

P.L.188-2017

[H.1148. Approved April 26, 2017.]

AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 16-18-2-45.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 45.5. "Cannabidiol", for purposes of IC 16-42-28.6, has the meaning set forth in IC 16-42-28.6-1.**

SECTION 2. IC 16-18-2-48.7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 48.7. "Caregiver", for purposes of IC 16-42-28.6, has the meaning set forth in IC 16-42-28.6-2.**

SECTION 3. IC 16-18-2-272 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 272. (a) "Patient", for purposes of IC 16-27-1, has the meaning set forth in IC 16-27-1-6.

(b) "Patient", for ~~the~~ purposes of IC 16-28 and IC 16-29, means an individual who has been accepted and assured care by a health facility.

(c) "Patient", for purposes of IC 16-36-1.5, has the meaning set forth in IC 16-36-1.5-3.

(d) "Patient", for purposes of IC 16-39, means an individual who has received health care services from a provider for the examination, treatment, diagnosis, or prevention of a physical or mental condition.

(e) "Patient", for purposes of IC 16-42-28.6, has the meaning set forth in IC 16-42-28.6-3.

SECTION 4. IC 16-18-2-282, AS AMENDED BY P.L.6-2012, SECTION 111, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 282. (a) "Physician", except as provided in subsections (b) ~~and (c)~~, **through (d)**, means a licensed

physician (as defined in section 202 of this chapter).

(b) "Physician", for purposes of IC 16-41-12, has the meaning set forth in IC 16-41-12-7.

(c) "Physician", for purposes of IC 16-37-1-3.1 and IC 16-37-3-5, means an individual who:

(1) was the physician last in attendance (as defined in section 282.2 of this chapter); or

(2) is licensed under IC 25-22.5.

(d) "Physician", for purposes of IC 16-42-28.6, has the meaning set forth in IC 16-42-28.6-4.

~~(e)~~ (e) "Physician", for purposes of IC 16-48-1, is subject to IC 16-48-1-2.

SECTION 5. IC 16-18-2-342.6 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 342.6. "Substance containing cannabidiol", for purposes of IC 16-42-28.6, has the meaning set forth in IC 16-42-28.6-5.**

SECTION 6. IC 16-18-2-354.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 354.7. "Treatment resistant epilepsy", for purposes of IC 16-42-28.6, has the meaning set forth in IC 16-42-28.6-6.**

SECTION 7. IC 16-42-28.6 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Chapter 28.6. Drugs: Use of Cannabidiol for the Treatment of Epilepsy

Sec. 1. As used in this chapter, "cannabidiol" means 2-(6-isopropenyl-3-methyl-2-cyclohexen-1-yl)-5-pentyl-1,3-benzenediol.

Sec. 2. As used in this chapter, "caregiver" means a parent or legal guardian of an individual who has been diagnosed with treatment resistant epilepsy by a physician.

Sec. 3. As used in this chapter, "patient" refers to an individual who has been diagnosed with treatment resistant epilepsy by a physician.

Sec. 4. As used in this chapter, "physician" means an individual who:

- (1) is licensed under IC 25-22.5; and
- (2) is board certified in neurology.

Sec. 5. As used in this chapter, "substance containing cannabidiol" means a product that contains:

- (1) not more than three-tenths percent (0.3%) total tetrahydrocannabinol (THC) by weight, including its precursors and derivatives;
- (2) at least five percent (5%) cannabidiol by weight; and
- (3) no other controlled substances.

Sec. 6. As used in this chapter, "treatment resistant epilepsy" means:

- (1) Dravet syndrome;
- (2) Lennox-Gastaut syndrome; or
- (3) another form of epilepsy in a patient who has not responded to at least two (2) other epilepsy treatment options that have been provided in good faith;

if the syndrome or epilepsy has been examined and diagnosed by a physician.

Sec. 7. (a) The state department shall develop and implement a cannabidiol registry for the registration of:

- (1) patients; and
- (2) caregivers;

for the use of a substance containing cannabidiol in the treatment of patients who have been diagnosed with treatment resistant epilepsy.

