State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-SECOND SESSION

H. F. No. 3162

02/07/2022 Authored by Freiberg
The bill was read for the first time and referred to the Committee on Health Finance and Policy

A bill for an act

relating to health; providing for the operation of Tribal medical cannabis programs; establishing dual registration of Tribal patients; providing for transportation of medical cannabis by manufacturers registered with Tribal medical cannabis programs; authorizing Tribal compacts regarding medical cannabis; requiring a report; amending Minnesota Statutes 2020, sections 152.22, subdivisions 3, 7, 9, 10, 13, by adding subdivisions; 152.27, by adding a subdivision; 152.29, subdivisions 2, 4; 152.30; 152.32, subdivision 2; Minnesota Statutes 2021 Supplement, sections 152.22, subdivision 11; 152.29, subdivisions 1, 3; 152.31; proposing coding for new law in Minnesota Statutes, chapter 152.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2020, section 152.22, subdivision 3, is amended to read:

Subd. 3. **Disqualifying felony offense.** "Disqualifying felony offense" means a violation of a state or federal controlled substance law that is a felony under Minnesota law, or would be a felony if committed in Minnesota, regardless of the sentence imposed, unless the commissioner or a Tribal medical cannabis board determines that the person's conviction was for the medical use of cannabis or assisting with the medical use of cannabis.

Sec. 2. Minnesota Statutes 2020, section 152.22, is amended by adding a subdivision to read:

Subd. 5d. **Indian lands.** "Indian lands" means all lands within the limits of any Indian reservation and any lands title which are either held in trust by the United States or over which an Indian Tribe exercises governmental power.

Sec. 3. Minnesota Statutes 2020, section 152.22, subdivision 7, is amended to read:

Subd. 7. **Medical cannabis manufacturer.** "Medical cannabis manufacturer" or "manufacturer" means an entity registered by the commissioner or authorized by Tribal compact to cultivate, acquire, manufacture, possess, prepare, transfer, transport, supply, or dispense medical cannabis, delivery devices, or related supplies and educational materials.

Sec. 4. Minnesota Statutes 2020, section 152.22, subdivision 9, is amended to read:

Subd. 9. **Patient.** "Patient" means a Minnesota resident or Tribal member who has been diagnosed with a qualifying medical condition by a health care practitioner and who has otherwise met any other requirements for patients under sections 152.22 to 152.37 to participate in the registry program under sections 152.22 to 152.37.

Sec. 5. Minnesota Statutes 2020, section 152.22, subdivision 10, is amended to read:

Subd. 10. **Patient registry number.** "Patient registry number" means a unique identification number assigned by the commissioner to a patient enrolled in the state registry program or assigned by a Tribal medical cannabis board to a patient enrolled in a Tribal medical cannabis program.

Sec. 6. Minnesota Statutes 2021 Supplement, section 152.22, subdivision 11, is amended to read:

Subd. 11. **Registered designated caregiver.** "Registered designated caregiver" means a person who:

(1) is at least 18 years old;

(2) does not have a conviction for a disqualifying felony offense;

(3) has been approved by the commissioner to assist a patient who requires assistance in administering medical cannabis or obtaining medical cannabis from a distribution facility; and

(4) is authorized by the commissioner or a Tribal medical cannabis board to assist the patient with the use of medical cannabis.

Sec. 7. Minnesota Statutes 2020, section 152.22, subdivision 13, is amended to read:

Subd. 13. **Registry verification.** "Registry verification" means the verification provided by the commissioner that a patient is enrolled in the state registry program or the verification provided by a Tribal medical cannabis board that a patient is enrolled in a Tribal medical

cannabis program and that includes the patient's name, registry number, and, if applicable, the name of the patient's registered designated caregiver or parent, legal guardian, or spouse.

Sec. 8. Minnesota Statutes 2020, section 152.22, is amended by adding a subdivision to read:

Subd. 15. **Tribal medical cannabis board.** "Tribal medical cannabis board" means an agency established by a federally recognized Tribal government and duly authorized by the Tribe's governing body to perform regulatory oversight and monitor compliance with a Tribal medical cannabis program and applicable regulations.

