

Date: January 26th, 2022

To: All Legislators

From: **Senators** Felzkowski and Bernier
Representatives Snyder, Schraa, Rozar,
Edming, Kitchens, Krug, Loudenbeck,
Macco, Novak, Sortwell, and Tittl



Re: Co-Sponsorship of LRB-0250/1: Creation of a Medical Marijuana Program

DEADLINE: Wednesday, February 9th, 2022 at 5pm

Illness does not discriminate; it effects people from all walks of life. Mothers, sons, veterans, co-workers, friends. There is no doubt that each and every one of us knows someone that has suffered through an illness and struggled to find a way to make it through each day. While there are often medications that doctors can prescribe to help combat these illnesses, many come with side effects that can make living a normal life much more difficult. In some cases, the only option for pain relief is to take opioids on a long term basis, which can lead to a whole host of other challenges that already afflict our state.

However, there is an alternative. Currently 36 other states, including our neighbors Michigan, Illinois, and Minnesota, have passed laws allowing patients with certain medical conditions to access medical marijuana if their doctors recommend it. Medicine is never one-size-fits-all, and it is time for Wisconsin to join the majority of the country in adding another option which may help patients find the relief they need.

Many Wisconsinites have already expressed their interest in our state having this conversation. In the 2018 midterm election, 16 counties and 2 cities, representing 52% of the state's population, voted on medical or recreational cannabis referendums. All of them passed with overwhelming support. It is clear that we as a state need to begin having a real discussion about medical marijuana legalization, and it is our hope that this bill will be the first step.

LRB 0250/1 creates a Medical Marijuana program that tightly regulates the cultivation, processing, testing, and dispensing of medical marijuana to ensure patients have legal, safe, and reliable access to a consistent product without breaking the law to obtain it. Please read the comprehensive analysis from the Legislative Reference Bureau below for a more in-depth understanding of each facet of the bill.

If you would like to co-sponsor this legislation, or have any questions at all about provisions in the bill, please reply to this email or call Senator Felzkowski's office at 266-2509 or Representative Snyder's office at 266-0654 **no later than Wednesday, February 9th, 2022 at 5pm.**

Analysis by the Legislative Reference Bureau

This bill creates a program that allows for the possession and use of medical marijuana by registered patients and that licenses medical marijuana producers, processors, dispensaries, transporters, and laboratories to operate in this state.

Medical Marijuana Regulatory Commission

The bill creates the Medical Marijuana Regulatory Commission to regulate the medical marijuana program. The commission is attached to the Department of Revenue and consists of one member appointed by the governor, one member appointed by the senate majority leader, one member appointed by the speaker of the assembly, one member appointed by the senate minority leader, and one member appointed by the assembly minority leader. The members serve staggered terms of six years each. The governor selects one of the appointees to serve as the chairperson for a two-year term.

Recommendations; registered patients and caregivers

The bill authorizes physicians, physician assistants, and certified advanced practice nurse prescribers to provide a written recommendation for a patient to use medical marijuana under certain circumstances, including the existence of a bona fide health care provider-patient relationship and that the patient suffers from a qualifying medical condition. Minors are eligible to receive a recommendation for use of medical marijuana if certain requirements are met. Medical marijuana must be in the form of a liquid, oil, pill, or tincture or in a form that is applied topically.

Under the bill, patients and primary caregivers may apply to the commission to receive a registry identification card, allowing the patient or primary caregiver to obtain medical marijuana from a dispensary. Applicants must meet certain criteria, including that the person is a resident of the state and submits a written recommendation that is less than 30 days old from a physician, physician assistant, or certified advanced practice nurse prescriber. A primary caregiver must be over the age of 21 and may not have any drug-related conviction. The commission is required to establish and maintain a list of registered cardholders and must establish rules for implementation of the medical marijuana program as it relates to recommendation and registration.

The bill also requires the commission to establish procedures for physicians, physician assistants, and certified advanced practice nurse prescribers to apply for certification and to be certified to recommend the use of medical marijuana to qualifying patients. All such persons certified by the commission must keep complete and accurate records of the recommendations made and for whom the recommendations are made and provide that information to the commission at the commission's request.

The bill provides civil, criminal, and professional disciplinary immunity for physicians, physician assistants, and certified advanced practice nurse prescribers who recommend medical marijuana for patients in accordance with the requirements and limitations specified in the bill. However, the bill allows the Medical Examining Board and the Board of Nursing to issue non-mandatory guidelines regarding best practices in making recommendations for the use of medical marijuana.

Licensed producers, processors, transporters, dispensaries, and laboratories

The bill requires any person operating as a medical marijuana producer, processor, transporter, dispensary, or laboratory to obtain a license from the commission. An applicant may not obtain a license if the applicant, or any principal officer or board member, has been convicted of a controlled substance offense. The applicant, and each principal officer or board member, must be at least 21 years old, and may not have been a principal officer or board member of a producer, processor, transporter, dispensary, or laboratory that has had its license revoked and not reinstated. In addition, the applicant or at least one principal officer or board member must be a resident of this state. The applicant must also show that it will have sufficient security measures and record-keeping procedures in place. A producer, processor, or dispensary may not have any financial interest in a laboratory, and a laboratory may not have any financial interest in a producer, processor, or dispensary. A license issued by the commission expires after one year.

Under the bill, a licensee may not operate within 300 feet of a school or child care center. Every employee of a licensee must be at least 21 years old and may not have been convicted of a controlled substance offense. In addition, dispensary employees must complete certain training, as required by the commission by rule.

