

ORDINANCE 2017-02

AN ORDINANCE OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA ESTABLISHING AND IMPOSING A TEMPORARY MORATORIUM ON THE DISPENSING OF MEDICAL CANNABIS TO INCLUDE, BUT NOT BE LIMITED TO, MEDICAL MARIJUANA TREATMENT CENTERS WITHIN THE CITY OF DAYTONA BEACH SHORES; PROHIBITING ANY AND ALL DISPENSING OF MEDICAL CANNABIS DURING THE MORATORIUM PERIOD FOR ANY PROPERTY LOCATED WITHIN THE CITY OF DAYTONA BEACH SHORES; PROVIDING FOR THE MORATORIUM TO EXTEND TO ALL APPLICATIONS FOR DEVELOPMENT ORDERS AND DEVELOPMENT PERMITS RELATING TO REAL PROPERTY LOCATED IN THE CITY LIMITS OF THE CITY OF DAYTONA BEACH SHORES IN ORDER TO ALLOW AN OPPORTUNITY FOR THE CITY TO DEVELOP GOALS, OBJECTIVES AND POLICIES OF THE CITY'S COMPREHENSIVE PLAN AND AMENDMENTS TO THE CITY'S LAND DEVELOPMENT REGULATIONS, AS APPROPRIATE, RELATING TO THE DEVELOPMENT OF DESIGN STANDARDS AND RELATED MATTERS PERTAINING TO DISPENSING OF MEDICAL CANNABIS AS WELL AS POLICE POWER REGULATIONS; PROVIDING FOR LEGISLATIVE AND ADMINISTRATIVE FINDINGS; PROVIDING FOR GEOGRAPHIC AREA ENCOMPASSED BY THE MORATORIUM; PROVIDING FOR DEVELOPMENT WHICH IS SUBJECT TO MORATORIUM; PROVIDING FOR POSSIBLE EXTENSION OF MORATORIUM; PROVIDING FOR AN ADMINISTRATIVE REMEDY TO ASSERT VESTED RIGHTS CLAIMS; PROVIDING FOR IMPLEMENTING ADMINISTRATIVE ACTIONS; PROVIDING FOR A SAVINGS PROVISION; PROVIDING FOR NON-CODIFICATION AS WELL AS THE CORRECTION OF SCRIVENER'S ERRORS; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, in 2014, the Florida Legislature passed *the Compassionate Medical Cannabis Act*, which is codified as Section 381.986, *Florida Statutes*, which legalized the cultivation, processing, and dispensing of certain “Low-THC Cannabis” to “qualified patients” as defined by the Act; and

WHEREAS, in 2016, the Florida Legislature amended Section 381.986, *Florida Statutes*, by modifying the definition of a “qualified patient” and added multiple new regulations to the statutory scheme of regulation; and

WHEREAS, in November, 2016, the citizens of Florida voted to adopt an amendment (Amendment 2)ⁱ to the *Constitution of the State of Florida* which substantially broadens access to medical cannabis and one of the terms that was included in that amendment was the following:

“Medical Marijuana Treatment Center” (MMTC) means an entity that acquires, cultivates, possesses, processes (including development of related products such as food, tinctures, aerosols, oils, or ointments), transfers, transports, sells, distributes, dispenses, or administers marijuana, products containing marijuana, related supplies, or educational materials to qualifying patients or their caregivers and is registered by the Department.

and;

WHEREAS, future constitutional amendments and legislation may further expand the legal use of Cannabis in Florida; and

WHEREAS, it has been estimated that fewer than seven hundred (700) patients were registered to receive the current marijuana products, but it has been reported that State health officials estimate that at least five hundred thousand (500,000) patients would be eligible for the treatment under the constitutional amendment that was approved on November 8, 2016; and

