national criminal history record information. The
5.24 bureau shall return the results of the Minnesota and federal criminal history records checks
5.25 to the commissioner.

5.26 (j) A manufacturer may not operate in any location, whether for distribution or cultivation,
5.27 harvesting, manufacturing, packaging, or processing, within 1,000 feet of a public or private
5.28 school existing before the date of the manufacturer's registration with the commissioner.

5.29 (k) A manufacturer shall comply with reasonable restrictions set by the commissioner
5.30 relating to signage, marketing, display, and advertising of medical cannabis.

6.1 Sec. 5. Minnesota Statutes 2018, section 152.29, subdivision 3, is amended to read:

6.2 Subd. 3. **Manufacturer; distribution.** (a) A manufacturer shall require that employees
6.3 licensed as pharmacists pursuant to chapter 151 be the only employees to give final approval
6.4 for the distribution of medical cannabis to a patient. A manufacturer may transport medical
6.5 cannabis products that have been cultivated, harvested, manufactured, packaged, and
6.6 processed by that manufacturer to another registered manufacturer for the other manufacturer
6.7 to distribute.

6.8 (b) A manufacturer may ~~dispense~~ distribute medical cannabis products, whether or not
6.9 the products have been manufactured by ~~the~~ that manufacturer, ~~but is not required to dispense~~
6.10 ~~medical cannabis products.~~

6.11 (c) Prior to distribution of any medical cannabis, the manufacturer shall:

6.12 (1) verify that the manufacturer has received the registry verification from the
6.13 commissioner for that individual patient;

6.14 (2) verify that the person requesting the distribution of medical cannabis is the patient,
6.15 the patient's registered designated caregiver, or the patient's parent or legal guardian listed
6.16 in the registry verification using the procedures described in section 152.11, subdivision
6.17 2d;

6.18 (3) assign a tracking number to any medical cannabis distributed from the manufacturer;

6.19 (4) ensure that any employee of the manufacturer licensed as a pharmacist pursuant to
6.20 chapter 151 has consulted with the patient to determine the proper dosage for the individual
6.21 patient after reviewing the ranges of chemical compositions of the medical cannabis and
6.22 the ranges of proper dosages reported by the commissioner. For purposes of this clause, a
6.23 consultation may be conducted remotely using a videoconference, so long as the employee
6.24 providing the consultation is able to confirm the identity of the patient, the consultation
6.25 occurs while the patient is at a distribution facility, and the consultation adheres to patient
6.26 privacy requirements that apply to health care services delivered through telemedicine;

6.27 (5) properly package medical cannabis in compliance with the United States Poison
6.28 Prevention Packing Act regarding child-resistant packaging and exemptions for packaging
6.29 for elderly patients, and label distributed medical cannabis with a list of all active ingredients
6.30 and individually identifying information, including:

6.31 (i) the patient's name and date of birth;

6.32 (ii) the name and date of birth of the patient's registered designated caregiver or, if listed
6.33 on the registry verification, the name of the patient's parent or legal guardian, if applicable;

(iii) the patient's registry identification number;

(iv) the chemical composition of the medical cannabis; and

(v) the dosage; and

(6) ensure that the medical cannabis distributed contains a maximum of a 30-day supply of the dosage determined for that patient.

(d) A manufacturer shall require any employee of the manufacturer who is transporting medical cannabis or medical cannabis products to a distribution facility or to another registered manufacturer to carry identification showing that the person is an employee of the manufacturer.

Sec. 6. Minnesota Statutes 2018, section 152.33, subdivision 1, is amended to read:

Subdivision 1. **Intentional diversion; criminal penalty.** In addition to any other applicable penalty in law, a manufacturer or an agent of a manufacturer who intentionally transfers medical cannabis to a person other than another registered manufacturer, a patient, a registered designated caregiver or, if listed on the registry verification, a parent or legal guardian of a patient is guilty of a felony punishable by imprisonment for not more than two years or by payment of a fine of not more than \$3,000, or both. A person convicted under this subdivision may not continue to be affiliated with the manufacturer and is disqualified from further participation under sections 152.22 to 152.37.

Sec. 7. **[152.345] POSSESSION AND USE OF MEDICAL CANNABIS IN SCHOOLS.**

(a) A student shall not possess or self-administer medical cannabis on the grounds of a preschool, elementary, or secondary school; a school bus or van; or at a school-sponsored event, except as permitted under this section.

(b) A parent or legal guardian of a minor student who is enrolled as a patient in the registry program or a student's registered designated caregiver may possess and administer medical cannabis to the student on the grounds of a preschool, elementary, or secondary school in which the student is enrolled; on a school bus or van; or at a school-sponsored event. If the student is 18 years of age or older and enrolled as a patient in the registry program, the student may self-administer the medical cannabis under the supervision of a designated caregiver or designated school personnel on the grounds of a secondary school in which the student is enrolled, on a school bus or van, or at a school-sponsored event. A parent, legal guardian, designated caregiver, or student shall not administer medical cannabis in a manner that creates disruption to the educational environment or causes exposure to

8.1 other students. The school may designate specific locations on school grounds where medical
8.2 cannabis must be administered.

8.3 (c) After the parent, legal guardian, or designated caregiver administers the medical
8.4 cannabis, the parent, legal guardian, or designated caregiver shall remove any remaining
8.5 medical cannabis from the grounds of the preschool, elementary, or secondary school; the
8.6 school bus or van; or a school-sponsored event, unless the school allows for the storage of
8.7 the student's supply of medical cannabis in a locked secure location.

8.8 (d) Nothing in this section requires school staff or the school district's staff to administer
8.9 medical cannabis to a student or to store or maintain a student's supply of medical cannabis.

8.10 (e) The school or school district may adopt policies regarding reasonable parameters for
8.11 the administration and use of medical cannabis, but may not unreasonably limit a patient's
8.12 access to or use of medical cannabis.

8.13 (f) This section does not apply to a school district if the school district loses federal
8.14 funding as a result of implementing this section, and can reasonably demonstrate that it lost
8.15 federal funding as a result of implementing this section.

8.16 Sec. 8. Minnesota Statutes 2018, section 290.0132, is amended by adding a subdivision
8.17 to read:

8.18 Subd. 27. **Disallowed section 280E expenses; medical cannabis manufacturers.** The
8.19 amount of expenses of a medical cannabis manufacturer, as defined in section 152.22,
8.20 subdivision 7, related to the business of medical cannabis under sections 152.21 to 152.37,
8.21 and not allowed for federal income tax purposes under section 280E of the Internal Revenue
8.22 Code is a subtraction.

8.23 **EFFECTIVE DATE.** This section is effective for taxable years beginning after December
8.24 31, 2018.

8.25 Sec. 9. Minnesota Statutes 2018, section 290.0134, is amended by adding a subdivision
8.26 to read:

8.27 Subd. 17. **Disallowed section 280E expenses; medical cannabis manufacturers.** The
8.28 amount of expenses of a medical cannabis manufacturer, as defined in section 152.22,
8.29 subdivision 7, related to the business of medical cannabis under sections 152.21 to 152.37,
8.30 and not allowed for federal income tax purposes under section 280E of the Internal Revenue
8.31 Code is a subtraction.

9.1 **EFFECTIVE DATE.** This section is effective for taxable years beginning after December
9.2 31, 2018.

9.3 Sec. 10. **APPROPRIATION.**

9.4 \$1,759,000 in fiscal year 2020 and \$2,259,000 in fiscal year 2021 are appropriated from
9.5 the state government special revenue fund to the commissioner of health for administration
9.6 of the medical cannabis program under Minnesota Statutes, sections 152.22 to 152.37.