Sec. 9. Minnesota Statutes 2020, section 152.22, is amended by adding a subdivision to read:

Subd. 16. **Tribal medical cannabis program.** "Tribal medical cannabis program" means a program established by a federally recognized Tribal government and recognized by a compact entered into under section 152.40 regarding the commercial production, processing, sale or distribution, and possession of medical cannabis and medical cannabis products.

Sec. 10. Minnesota Statutes 2020, section 152.27, is amended by adding a subdivision to read:

Subd. 6a. **Dual enrollment.** Upon receiving notice from a Tribal medical cannabis board under section 152.30, paragraph (b), of a Tribal patient's enrollment in a Tribal medical cannabis program, the commissioner shall enroll the Tribal patient in the state registry program.

Sec. 11. Minnesota Statutes 2021 Supplement, section 152.29, subdivision 1, is amended to read:

Subdivision 1. **Manufacturer; requirements.** (a) A manufacturer may operate 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. The commissioner shall designate the geographical service areas to be served by each manufacturer registered with the state registry program based on geographical need throughout the state to improve patient access. A Tribal medical cannabis board shall designate the geographical service areas to be served by each manufacturer registered with a Tribal medical cannabis program. A manufacturer shall not have more than two distribution facilities in each geographical service area assigned to the manufacturer by the commissioner

or Tribal medical cannabis board. A manufacturer shall operate only one location where all cultivation, harvesting, manufacturing, packaging, and processing of medical cannabis shall be conducted. 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 the other distribution facility 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 manufacturer may acquire hemp grown in this state from a hemp grower, and may acquire hemp products produced by a hemp processor. A manufacturer may manufacture or process hemp and hemp products into an allowable form of medical cannabis under section 152.22, subdivision 6. Hemp and hemp products acquired by a manufacturer under this paragraph are subject to the same quality control program, security and testing requirements, and other requirements that apply to medical cannabis under sections 152.22 to 152.37 and Minnesota Rules, chapter 4770.

(c) For manufacturers registered with the state program, 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 or hemp or hemp products acquired 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.

(d) For manufacturers registered with a Tribal medical cannabis program, a manufacturer shall contract with a laboratory approved by a Tribal medical cannabis board, subject to any additional requirements set by the Tribal medical cannabis board, for the purposes specified in paragraph (c). The cost of laboratory testing shall be paid by the manufacturer.

~~(d)~~ (e) The operating documents of a manufacturer must include:

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

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

(3) procedures for the delivery and transportation of hemp between hemp growers and manufacturers and for the delivery and transportation of hemp products between hemp processors and manufacturers.

~~(e)~~ (f) A manufacturer shall implement security requirements, including requirements for the delivery and transportation of hemp and hemp products, protection of each location by a fully operational security alarm system, facility access controls, perimeter intrusion detection systems, and a personnel identification system.

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

~~(g)~~ (h) A manufacturer shall not permit any person to consume medical cannabis on the property of the manufacturer.

~~(h)~~ (i) A manufacturer is subject to reasonable inspection by the commissioner.

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

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

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

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

~~(m)~~ (n) Before a manufacturer acquires hemp from a hemp grower or hemp products from a hemp processor, the manufacturer must verify that the hemp grower or hemp processor has a valid license issued by the commissioner of agriculture under chapter 18K.

~~(n)~~ (o) Until a state-centralized, seed-to-sale system is implemented that can track a specific medical cannabis plant from cultivation through testing and point of sale, the commissioner shall conduct at least one unannounced inspection per year of each manufacturer that includes inspection of:

(1) business operations;

(2) physical locations of the manufacturer's manufacturing facility and distribution facilities;

(3) financial information and inventory documentation, including laboratory testing results; and

(4) physical and electronic security alarm systems.

Sec. 12. Minnesota Statutes 2020, section 152.29, subdivision 2, is amended to read:

Subd. 2. **Manufacturer; production.** (a) A manufacturer of medical cannabis shall provide a reliable and ongoing supply of all medical cannabis needed for the registry program through cultivation by the manufacturer and through the purchase of hemp from hemp growers.

