

ONE HUNDRED SEVENTH LEGISLATURE - FIRST SESSION - 2021
COMMITTEE STATEMENT
LB474

Hearing Date: Wednesday March 10, 2021
Committee On: Judiciary
Introducer: Wishart
One Liner: Adopt the Medicinal Cannabis Act

Roll Call Vote - Final Committee Action:

Advanced to General File with amendment(s)

Vote Results:

Aye:	5	Senators DeBoer, Lathrop, McKinney, Morfeld, Pansing Brooks
Nay:	2	Senators Geist, Slama
Absent:		
Present Not Voting:	1	Senator Brandt

Oral Testimony:

Proponents:

Senator Anna Wishart
Grant Wistrom
Nicole Hochstein
Jason Harper
Amanda McKinney
Teri Mikkelsen
Crista Eggers

Representing:

Introducer
Self
Self
Self
Self
Self
Self

Opponents:

Gary Anthone
John Massey
Mark Patefield
John Bolduc
John Kuehn

Representing:

Department of Health & Human Services
Nebraska Medical Association
Self
Nebraska State Patrol
SAM Nebraska

Neutral:

Bill Hawkins

Representing:

Nebraska Hemp Company

Submitted Written Testimony:

Proponents:

Marcia Mueting
Patricia Petersen
Lia McDowell Post
Joshua Stortz
Kristi Berst

Representing:

Nebraska Pharmacists Association
Nebraska Families for Medical Cannabis
Self
Self
Epilepsy Foundation Nebraska

Ann Myers
Spike Eickholt
David Swarts
Barry Rubin

Self
ACLU of Nebraska
Nebraska Families for Medical Cannabis
Heartland Relief LLC

Opponents:

Linda Wittmuss

Mary Hilton
David Bydalek
Lorelle Mueting
Maggie Ballard
Ronald Lawson
Corben Waldron
Terry Wagner

Monica Oldenburg

Representing:

Dept. of Health & Human Services Division of Behavioral Health

Self

Attorney General's Office

Heartland Family Service

Heartland Family Service

Self

Smart Approaches to Marijuana Nebraska

Lancaster County Sheriff's Office & Nebraska Sheriffs Association

Self

Neutral:

Kristen Hassebrook

Patrick Habecker

Representing:

Nebraska Chamber of Commerce

Self

Summary of purpose and/or changes:

LB 474 is titled as the Medicinal Cannabis Act. The bill establishes Medicinal Cannabis Board consisting of seven appointed members, geographically disbursed, and two ex officio members. The Board oversees the Marijuana Enforcement Division and hires a director of the division. The Division has rule and regulation authority and maintains the various registries established in the Act.

The Act defines patients, health practitioners, and caregivers as well as qualifying medical conditions. It also defines producers, processors, and dispensaries.

The Division establishes and maintains registries for the various participants in the process and in the case of producers, processors and dispensaries approves up to ten each in each congressional district. The bill allows for local jurisdictions to pass resolutions or ordinances to prohibit or restrict locations. The bill establishes application fees for producers, processors and dispensaries as well as additional annual fees. Such fees are deposited in the created Medical Cannabis Regulation Fund.

LB 474 provides qualifications for employees in the production, processing and dispensary areas as well as ensuring adequate security measures. The Division establishes rules and regulations by September 1, 2022, with applications approved by November 1, 2022 and service to patients by May 1, 2023.

Section by section

Section 1 Title Medicinal Cannabis Act

Section 2 Definitions Sections 3 to 27

Section 3 Allowable amount 2 1/2 or less cannabis, cannabis product less than 2000 mg, exception for medical necessity

Section 4 Bona fide practitioner-patient relationship Consulting relationship, medical history assessment, exam, qualifying medical condition

Section 5 Cannabis Any species, including extracts and resins, excludes FDA approved prescription drugs. Does not include Cannabis sativa L in certain circumstances.

Section 6 Cannabis accessory Delivery device, supplies, educational materials. Excludes bong, pipes, other paraphernalia used to smoke cannabis.

Section 7 Cannabis product Product that is infused with cannabis, extracts, and resins intended for human consumption. Includes edibles, beverages, topicals, ointments and oils.

Section 8 Certified patient Resident who has been issued a certification within past 90 days, has signed disclosure form or has enrolled in registry program. If patient younger than 18, consent affidavit signed by parent or guardian.

Section 9 Department Cannabis Enforcement Department

Section 10 Designated caregiver Person at least 21 years old designated by patient to assist patient. Requires affidavit. Also parent or guardian and health care facility.