(b) The cannabidiol registry must include a secure, electronic online data base that is accessible by law enforcement agencies in order to verify the registration of an individual.

(c) The state department shall register and issue an individual described in subsection (a) a registration card under this section only if the individual meets the following requirements:

- (1) The individual is:
 - (A) a caregiver at least eighteen (18) years of age; or
 - (B) a patient.
- (2) The individual is an Indiana resident.
- (3) The individual provides a certified statement by a physician that the patient or a patient in the care of the caregiver has been examined and diagnosed by the physician to have treatment resistant epilepsy.

(4) The patient submits a completed registration application.

(5) The patient pays the registration fee set by the state department.

(d) The state department shall develop the cannabidiol registration application. The registration application for a caregiver must ask for the following information:

(1) The caregiver's name, address, and relationship to the patient.

(2) The patient's name and address.

(3) A copy of the caregiver's valid government issued photo identification card.

(4) The name and business address of the physician who diagnosed the patient with treatment resistant epilepsy.

(5) Any other relevant information the state department considers necessary to implement this section.

(e) The state department shall charge a registration fee of not more than fifty dollars (\$50) for an individual's initial registration under this section to cover the costs of implementing and administering the cannabidiol registry. The state department may adopt rules under IC 4-22-2 permitting a fee reduction or fee waiver for a patient who is indigent.

(f) Registration under this section is valid for one (1) year from the date of issuance, unless the physician requests a shorter expiration date. The state department shall renew registration under this section for an individual if the initial registration is current or has been updated by the individual and the individual continues to meet the registration requirements under this chapter. The state department shall charge a renewal fee of not more than twenty-five dollars (\$25). The state department may adopt rules under IC 4-22-2 permitting a fee reduction or fee waiver for a patient who is indigent.

(g) The state department may execute a contract with a vendor designated by the state department to perform any function associated with the administration of the cannabidiol registry.

Sec. 8. When a patient or caregiver registers for the cannabidiol registry, the state department shall contact and provide the local department of health where the patient or caregiver resides with the following information:

(1) The name and address of the patient or caregiver.

(2) Identifying information contained on the patient's or caregiver's registration card.

(3) Any other information the state department determines is necessary to disclose.

Sec. 9. Subject to sections 7 through 8 of this chapter, the state department shall maintain any medical records obtained under this chapter as confidential, and the medical records may not be disclosed to the public.

Sec. 10. (a) This section applies to an allegation that a person has violated one (1) or more of the following:

(1) A condition of a probation.

(2) A condition of parole.

(3) A condition of a pretrial diversion program.

(4) A condition of participation in a community corrections program.

(5) A condition of participation in a forensic diversion program.

(6) A condition of a community transition program under IC 11-10-11.5.

(7) An order in a dispositional decree under IC 31-34-20 to participate in a family dependency drug court if the individual is a parent, guardian, or another household member of a child adjudicated a child in need of services.

(8) A condition of an informal adjustment program.

(9) A condition of a program authorized by the:

(A) judge of a problem solving court; and

(B) department of correction or the county sheriff.

(10) A condition of pretrial release.

(b) It is a defense to an allegation that a person has violated a condition described in subsection (a) if:

(1) the violation is based solely on the person's use of a substance containing cannabidiol; and

(2) the person's use of the substance containing cannabidiol complies with this chapter.

(c) It is a defense to an allegation that a person has violated a condition described in subsection (a) that:

(1) the violation is based solely on the person's use of a substance containing cannabidiol;

(2) the substance containing cannabidiol has been approved

by the federal Food and Drug Administration or the federal Drug Enforcement Agency as a prescription drug; and
(3) the substance was prescribed and dispensed in accordance with the federal approval described in subdivision (2).

Sec. 11. The state department may adopt rules under IC 4-22-2 necessary to implement this chapter.