WHEREAS, potential adverse impacts on the health, safety, morals and welfare of residents and business from secondary effects associated with the distribution of cannabis exist, potentially including: offensive odors, trespassing, robberies, theft, fire hazards, increased crime, nuisance problems in and about cannabis dispensing businesses and nearby businesses and places; and

WHEREAS, the potential for misappropriation and diversion of medical cannabis to non-medical uses exists and presents threats to the public health, safety, morals and welfare; and

WHEREAS, an overabundance of medical cannabis dispensing facilities to include, but not be limited to, medical marijuana treatment centers, or the inappropriate location of such facilities could affect the viability of such facilities, result in compliance issues and increased

regulatory costs, lead to the improper diversion of products, and accentuate threats to the public health, safety, morals and welfare; and

WHEREAS, there is a need to adopt health, safety and welfare regulations to avoid adverse impacts on the City which may arise from the distribution of cannabis at medical cannabis dispensing facilities to include, but not be limited to, medical marijuana treatment centers,; and

WHEREAS, an effective regulatory system governing the dispensing of cannabis will address potential adverse impacts to the public health, welfare, morals and safety consistent with Florida law; and

WHEREAS, it is the intent of the City Council of the City of Daytona Beach Shores to develop and enact reasonable restrictions intended to protect the public health, safety, morals and welfare; and

WHEREAS, the City Council of the City of Daytona Beach Shores has determined that it is in the public interest to adopt this Ordinance pursuant to the City's police powers land development regulatory powers and Section 381.986, *Florida Statutes*, as well as other applicable state laws and provisions of the *Constitution of the State of Florida*, all to protect the health, safety, morals and welfare of the public; and

WHEREAS, inasmuch as the ballot initiative was adopted at the November 8, 2016 General Election, the Florida Department of Health will have six (6) months to establish regulations for the growing and distribution of this newly expanded cannabis amendment to the *Constitution of the State of Florida*; and

WHEREAS, numerous local government jurisdictions throughout the State of Florida are establishing a temporary moratorium on medical cannabis activities until recommendations

can be made for appropriate zoning and land development regulations as well as police power regulations to be established which process is time consuming and will cause a drain of resources upon City staff; and

WHEREAS, other jurisdictions have regulated the dispensing of cannabis by limiting the number and locations of such cannabis dispensing businesses to reduce threats to the public health, safety, morals and welfare while other jurisdictions that plan to allow cannabis dispensing businesses facilities to include, but not be limited to, medical marijuana treatment centers, have implemented regulatory and enforcement systems that address the adverse impacts that cannabis dispensing businesses could pose to public safety, health, morals and welfare; and

WHEREAS, the City Council of the City of Daytona Beach Shores finds that due to the subsequent revision of Section 381.986, *Florida Statutes*, in 2016 and the enactment of the amendment to the *Constitution of the State of Florida* to allow for medical cannabis, the City should put in place a temporary moratorium on dispensing medical cannabis facilities to include, but not be limited to, medical marijuana treatment centers, in order to have adequate time and to devote necessary resources to analyze whether changes to zoning and land development regulations as well as police power regulations should be enacted and in order to ensure compliance with controlling State law such as the forthcoming Florida Department of Health regulations; and

WHEREAS, this Ordinance is enacted pursuant to the home rule powers of the City of Daytona Beach Shores as set forth at Article VIII, Section 2, of the *Constitution of the State of Florida*; Chapter 166, *Florida Statutes*, and other applicable controlling law.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA THAT:

SECTION ONE: LEGISLATIVE AND ADMINISTRATIVE FINDINGS AND INTENT.

(a). The City of Daytona Beach Shores has complied with all requirements and procedures of Florida law in processing and advertising this Ordinance.

(b). The foregoing recitals (whereas clauses) are hereby ratified, affirmed and confirmed as being true and correct and are hereby made a part of this Ordinance.

SECTION TWO: DEFINITIONS.