Section 11 Dispensary Registered by department to possess and dispense cannabis.

Section 12 Felony offense Violation of Nebraska, federal, or other state law. Does not include offense for conduct under Medical Cannabis Act occurring prior to the Act or prosecuted by authority other than the state.

Section 13 Health Care practitioner MD's, DO's, PA's, APRN's

Section 14 Laboratory Registered by Department to test cannabis

Section 15 Medicinal use Includes acquiring, delivering, possession, preparation, or use of cannabis to alleviate qualifying medical condition. Does not include cultivation unless by producer and resin extraction unless by a processor.

Section 16 Nonresident caregiver Parent, guardian, or other person authorized to consent to medical treatment for patient with qualifying condition. Not a Nebraska resident or resident for less than 45 days. Holds a valid registry or equivalent from another state.

Section 17 Nonresident patient Diagnosed with qualifying condition, not a Nebraska resident or a resident for less than 45 days. Holds a valid registry or equivalent from another state.

Section 18 Participating health care provider Health practitioner treating a certified patient, complies with section 37.

Section 19 Patient registry number Patient's unique identification number assigned by the department.

Section 20 Process Processing harvested cannabis into products or concentrates.

Section 21 Processor Person registered with department to process cannabis in the state.

Section 22 Produce Plant, grow and harvest cannabis. Does not include: drying by a processor, cultivation of immature plants by processor if received from a producer.

Section 23 Producer Person registered with the department to produce cannabis.

Section 24 Qualifying medical condition Diagnosis of Cancer, epilepsy, glaucoma, Parkinson's, terminal illnesses, PTSD, and others.

Section 25 Registry program Voluntary program for patient registry under the Act.

Section 26 Registry verification Process by department to verify that patient is enrolled.

Section 27 Written certification Document with information included in sections 37 and 39 indicating patient diagnosed with qualifying condition.

Section 28 Nothing in Act allows or prevents penalties for: negligence or malpractice due to use, possession or use on a school bus, on school grounds, in a correctional facility, on child care facility grounds. Act also does not permit vaporization on public transportation, where could be inhaled by a child, public locations or places of employment. Act also doesn't permit operating motor vehicles etc under the influence of cannabis. Prohibits use in motor vehicle and open container in vehicle.

The Act does not require employers to accommodate possession, consumption, distribution or sale of cannabis. Also allows employers to restrict use by employees and does not require employer to accommodate medicinal use. Does not require medical assistance or employers to reimburse costs associated with medicinal use.

The Act does not prohibit employers from prohibiting use or permit a cause of action for wrongful discharge. Also does not prohibit regulating or prohibiting possession, consumption or sale on property or employers from establishing drug free or zero tolerance policies. Employee discharged for ingestion, working under the influence or testing positive are disqualified from unemployment benefits.

Section 29 Schools, health facilities, child or foster care facilities can but not required to adopt reasonable restrictions on use including: not responsible for providing cannabis, not inhaled, consumed only in designated place. These facilities cannot unreasonably restrict patient use unless could lose funding or licensing under federal law.

Section 30 Nothing in the Act allows or requires Medicaid or private insurers to reimburse for medical use.

Section 31 Department establishes voluntary registry that contains patient's name, address, telephone, practitioner, and caregiver if applicable. Department assigns registry number to patient. Patient applies to department for inclusion on registry, application and related information is confidential.

Section 32 Patient or caregiver not subject to civil or criminal penalty or discipline for medical use if possesses allowable amount, has written certification and caregiver affidavit. Same provisions for non residents. Creates a rebuttable presumption of medical use if allowable amount and proper documentation. If patient or caregiver doesn't have documentation and is charged, charges are dismissed upon production of documentation.

Section 33 Person not subject to civil or criminal penalty or discipline for providing or selling accessories to patients, caregivers, producers, processors, dispensaries or labs. Also for being in the presence of or allowing medicinal use on their property.

Section 34 Department develops application for patient registry. Application includes name, address, DOB of patient, name address, and telephone of health provider, name address and DOB of caregiver, other affidavits and consent forms and written certification. Renewal is on annual basis with recent certification.

Department develops and requires signing of disclosure form that includes department and employees are not liable for acting within scope of duties. Form also indicates enrollment is conditional on complying with the Act, and includes informed consent statement. Form has statement that insurance not obligated to pay for cannabis treatments and patient is responsible for all costs.

Section 35 Department enrolls or notifies patient in writing of denial within 30 days. Can be denied for no written certification, no disclosure and consent forms, lack of required information, been previously removed from registry or provides false information. Denial can be appealed under APA. Registry revoked only for violation or death. Department develops registry verification which may be in form of identification card.