(b) All cultivation, harvesting, manufacturing, packaging, and processing of medical cannabis must take place in an enclosed, locked facility at a physical address provided to the commissioner or a Tribal medical cannabis board during the registration process.

(c) A manufacturer must process and prepare any medical cannabis plant material or hemp plant material into a form allowable under section 152.22, subdivision 6, prior to distribution of any medical cannabis.

Sec. 13. Minnesota Statutes 2021 Supplement, section 152.29, subdivision 3, is amended to read:

Subd. 3. **Manufacturer; distribution.** (a) A manufacturer shall require that employees licensed as pharmacists pursuant to chapter 151 be the only employees to give final approval for the distribution of medical cannabis to a patient. A manufacturer may transport medical cannabis or medical cannabis products that have been cultivated, harvested, manufactured,

packaged, and processed by that manufacturer to another registered manufacturer for the other manufacturer to distribute.

(b) A manufacturer may distribute medical cannabis products, whether or not the products have been manufactured by that manufacturer.

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

(1) verify that the manufacturer has received the registry verification from the commissioner or a Tribal medical cannabis board for that individual patient;

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

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

(4) ensure that any employee of the manufacturer licensed as a pharmacist pursuant to chapter 151 has consulted with the patient to determine the proper dosage for the individual patient after reviewing the ranges of chemical compositions of the medical cannabis and the ranges of proper dosages reported by the commissioner. For purposes of this clause, a consultation may be conducted remotely by secure videoconference, telephone, or other remote means, so long as the employee providing the consultation is able to confirm the identity of the patient and the consultation adheres to patient privacy requirements that apply to health care services delivered through telehealth. A pharmacist consultation under this clause is not required when a manufacturer is distributing medical cannabis to a patient according to a patient-specific dosage plan established with that manufacturer and is not modifying the dosage or product being distributed under that plan and the medical cannabis is distributed by a pharmacy technician;

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

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

(ii) the name and date of birth of the patient's registered designated caregiver or, if listed 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 90-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.

(e) A manufacturer shall distribute medical cannabis in dried raw cannabis form only to a patient age 21 or older, or to the registered designated caregiver, parent, legal guardian, or spouse of a patient age 21 or older.

Sec. 14. Minnesota Statutes 2020, section 152.29, subdivision 4, is amended to read:

Subd. 4. **Report.** Each manufacturer registered with the state program shall report to the commissioner on a monthly basis the following information on each individual patient for the month prior to the report:

(1) the amount and dosages of medical cannabis distributed;

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

(3) the tracking number assigned to any medical cannabis distributed.

Sec. 15. **[152.291] TRIBAL MEDICAL CANNABIS PROGRAM; MANUFACTURER TRANSPORTATION OF MEDICAL CANNABIS.**

(a) A manufacturer registered with a Tribal medical cannabis program may transport medical cannabis to testing laboratories in the state and to other Indian lands.

(b) A manufacturer registered with a Tribal medical cannabis program must staff a motor vehicle used to transport medical cannabis with at least two employees of the manufacturer. Each employee in the transport vehicle must carry identification specifying that the employee is an employee of the manufacturer and one employee in the transport vehicle must carry a detailed transportation manifest that includes the place and time of departure, the address of the destination, and a description and count of the medical cannabis being transported.

Sec. 16. Minnesota Statutes 2020, section 152.30, is amended to read:

152.30 PATIENT DUTIES.

(a) A patient shall apply to the commissioner for enrollment in the state registry program by submitting an application as required in section 152.27 and an annual registration fee as determined under section 152.35.

(b) A patient of a Tribal Nation shall apply to a Tribal medical cannabis board for enrollment in the Tribal medical cannabis program. Upon enrollment, the Tribal medical cannabis board shall notify the commissioner of the Tribal patient's enrollment. When the commissioner receives this notice and enrolls the patient in the state registry program, the Tribal patient shall be dually enrolled in the Tribal medical cannabis program and the state registry program.

~~(b)~~ (c) As a condition of continued enrollment, patients shall agree to:

(1) continue to receive regularly scheduled treatment for their qualifying medical condition from their health care practitioner; and

(2) report changes in their qualifying medical condition to their health care practitioner.