(1). The definitions set forth in Section 381.986, *Florida Statutes*, are applicable to the provisions of this Ordinance.ⁱⁱ

(2). The definitions set forth in Amendment 2 to the *Constitution of the State of Florida*, as approved by the electors of Florida at the November 8, 2016 General Election, are applicable to the provisions of this Ordinance to include, but not be limited to the definition of “medical marijuana treatment center”.

SECTION THREE: STUDY AND REVIEW PROCESS.

(a). During the temporary moratorium period designated in Section 4 of this Ordinance, the City staff, including the Community Services Department staff and the Director of Public Safety and his departmental personnel, are hereby directed to study controlling State law regarding medical cannabis to include, but not be limited to, those related to medical marijuana treatment centers, to determine the impact upon the health, safety, morals and welfare of the residents and businesses of the City of Daytona Beach Shores. Additionally, City staff shall monitor the regulations adopted by the Florida Department of Health, as they relate to medical cannabis, to ensure consistency with the code and ordinances of the City and to develop

land development and police power regulations to address potential impacts upon the City and its citizens.

(b). The essential purpose of such a review and study by the City staff is to develop and propose to the City Council amendments to the City's codes and ordinances as may be necessary and appropriate to protect the City and its citizens from potential adverse effects and impacts relating to medical cannabis.

SECTION FOUR: IMPOSITION OF TEMPORARY MORATORIUM.

(a). All activity relating to the acceptance, review and action upon development applications of any nature relating to dispensing medical cannabis, to include, but not be limited to, medical marijuana treatment centers, is temporarily suspended in order for the City to have the time and opportunity necessary to complete design and development standards, land use compatibility requirements, approval processes and procedures, and any and all other planning and land use matters and all other activities related to the dispensing of medical cannabis within the City to include, as may be necessary and appropriate, but not to limited to, amendment of the City's *Comprehensive Plan* and *Land Development Regulations* as well as the police power codes and ordinances of the City. Until the effective date of an ordinance establishing a new or amended land development regulations or police power codes and ordinances concerning dispensing medical cannabis, under any scenario, or until one hundred and eighty (180) days from the effective date of this Ordinance, whichever date is earlier, no permits shall be issued to allow the dispensing of medical cannabis to include, but not be limited to, medical marijuana treatment centers. Furthermore, in the event that any application for the dispensing of medical cannabis or related activities to include, but not be limited to, medical marijuana treatment centers, may be pending, such applications shall be abated, and no new applications for such

permits or activities shall be accepted or processed during the moratorium period or until one hundred and eighty (180) days from the effective date of this Ordinance, whichever date is earlier, no permits shall be issued to allow the dispensing of medical cannabis. Furthermore, in the event that any application for the dispensing of medical cannabis or related activities may be pending, such applications shall be abated, and no new applications for such permits or activities shall be accepted or processed during the moratorium period.

(b). Based upon the legislative findings, purpose, and intent set forth herein, there is hereby imposed a temporary moratorium on all the dispensing of medical cannabis within the City Limits of the City to include, but not be limited to, actions relating to medical marijuana treatment centers.

(c). During the time that the moratorium imposed by this Ordinance is in effect, no applications for development approval or any similar activities will be accepted with regard to the dispensing of medical cannabis to include, but not be limited to, medical marijuana treatment centers, within the City Limits of the City.

SECTION FIVE: GEOGRAPHIC AREA COVERED.

This Ordinance applies to all areas within the City Limits of the City of Daytona Beach Shores.

SECTION SIX: DEVELOPMENT SUBJECT TO MORATORIUM.

(a). The moratorium imposed by the provisions of the Ordinance includes all land use applications for development approval relating to the dispensing of medical cannabis to include, but not be limited to, medical marijuana treatment centers.

(b). If a property owner or owners asserts that a development application proposed by the property owner or owners is not subject to the moratorium imposed by the provisions of the

Ordinance, the provisions of the City's *Land Development Regulations* relating to administrative interpretations shall apply.