Section 36 Department registers designated caregivers with signed statement agreeing to serve . If a facility is signed by CEO or COO. Must meet qualifications and agrees to possess only for assisting patient and assist only one patient. Facility must agree that persons assisting are at least 21, and agree that cannabis a t the location is for Act.

Department adopts rules and regs on facilities including limiting number who transport and administer and filing names and DOB with Department.

Section 37 Health care practitioner makes determination of qualifying medical condition. Section does not require practitioner to participate in Act or make recommendations, or restrictions on dosage or form of cannabis. Practitioner shall complete continuing education course prior to 11th certification. Practitioner recommending a significantly larger number must comply with continuing ed required by Medical Cannabis Board. During 3 months after Board approves a continuing ed course, practitioner may instead take 3 hour course in another state. Certification limits of 1100 per year or 275 in 90 days.

Written certification is dated and signed by practitioner and state that patient has qualifying condition, is bona fide relationship, the practitioner conducted an evaluation. The evaluation includes: assessment for substance abuse and patient or family history indicates psychotic disorder unless patient terminally ill. Physical exam and discussion of risks related to pregnancy. Practioner may not provide certification to a person who is pregnant. Written certification is on form departments develops and made available on website.

Practitioners may not solicit or accept remuneration from dispensaries or offer discounts for using a particular dispensary, examine a patient at a location where cannabis, products, or accessories are sold.

If reasonable cause to believe a practitioner has violated Act, department or Board may have HHS investigate. If violation found, department can re3strict practitioner's authority to be a participating health care practitioner or other sanctions by DHHS.

Practitioner not subject to criminal, civil, or disciplinary actions solely for providing certifications or stating that patient may benefit from medical use. Can be sanctioned for issuing certification when no bona fide relationship, properly evaluating a patient or other violations.

Section 38 Pharmacist not subject to criminal, civil or disciplinary actions solely for providing advice on cannabis. Can be sanctioned for violating the Act or negligently providing advice contrary to continuing education information.

Section 39 Department creates certification form and provides to practitioners. Develops necessity waiver. Provides for 3 levels of producers with fees and security varied. Develops security and record keeping for dispensaries. Establishes requirements for financial hardship waiver and may limit amounts under waiver. Patient may be required to designate dispensary.

Section 40 Department registers up to 10 producers per Congressional District. Annual registration renewal on November 1 for producers and processors. Producer agrees to begin supply by 5/1/22 unless extended. Department registers unlimited number of processors. Person applying as producer or processor must be 2 year resident, and 60% of those owning interest must be residents. Processors and producers delivering to dispensaries must contract with lab approved by department.

Section 41 Growing, harvesting, processing and packaging must occur at physical address in application for producers and processors. Processors and producers who provide to dispensaries must contract with approved lab.

Section 42 Processors assign tracking number to processed cannabis. Employees transporting must carry identification.

Section 43 Department registers up to 10 dispensaries per Congressional District with application/renewal annually on November 1. Dispensaries agree to provide cannabis by 5/1/23 and provide 10% or more discount for financial hardship waiver. Person applying as dispensary must be 2 year resident, and 60% of those owning interest must be residents. Dispensary must contract with pharmacist with at least 15 hours of continuing education to advise employees and patients. Pharmacist continuing Education includes drug interaction, dosages and counter indications. Dispensary employees must complete 4 hour education course.

Section 44 Department registers all qualifying labs for testing by 1/1/23. Annual renewal on November 1. Cannot register if own interest in producer, processor or dispensary. Person applying as lab must be 2 year resident, and 60% of those owning interest must be residents. Lab determines concentration, presence of mold or fungus and chemicals and reports to producer, processor or dispensary.

Section 45 Department develops dispensary rules and regs by 11/1/22. Department notifies public by 9/1/22 if unable to register producers and processors. If producers unable to supply by 5/1/23, Department notifies public and may grant one 6 month extension. If unable to register labs by 1/1/23, notifies the public and may extend deadline once by six months

Section 46 Dispensaries verify that person requesting is certified patient, packages material in child resistant packaging and labels containing patient's name, registry number, active ingredients and chemical composition, date, recommended dosage, and name and address of dispensary. Dispensary must also take back any unused and dispose of. Provides for additional warnings and sealed containers.

Section 47 Producers, processors, dispensaries, and labs must disclose location during application process. Subdivisions may prohibit within jurisdiction through resolution or ordinance. If all jurisdictions within a Congressional District prohibit producers and dispensaries, department may register additional in other congressional districts.