~~(c)~~ (d) A patient shall only receive medical cannabis from a registered manufacturer but is not required to receive medical cannabis products from only a registered manufacturer.

Sec. 17. Minnesota Statutes 2021 Supplement, section 152.31, is amended to read:

152.31 DATA PRACTICES.

(a) Government data or Tribal medical cannabis board data in patient files maintained by the commissioner and the health care practitioner, and data submitted to or by a medical cannabis manufacturer, are private data on individuals, as defined in section 13.02, subdivision 12, or nonpublic data, as defined in section 13.02, subdivision 9, but may be used for purposes of complying with chapter 13 and complying with a request from the legislative auditor or the state auditor in the performance of official duties. The provisions of section 13.05, subdivision 11, apply to a registration agreement entered between the commissioner and a medical cannabis manufacturer under section 152.25 or to a registration agreement entered between a Tribal medical cannabis board and a medical cannabis manufacturer.

(b) Not public data maintained by the commissioner or by a Tribal medical cannabis board may not be used for any purpose not provided for in sections 152.22 to 152.37, and may not be combined or linked in any manner with any other list, dataset, or database.

(c) The commissioner may execute data sharing arrangements with the commissioner of agriculture to verify licensing, inspection, and compliance information related to hemp growers and hemp processors under chapter 18K.

Sec. 18. Minnesota Statutes 2020, section 152.32, subdivision 2, is amended to read:

Subd. 2. **Criminal and civil protections.** (a) Subject to section 152.23, the following are not violations under this chapter:

(1) use or possession of medical cannabis or medical cannabis products by a patient enrolled in the registry program, or possession by a registered designated caregiver or the parent, legal guardian, or spouse of a patient if the parent, legal guardian, or spouse is listed on the registry verification;

(2) possession, dosage determination, or sale of medical cannabis or medical cannabis products by a medical cannabis manufacturer, employees of a manufacturer, a laboratory conducting testing on medical cannabis, or employees of the laboratory; and

(3) possession of medical cannabis or medical cannabis products by any person while carrying out the duties required under sections 152.22 to 152.37.

(b) Medical cannabis obtained and distributed pursuant to sections 152.22 to 152.37 and associated property is not subject to forfeiture under sections 609.531 to 609.5316.

(c) The commissioner~~,~~; members of a Tribal medical cannabis board; the ~~commissioner's~~ staff, ~~the commissioner's~~ agents, or contractors~~,~~ of the commissioner or a Tribal medical cannabis board; and any health care practitioner are not subject to any civil or disciplinary penalties by the Board of Medical Practice, the Board of Nursing, or by any business, occupational, or professional licensing board or entity, solely for the participation in the registry program under sections 152.22 to 152.37. A pharmacist licensed under chapter 151 is not subject to any civil or disciplinary penalties by the Board of Pharmacy when acting in accordance with the provisions of sections 152.22 to 152.37. Nothing in this section affects a professional licensing board from taking action in response to violations of any other section of law.

(d) Notwithstanding any law to the contrary, the commissioner, the governor of Minnesota, members of the Tribal medical cannabis board, or an employee of any state agency may not be held civilly or criminally liable for any injury, loss of property, personal injury, or death caused by any act or omission while acting within the scope of office or employment under sections 152.22 to 152.37.

(e) Federal, state, and local law enforcement authorities are prohibited from accessing the patient registry under sections 152.22 to 152.37 except when acting pursuant to a valid search warrant.

(f) Notwithstanding any law to the contrary, neither the commissioner nor a public employee may release data or information about an individual contained in any report, document, or registry created under sections 152.22 to 152.37 or any information obtained about a patient participating in the program, except as provided in sections 152.22 to 152.37.

(g) No information contained in a report, document, or registry or obtained from a patient under sections 152.22 to 152.37 may be admitted as evidence in a criminal proceeding unless independently obtained or in connection with a proceeding involving a violation of sections 152.22 to 152.37.

(h) Notwithstanding section 13.09, any person who violates paragraph (e) or (f) is guilty of a gross misdemeanor.