SECTION SEVEN: DURATION OF MORATORIUM.

(a). The temporary moratorium established by this Ordinance shall take effect immediately upon the effective date of this Ordinance and shall terminate one hundred and eighty (180) days after the said effective date.

(b). No applications for development approvals subject to the moratorium will be accepted by the City until the moratorium has expired.

(c). The temporary moratorium set forth in this Ordinance shall expire prior to the termination date set forth herein if the City Council adopts amendments to the City's *Land Development Regulations* that protect the health, safety, morals and welfare of the residents of the City of Daytona Beach Shores relating to the regulation of the dispensing of medical cannabis to include, but not be limited to, medical marijuana treatment centers.

SECTION EIGHT: TIME EXTENSION OF MORATORIUM.

The City Council may extend the moratorium set forth in this Ordinance by the adoption of a resolution, but only one (1) time, and only for a period not to exceed one hundred and eighty (180) days upon a legislative finding being made by the City Council and set forth in the resolution that the regulatory and planning issues giving rise to the need for the moratorium imposed by this Ordinance still exist and that reasonable progress is being made in carrying out a specific and prompt plan of regulatory action, but that additional time is needed to adequately address the land use issues facing the City and police power issues facing the City.

SECTION NINE: ADMINISTRATIVE/QUASI-JUDICIAL REVIEW PROCEDURES.

(a). The owner or owners of real property or his, her, its or their expressly authorized agent may request a determination of vested rights by paying the application fee therefor and filing a technically complete application with the City Manager or designee.

(b). The application form shall, at a minimum, contain the following information:

(1). The name and address of the applicant who shall be the owner or all owners of the subject parcel of real property or a person expressly authorized to apply on behalf of the property owner or owners.

(2). A legal description, current tax parcel identification number and survey or a sketch of the real property which is the subject of the application.

(3). The name and address of each owner of the real property.

(4). A site or development plan or plat for the real property.

(5). Identification by specific reference to any ordinance, resolution or other action of the City or failure to act by the City, upon which the applicant relied and which the applicant believes supports the applicant's position.

(6). A statement of fact which the applicant intends to prove in support of the application that vested rights exist. The application shall fully articulate the legal basis for being allowed to proceed with development relating to the dispensing of medical cannabis notwithstanding the moratorium imposed in this Ordinance.

(7). Such other relevant information that the City Manager, or designee, may request or the applicant may desire to have initially considered.

(c). The application shall provide a sworn statement to be executed by all owners of the real property or an authorized agent that all information set forth on the application is true and correct.

(d). The City Manager, or designee, shall screen each application for a vested rights determination to determine whether the application is technically complete. The sufficiency determination shall be made within fourteen (14) calendar days after receipt of an application. If not technically complete, the application shall be promptly returned to the applicant. A technically incomplete application shall be returned to the applicant with written notification of the deficient items not provided as required by this Ordinance and the applicant shall be granted fourteen (14) additional calendar days to complete this application. If a response is not submitted to the City Manager, or designee, within the time specified the application shall be deemed abandoned.

(e). Upon the City Manager, or designee, accepting a technically complete application, for which the application fee has been submitted, the City Council shall review the application and hold a public hearing and make a final determination within twenty-one (21) calendar days as to whether or not it has been clearly and convincingly demonstrated that the real property subject to the application has vested status. Within seven (7) calendar days after making a final determination of vested rights status, the City Council shall provide the applicant with written notification of the determination of vested rights status. If the City Council determines that vested rights exist and that development may proceed, the applicant shall have the right to rely upon such written notification that the real property is vested and the determination that the real property is vested shall be final and not subject to appeal, revocation or modification. Thereupon, permits for the dispensing of medical cannabis cannabis to include, but not be limited to, medical marijuana treatment centers, may be granted notwithstanding the moratorium established in this Ordinance.