Outlines operating documents of dispensary and prohibits cultivation, manufacturing, and processing of cannabis by dispensaries. Operating documents include security. Producers, processors, dispensaries, and labs need security including alarms and personnel identification. Cannot share space with a practitioner and cannot consume cannabis on their property. Employees must be at least 21 and cannot have been convicted of a felony. Employees are subject to a criminal history check, at their own cost. Criminal background check is subject to federal confidentiality standards. Producers, processors, dispensaries and labs are subject to department guidelines on signage and advertising.

Section 48

Use or possession of cannabis or accessories by a patient, possession or sale by producers, processors, dispensaries, labs or their employees if under the Act, are not subject to citation or arrest. The Department and its employees and agents, and other professions, and are not subject to profession discipline by solely participating or providing advice regarding the Act.

State and local law enforcement is prohibited from accessing the registry except subject to a warrant or to verify

participation in the registry. State and local officials cannot disclose to federal authorities, including ATF any information regarding participation in the registry program. Violation is a Class I misdemeanor.

Information from the registry or associated reports is not admissible in a prosecution unless independently obtained or prosecution for a violation of the Act. Attorneys are not subject to disciplinary action for providing assistance to a patient or caregiver, or producer, processor, dispensary or lab. Possession of a registry verification or other documents are not probable cause and cannot be used as the basis for a search.

The governing body of a political subdivision cannot prohibit the delivery of cannabis or accessories for use under the Act.

Section 49 Activities related to cannabis are lawful if conducted under the Act.

Section 50 Contracts related to cannabis for use under the Act by patients caregivers, producers, processors, dispensaries, and labs are enforceable. No such contract shall be unenforceable based on federal law.

Section 51 Schools and landlords cannot refuse to enroll or lease based solely on participation under the Act unless would lose money based on federal law. Organ donations and minor child custody or visitation cannot be affected solely for participation in the Act.

Section 52 State and local agencies cannot infringe on a person's right to own or receive a certification for a firearm solely based on the person's status as a patient or caregiver. State and local agencies are prohibited from providing information to federal authorities who may use the information to restrict rights of patients or caregivers.

Section 53 The department may suspend or revoke the registration of a producer, processor, dispensary or lab after a hearing for violations of the Act. Can also immediately prohibit participation for selling cannabis to a person not for medical use under the Act. The department maintains a list of those prohibited and may share it with state and local law enforcement.

Section 54 The department can revoke the registration of any patient or caregiver for violations of the Act and can immediately revoke for selling or providing cannabis to a person not for medical use. The department maintains a list those revoked and share it with law enforcement and producers, process dispensaries and labs. The department also notifies another state if the revocation is for a non resident patient or caregiver.

Section 55 Producers, processors, and dispensaries are subject to criminal penalties if transferring or dispensing to others not covered by the Act.

Section 56 Patients and caregivers are subject to criminal penalties for selling cannabis to those not covered by the Act.

Section 57 Prohibits smoking of cannabis by a patient under the Act and defines smoking.

Section 58 Making an intentionally false statement relating to cannabis to law enforcement to avoid prosecution is a Class III misdemeanor in addition to other penalties not protected by the Act. If a certified patient or caregiver, the person is disqualified from participating under the Act.

Section 59 Producers, processors, dispensaries, and labs who submit false records or documents in the registration process can be prosecuted for false reporting to a regulatory body, abuse of records, or false swearing.

Section 60 Producers, processors, dispensaries and labs can be fined up to \$1000 for violations of the Act or the rules and regulations if no other penalty is specified in addition to other applicable penalties.

Section 61 Application fees: Dispensaries - \$25,000, Producers- up to \$5000, \$25,000 for producers in largest tier, Processors- up to \$5000 for extraction using water, glycerin, vegetable oil etc.- \$25,000 for other solvent based extractions. Laboratories- up to \$10,000.

Annual fees: Producers - up to \$40,000 for largest tier-\$5000 for smaller tiers Processors- \$5000 for extraction using water, glycerin etc. \$40,000 for other solvent extraction, Dispensaries - \$25,000, Labs- \$15,000.
Fees go to the Medical Cannabis Regulation Fund.

Section 62 Creates Medical Cannabis Regulation Fund.

Section 63 Department can inspect producers, processors, dispensaries, and labs as provided in rules and regs. May use specialists to conduct inspection. Department provides copy of report within 10 days after completion of inspection and posts on web site.

Section 64 Department develops rules and regs for law enforcement and health care professionals to report incidents. Department rules include method for reporting diversion of cannabis.