The bill requires licensed producers, licensed processors, and licensed laboratories to operate within an enclosed, locked facility. A licensed producer is prohibited from growing medical marijuana for personal, family, or household use and may distribute its medical marijuana only to a licensed processor. A licensed processor must send samples of the medical marijuana that it processes to a licensed laboratory to test and certify the tetrahydrocannabinol (THC) concentration of the processor's products and test for the presence of certain contaminants; must package its products in child-resistant packaging; and must label each package with how many ounces of medical marijuana it contains and the THC concentration of the product. A licensed processor may distribute its products only to a licensed dispensary. A licensed dispensary must label the medical marijuana that it dispenses with certain information, including the name of the dispensary and the name of the patient, and may dispense medical marijuana only to a person who presents a valid registry identification card and only in accordance with the patient's recommendation. All marijuana and medical marijuana that is transported by way of a public road may only be transported by a licensed transporter.

The bill also authorizes the commission to inspect, without prior notice, the premises and records of a licensee or an applicant. The commission may also establish rules for suspending, revoking, or refusing to issue or renew a license. The bill authorizes the commission to promulgate any other rules necessary to administer and implement the medical marijuana program as it relates to producers, processors, transporters, dispensaries, and laboratories.

Medical marijuana tax

The bill imposes an excise tax on a licensed processor at the rate of 10 percent of the sales price on each wholesale sale in this state of marijuana to a licensed dispensary. All proceeds from the tax, and all fees and penalties collected by the commission, are deposited into a segregated fund, identified in the bill as the medical marijuana fund.

Criminal provisions

The bill decriminalizes the manufacture, possession, distribution, and delivery of medical marijuana if that manufacture, possession, distribution, or delivery is done in compliance with the medical marijuana program established by the commission.

Under current law, with certain exceptions, it is illegal to manufacture, possess, distribute, or deliver THC, including THC in marijuana, which is classified as a schedule I controlled substance. The bill authorizes the possession, distribution, or delivery of medical marijuana by a qualifying patient or his or her primary caregivers if 1) the possession, distribution, or delivery of marijuana is done to facilitate a qualifying patient's medical use of the marijuana in accordance with his or her recommendation; 2) the marijuana is legally obtained from a person who is authorized to distribute or deliver medical marijuana under the laws of this state; 3) the amount of usable marijuana does not exceed 15 grams of cannabis concentrate per qualifying patient; and 4) the qualifying patient or primary caregiver has in his or her immediate possession a registry identification card.

The bill authorizes the manufacture, possession, distribution, or delivery of medical marijuana by an entity that is licensed by the commission or an employee or agent of such a licensed entity if the manufacture, possession, distribution, or delivery is done in the usual course of business or employment.

Under the bill, if a person manufactures, possesses, distributes, delivers, or uses medical marijuana in a way that is not in compliance with the requirements of the medical marijuana program, he or she can be referred by the Medical Marijuana Regulatory Commission for criminal prosecution under the controlled substances act or a local law that prohibits the possession, manufacture, distribution, or delivery of marijuana.

Prescription drug monitoring program

Current law requires the Controlled Substances Board to establish a Prescription Drug Monitoring Program (PDMP) that requires pharmacies and health care practitioners to generate records documenting the dispensing of monitored prescription drugs. Records from the PDMP may be disclosed to persons specified under current law or by the board by rule.

This bill also requires records to be generated for the PDMP documenting recommendations for medical marijuana and the issuance of registry identification cards for medical marijuana.

Fair employment law

Under the current fair employment law, an employer may not refuse to hire or employ, bar or terminate from employment, or discriminate against any individual in promotion or compensation or in terms, conditions, or privileges of employment because the individual has a disability. Such discrimination against an individual with a disability includes refusing to reasonably accommodate an employee's or prospective employee's disability unless the employer can demonstrate that the accommodation would pose a hardship on the employer's program, enterprise, or business. Also under the fair employment law, an employer may not refuse to hire or employ, bar or terminate from employment, or discriminate against any individual in promotion or compensation or in terms, conditions, or privileges of employment because of the individual's use or nonuse of lawful products off the employer's premises during nonworking hours.

DWD enforces the fair employment law and may receive and investigate complaints charging discrimination or discriminatory practices and may, if an employer is found to have engaged in discrimination, order such action by the respondent as will effectuate the purpose of the fair employment law, including awarding back pay. Decisions of DWD hearing examiners made under the fair employment law are subject to further review by the Labor and Industry Review Commission and a court.

The bill provides that the fair employment law does not apply to any act of an employer based on an individual's use of medical marijuana.

Unemployment insurance; worker's compensation

Currently, an individual whose work is terminated by an employer for misconduct by the employee connected with the employee's work is ineligible to receive unemployment insurance benefits until the individual satisfies certain conditions. In addition, the wages paid to the individual by that employer are excluded from the employee's base period wages for purposes of calculating the individual's entitlement to UI benefits. "Misconduct," for purposes of these provisions, is defined specifically as including a violation by an employee of an employer's reasonable written policy concerning the use of a controlled substance if the employee 1) had knowledge of the policy; and 2) admitted to the use of a controlled substance or refused to take a test or tested positive for the use of a controlled substance in a test used by the employer in accordance with a testing methodology approved by DWD.

Also under current law, an employer is not liable for temporary disability benefits under the worker's compensation law during an employee's healing period if the employee is suspended or terminated for misconduct as defined above.

The bill retains these provisions regarding misconduct and further provides that such a reasonable written policy may include a drug-free workplace policy.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report.

For further information see the state and local fiscal estimate, which will be printed as an appendix to this bill.