(f). At the hearing, the applicant shall present all of its, their, his or her evidence in support of the application. The technical rules of evidence in judicial proceedings shall not be applicable, but all testimony given shall be under oath.

(g). The City Council's decision to grant or determine vested rights status shall be final subject, however, to appeal in accordance with State law.

(h). Decisions made by the City Council pursuant to this Ordinance may be appealed by the real property owner or owners to the Circuit Court in and for Volusia County, Florida.

SECTION TEN: IMPLEMENTING ADMINISTRATIVE ACTIONS.

(a). The City Manager is hereby authorized and directed to implement the provisions of this Ordinance by the promulgation of rules and the development and usage of forms and processes all as may be deemed necessary or appropriate by the City Manager.

(b). The City Manager and City Attorney are also hereby authorized and directed to generally implement the provisions of this Ordinance and to take any and all necessary administrative actions to bring into effect the provisions of this Ordinance in accordance with controlling law as such officers may deem appropriate in their respective roles and functions under the *City of Daytona Beach Shores City Charter*.

SECTION TWELVE: SAVINGS.

The prior actions of the City of Daytona Beach Shores in terms of the matters relating to the regulation of illegal drugs, to include, but not be limited to, marijuana, as well as any and all related matters, are hereby ratified and affirmed.

SECTION THIRTEEN: CODIFICATION; SCRIVENER'S ERRORS.

(a). The provisions of this Ordinance shall not be codified.

(b). Typographical errors and other matters of a similar nature that do not affect the intent of this Ordinance, as determined by the City Clerk and City Attorney, may be corrected with the endorsement of the City Manager, or designee, without the need for a public hearing.

SECTION FOURTEEN: CONFLICTS.

All ordinances or parts thereof in conflict with this Ordinance are hereby repealed to the extent of such conflict.

SECTION FIFTEEN: SEVERABILITY.

If any section, subsection, sentence, clause, phrase, or portion of this Ordinance, or application hereof, is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion or application shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions thereof.

SECTION SIXTEEN: EFFECTIVE DATE.

This Ordinance shall take effect immediately upon enactment.

CITY OF DAYTONA BEACH SHORES, FLORIDA

HARRY JENNINGS, MAYOR

MICHAEL T. BOOKER, CITY MANAGER

CHERI SCHWAB, CITY CLERK

Approved as to form and legality:

LONNIE GROOT, CITY ATTORNEY

Passed on first reading this __ day of _____, 2017.

Adopted on second reading this __ day of _____, 2017.

ⁱ The amendment, as placed on the ballot, reads as follows:

BALLOT TITLE: Use of Marijuana for Debilitating Medical Conditions

BALLOT SUMMARY: Allows medical use of marijuana for individuals with debilitating medical conditions as determined by a licensed Florida physician. Allows caregivers to assist patients' medical use of marijuana. The Department of Health shall register and regulate centers that produce and distribute marijuana for medical purposes and shall issue identification cards to patients and caregivers. Applies only to Florida law. Does not immunize violations of federal law or any non-medical use, possession or production of marijuana.

ARTICLE AND SECTION BEING CREATED OR AMENDED: Article X, Section 29

FULL TEXT OF THE PROPOSED CONSTITUTIONAL AMENDMENT:

ARTICLE X, SECTION 29.- Medical marijuana production, possession and use.

(a) PUBLIC POLICY.

(1) The medical use of marijuana by a qualifying patient or caregiver in compliance with this section is not subject to criminal or civil liability or sanctions under Florida law.

(2) A physician shall not be subject to criminal or civil liability or sanctions under Florida law solely for issuing a physician certification with reasonable care to a person diagnosed with a debilitating medical condition in compliance with this section.

(3) Actions and conduct by a Medical Marijuana Treatment Center registered with the Department, or its agents or employees, and in compliance with this section and Department regulations, shall not be subject to criminal or civil liability or sanctions under Florida law.