Section 65 Creates the seven member Medicinal Cannabis Board. Appointed by Governor and confirmed by Legislature. At least one member from each Congressional District, one from law enforcement, two doctors, two pharmacists, one person with experience in substance abuse treatment, one certified patient or caregiver. Majority of members must be advocates of medical use. The chief medical officer and chair of Health and Human Services Committee or their designees are non voting members.

Section 66 Initial appointments include person with qualifying condition or caregiver for one year and a certified patient or caregiver for subsequent appointments. Other initial appointments include three members for a five year term, and other members with two, three and four year terms. After initial appointments terms are for five years. Terms of office expire on September 1. Vacancies are filled by gubernatorial appointment with person with similar qualifications as replacement. Members limited to two full consecutive terms.

Section 67 Board members allowed expense reimbursement.

Section 68 Board meets within 30 days after appointment and in the last quarter annually to elect a chair and other officers as deemed necessary. In case of a vacancy in the chairmanship, the vice chair assumes the chair until the next regular meeting or a special meeting called by members, where a new chair is elected.

Section 69 The Board meets at least quarterly. Special meetings can be called by the chair or four members. Meetings held at State Office Building and open to public.

Section 70 Board appoints director for the Department. Director advises Board on cannabis policies, rules and regs and legislative recommendations.

Section 71 Department maintains records of proceedings, transactions and official acts of Board. May hire other employees to carry out duties.

Section 72 Board members required to be bonded.

Section 73 Board members and Department employees must be citizens and residents of Nebraska for at least 2 years. Board members cannot have felony conviction or federal or state violations of manufacturing or sale of controlled

substances. Board members are prohibited from interests in companies that manufacture, sell or distribute cannabis. Does not prohibit members from being patients or caregivers.

Section 74 Members are prohibited from receiving or soliciting gifts, gratuities, and employment by those regulated by the Act. Those covered by the Act are prohibited from offering gifts, gratuities and employment to Board members. Board and Department members and employees lose their position for violations. In addition, a violation is a Class II misdemeanor.

Section 75 Department develops and Board approves continuing education courses for practitioners by 5/1/22 and for dispensaries and their staff. The cost shall be less than \$50. By December 20 of each year, the Department accepts and holds a Board hearing on changes to the list of qualifying conditions Any recommendations by the Board are forwarded to the Legislature. The Department develops an informational document for patients and caregivers available at dispensaries and on the Department's website. The information includes drug interactions, dosage information and warnings regarding cannabis use disorder, cognitive effects for children, psychosis risks, risks during pregnancy, and driving or operating machinery while impaired.

By 12/20/22, the Board holds a hearing and makes a recommendation regarding anxiety disorder and PTSD as qualifying conditions.

Section 76 Department director and employees can be reimbursed for necessary expenses. The Department can make expenditures for office furniture and other expenses.

Section 77 The Department office is in Lincoln, but may have additional branch offices. The Department may develop a seal for use on records.

Section 78 Attorney General assigns assistant AG to the Board when requested. Compensation for Assistant AG paid by AG's office.

Section 79 Amends section 28-416, regarding controlled substances to provide an exception under the Medical Cannabis Act.

Section 80 Amends section 28-439 regarding drug paraphernalia to provides exceptions provided in the Medical Cannabis Act.

Section 81 Amends section 77-2701.48 addressing bundled transactions to provide a cross reference to section 77-2704.09.

Section 82 Amends section 77-2704.09 regarding taxation of drugs to exempt Medical Cannabis Act cannabis from the definition of "drug".

Section 83 Amends section 77-27.132 regarding various revenue funds to credit sales and use taxes from the Act to the Medical Cannabis Regulation Fund.

Section 84 Amends section 77-27.237 regarding taxation of out of state retailers to cross reference section 77-27.132 (2)(e).

Section 85 Amends section 77-4303 regarding marijuana taxation to exempt possession under the Medical Cannabis Act (subsection 3).

Section 86 Operative date of October 1, 2019 for sections 82 through 86 and 89. Other sections effective on operative date.

Section 87 and 88 Repeals original sections.

Section 89 Emergency Clause.

Explanation of amendments:

AM 824 makes two changes to the original version of LB 47. First it replaces section 24, which defined qualifying medical condition as any illness for which cannabis might provide relief with a list of specific diseases or conditions. Second, the amendment rewrites the continuing medical education provisions to require eight hours of CME prior to issuing a certification and requiring eight hours of MCE approved by another state until the Board approves CME courses.

Steve Lathrop, Chairperson