(i) An attorney may not be subject to disciplinary action by the Minnesota Supreme Court, a Tribal court, or professional responsibility board for providing legal assistance to prospective or registered manufacturers or others related to activity that is no longer subject to criminal penalties under state law pursuant to sections 152.22 to 152.37.

(j) Possession of a registry verification or application for enrollment in the program by a person entitled to possess or apply for enrollment in the registry program does not constitute probable cause or reasonable suspicion, nor shall it be used to support a search of the person or property of the person possessing or applying for the registry verification, or otherwise subject the person or property of the person to inspection by any governmental agency.

Sec. 19. **[152.40] MEDICAL CANNABIS; COMPACTS TO BE NEGOTIATED WITH EACH TRIBAL NATION.**

Subdivision 1. **Definitions.** (a) As used in this section, the following terms have the meanings given.

(b) "Indian Tribe" means a Tribe, band, nation, or other federally recognized group or community of Indians located within the geographical boundaries of the state of Minnesota.

(c) "Medical cannabis" has the meaning given in section 152.22, subdivision 6.

(d) "Medical cannabis product" means any delivery device or related supplies and educational materials used in the administration of medical cannabis.

Subd. 2. **Negotiations authorized.** Following a public hearing, the governor or the governor's designated representatives are authorized to negotiate in good faith a compact with an Indian Tribe regulating medical cannabis and medical cannabis products. The attorney general is the legal counsel for the governor or the governor's representatives in regard to negotiating a compact under this section. If the governor designates representatives to negotiate under this subdivision, the designated representatives must include at least two members of the senate and at least two members of the house of representatives, two of whom must be the chairs of the senate and house of representatives standing committees with jurisdiction over health policy.

Subd. 3. **Terms of compact; rights of parties.** (a) A compact agreed to under this section may address any issues related to medical cannabis and medical cannabis products that affect the interests of both the state and Indian Tribe or that otherwise have an impact on Tribal-state relations. At a minimum, a compact agreed to under this section must address:

(1) enforcement of criminal and civil laws;

(2) regulation of the commercial production, processing, sale or distribution, and possession of medical cannabis and medical cannabis products;

(3) medical and pharmaceutical research involving medical cannabis and medical cannabis products;

(4) taxation of medical cannabis and medical cannabis products, including establishing an appropriate amount and method of revenue sharing;

(5) immunities of an Indian Tribe or preemption of state law regarding the production, processing, or sale or distribution of medical cannabis and medical cannabis products; and

(6) the method for resolution of disputes involving the compact, including the use of mediation or other alternative dispute resolution processes and procedures.

(b) In addressing the issues identified under paragraph (a), the governor or the governor's designated representatives shall only enter into agreements that:

(1) provide for the preservation of public health and safety;

(2) ensure the security of production, processing, retail, and research facilities on Tribal land; and

(3) establish provisions regulating business involving medical cannabis and medical cannabis products that pass between Tribal land and non-Tribal land in the state.

Subd. 4. **Taxes and fees.** Notwithstanding any law to the contrary, any compact agreed to under this section shall establish all taxes, fees, assessments, and other charges related to the production, processing, sale or distribution, and possession of medical cannabis and medical cannabis products.

Subd. 5. **Civil and criminal immunities.** The following acts, when performed by a validly licensed medical cannabis retailer operated by an Indian Tribe or an employee of a medical cannabis retailer operated by an Indian Tribe according to a compact agreed to under this section do not constitute a criminal or civil offense under state law:

(1) possession, purchase, and receipt of medical cannabis and medical cannabis products that are properly packaged and labeled as authorized under a compact agreed to under to this section; and

(2) delivery, distribution, and sale of medical cannabis and medical cannabis products as authorized under a compact agreed to under this section and that take place on the premises of a medical cannabis retailer on Tribal land.

Subd. 6. **Publication on website; report.** (a) The governor shall post any compact agreed to under this section on a publicly accessible website.

(b) The governor, the attorney general, and the governor's designated representatives shall report annually to the legislative committees with jurisdiction over health, taxation, and commerce. The annual report shall contain information on compacts negotiated under this section and an outline of prospective negotiations.