(b) DEFINITIONS. For purposes of this section, the following words and terms shall have the following meanings:

(1) "Debilitating Medical Condition" means cancer, epilepsy, glaucoma, positive status for human immunodeficiency virus (HIV), acquired immune deficiency syndrome (AIDS), post-traumatic stress disorder (PTSD), amyotrophic lateral sclerosis (ALS), Crohn's disease, Parkinson's disease, multiple sclerosis, or other debilitating medical conditions of the same kind or class as or comparable to those enumerated, and for which a physician believes that the medical use of marijuana would likely outweigh the potential health risks for a patient.

(2) "Department" means the Department of Health or its successor agency.

(3) "Identification card" means a document issued by the Department that identifies a qualifying patient or a caregiver.

(4) "Marijuana" has the meaning given cannabis in Section 893.02(3), Florida Statutes (2014), and, in addition, "Low-THC cannabis" as defined in Section 381.986(1)(b), Florida Statutes (2014), shall also be included in the meaning of the term "marijuana."

(5) "Medical Marijuana Treatment Center" (MMTC) means an entity that acquires, cultivates, possesses, processes (including development of related products such as food, tinctures, aerosols, oils, or ointments), transfers, transports, sells, distributes, dispenses, or administers marijuana, products containing marijuana, related supplies, or educational materials to qualifying patients or their caregivers and is registered by the Department.

(6) "Medical use" means the acquisition, possession, use, delivery, transfer, or administration of an amount of marijuana not in conflict with Department rules, or of related supplies by a qualifying patient or caregiver for use by the caregiver's designated qualifying patient for the treatment of a debilitating medical condition.

(7) "Caregiver" means a person who is at least twenty-one (21) years old who has agreed to assist with a qualifying patient's medical use of marijuana and has qualified for and obtained a caregiver identification card issued by the Department. The Department may limit the number of qualifying patients a caregiver may assist at one time and the number of caregivers that a qualifying patient may have at one time. Caregivers are prohibited from consuming marijuana obtained for medical use by the qualifying patient.

(8) "Physician" means a person who is licensed to practice medicine in Florida.

(9) "Physician certification" means a written document signed by a physician, stating that in the physician's professional opinion, the patient suffers from a debilitating medical condition, that the medical use of marijuana would likely outweigh the potential health risks for the patient, and for how long the physician recommends the medical use of marijuana for the patient. A physician certification may only be provided after the physician has conducted a physical examination and a full assessment of the medical history of the patient. In order for a physician certification to be issued to a minor, a parent or legal guardian of the minor must consent in writing.

(10) "Qualifying patient" means a person who has been diagnosed to have a debilitating medical condition, who has a physician certification and a valid qualifying patient identification card. If the Department does not begin issuing identification cards within nine (9) months after the effective date of this section, then a valid

physician certification will serve as a patient identification card in order to allow a person to become a "qualifying patient" until the Department begins issuing identification cards.

(c) LIMITATIONS.

(1) Nothing in this section allows for a violation of any law other than for conduct in compliance with the provisions of this section.

(2) Nothing in this section shall affect or repeal laws relating to non-medical use, possession, production, or sale of marijuana.

(3) Nothing in this section authorizes the use of medical marijuana by anyone other than a qualifying patient.

(4) Nothing in this section shall permit the operation of any vehicle, aircraft, train or boat while under the influence of marijuana.

(5) Nothing in this section requires the violation of federal law or purports to give immunity under federal law.

(6) Nothing in this section shall require any accommodation of any on-site medical use of marijuana in any correctional institution or detention facility or place of education or employment, or of smoking medical marijuana in any public place.

(7) Nothing in this section shall require any health insurance provider or any government agency or authority to reimburse any person for expenses related to the medical use of marijuana.

(8) Nothing in this section shall affect or repeal laws relating to negligence or professional malpractice on the part of a qualified patient, caregiver, physician, MMTC, or its agents or employees.