SECTION 8. IC 35-31.5-2-33.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 33.5. "Cannabidiol", for purposes of IC 35-48, has the meaning set forth in IC 35-48-1-6.5.**

SECTION 9. IC 35-31.5-2-316.9 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 316.9. "Substance containing cannabidiol", for purposes of IC 35-48, has the meaning set forth in IC 35-48-1-26.7.**

SECTION 10. IC 35-48-1-6.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 6.5. "Cannabidiol" has the meaning set forth in IC 16-42-28.6-1.**

SECTION 11. IC 35-48-1-26.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 26.7. "Substance containing cannabidiol" has the meaning set forth in IC 16-42-28.6-5.**

SECTION 12. IC 35-48-4-8.5, AS AMENDED BY P.L.208-2015, SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: **Sec. 8.5. (a) A person who keeps for sale, offers for sale, delivers, or finances the delivery of a raw material, an instrument, a device, or other object that is intended to be or that is designed or marketed to be used primarily for:**

- (1) ingesting, inhaling, or otherwise introducing into the human body marijuana, hash oil, hashish, salvia, a synthetic drug, or a controlled substance;
- (2) testing the strength, effectiveness, or purity of marijuana, hash oil, hashish, salvia, a synthetic drug, or a controlled substance;
- (3) enhancing the effect of a controlled substance;
- (4) manufacturing, compounding, converting, producing, processing, or preparing marijuana, hash oil, hashish, salvia, a synthetic drug, or a controlled substance;

(5) diluting or adulterating marijuana, hash oil, hashish, salvia, a synthetic drug, or a controlled substance by individuals; or

(6) any purpose announced or described by the seller that is in violation of this chapter;

commits a Class A infraction for dealing in paraphernalia.

(b) A person who knowingly or intentionally violates subsection (a) commits a Class A misdemeanor. However, the offense is a Level 6 felony if the person has a prior unrelated judgment or conviction under this section.

(c) This section does not apply to the following:

(1) Items marketed for use in the preparation, compounding, packaging, labeling, or other use of marijuana, hash oil, hashish, salvia, a synthetic drug, or a controlled substance as an incident to lawful research, teaching, or chemical analysis and not for sale.

(2) Items marketed for or historically and customarily used in connection with the planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, or inhaling of tobacco or any other lawful substance, **excluding the lawful possession of a substance containing cannabidiol under IC 35-48-4-11.**

(3) A qualified entity (as defined in IC 16-41-7.5-3) that provides a syringe or needle as part of a program under IC 16-41-7.5.

(4) Any entity or person that provides funding to a qualified entity (as defined in IC 16-41-7.5-3) to operate a program described in IC 16-41-7.5.

SECTION 13. IC 35-48-4-11, AS AMENDED BY P.L.226-2014(ts), SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 11. (a) A person who:

(1) knowingly or intentionally possesses (pure or adulterated) marijuana, hash oil, hashish, or salvia;

(2) knowingly or intentionally grows or cultivates marijuana; or

(3) knowing that marijuana is growing on the person's premises, fails to destroy the marijuana plants;

commits possession of marijuana, hash oil, hashish, or salvia, a Class B misdemeanor, except as provided in subsections (b) through (c).

(b) The offense described in subsection (a) is a Class A

misdeemeanor if the person has a prior conviction for a drug offense.

(c) The offense described in subsection (a) is a Level 6 felony if:

- (1) the person has a prior conviction for a drug offense; and
- (2) the person possesses:
 - (A) at least thirty (30) grams of marijuana; or
 - (B) at least five (5) grams of hash oil, hashish, or salvia.

(d) It is a defense to a prosecution under subsection (a)(1) based on the possession of a substance containing cannabidiol that:

- (1) the person is a patient or caregiver registered under IC 16-42-28.6 for the use of a substance containing cannabidiol;**
- (2) the person reasonably believed that the substance possessed by the person was a substance containing cannabidiol; and**
- (3) the substance containing cannabidiol is packaged in a container labeled with the origin, volume, and concentration by weight of total THC, including its precursors and derivatives, and cannabidiol.**

(e) It is a defense to a prosecution under this section based on the possession of a substance containing cannabidiol that:

- (1) the substance containing cannabidiol has been approved by the federal Food and Drug Administration or the federal Drug Enforcement Agency as a prescription drug; and**
- (2) the substance was prescribed and dispensed in accordance with the federal approval described in subdivision (1).**

SECTION 14. An emergency is declared for this act.