(d) DUTIES OF THE DEPARTMENT. The Department shall issue reasonable regulations necessary for the implementation and enforcement of this section. The purpose of the regulations is to ensure the availability and safe use of medical marijuana by qualifying patients. It is the duty of the Department to promulgate regulations in a timely fashion.

(1) Implementing Regulations. In order to allow the Department sufficient time after passage of this section, the following regulations shall be promulgated no later than six (6) months after the effective date of this section:

a. Procedures for the issuance and annual renewal of qualifying patient identification cards to people with physician certifications and standards for renewal of such identification cards. Before issuing an identification card to a minor, the Department must receive written consent from the minor's parent or legal guardian, in addition to the physician certification.

b. Procedures establishing qualifications and standards for caregivers, including conducting appropriate background checks, and procedures for the issuance and annual renewal of caregiver identification cards.

c. Procedures for the registration of MMTCs that include procedures for the issuance, renewal, suspension and revocation of registration, and standards to ensure proper security, record keeping, testing, labeling, inspection, and safety.

d. A regulation that defines the amount of marijuana that could reasonably be presumed to be an adequate supply for qualifying patients' medical use, based on the best available evidence. This presumption as to quantity may be overcome with evidence of a particular qualifying patient's appropriate medical use.

(2) Identification cards and registrations. The Department shall begin issuing qualifying patient and caregiver identification cards, and registering MMTCs no later than nine (9) months after the effective date of this section.

(3) If the Department does not issue regulations, or if the Department does not begin issuing identification cards and registering MMTCs within the time limits set in this section, any Florida citizen shall have standing to seek judicial relief to compel compliance with the Department's constitutional duties.

(4) The Department shall protect the confidentiality of all qualifying patients. All records containing the identity of qualifying patients shall be confidential and kept from public disclosure other than for valid medical or law enforcement purposes.

(e) LEGISLATION. Nothing in this section shall limit the legislature from enacting laws consistent with this section.

(f) SEVERABILITY. The provisions of this section are severable and if any clause, sentence, paragraph or section of this measure, or an application thereof, is adjudged invalid by a court of competent jurisdiction other provisions shall continue to be in effect to the fullest extent possible.

ii Section 381.986, *Florida Statutes*, provides as follows:

Compassionate use of low-THC and medical cannabis.—

(1) DEFINITIONS.—As used in this section, the term:

(a) "Cannabis delivery device" means an object used, intended for use, or designed for use in preparing, storing, ingesting, inhaling, or otherwise introducing low-THC cannabis or medical cannabis into the human body.

(b) "Dispensing organization" means an organization approved by the department to cultivate, process, transport, and dispense low-THC cannabis or medical cannabis pursuant to this section.

(c) "Independent testing laboratory" means a laboratory, including the managers, employees, or contractors of the laboratory, which has no direct or indirect interest in a dispensing organization.

(d) "Legal representative" means the qualified patient's parent, legal guardian acting pursuant to a court's authorization as required under s. 744.3215(4), health care surrogate acting pursuant to the qualified patient's written consent or a court's authorization as required under s. 765.113, or an individual who is authorized under a power of attorney to make health care decisions on behalf of the qualified patient.

(e) "Low-THC cannabis" means a plant of the genus *Cannabis*, the dried flowers of which contain 0.8 percent or less of tetrahydrocannabinol and more than 10 percent of cannabidiol weight for weight; the seeds thereof; the resin extracted from any part of such plant; or any compound, manufacture, salt, derivative, mixture, or preparation of such plant or its seeds or resin that is dispensed only from a dispensing organization.

(f) "Medical cannabis" means all parts of any plant of the genus *Cannabis*, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, sale, derivative, mixture, or preparation of the plant or its seeds or resin that is dispensed only from a dispensing organization for medical use by an eligible patient as defined in s. 499.0295.

(g) "Medical use" means administration of the ordered amount of low-THC cannabis or medical cannabis. The term does not include the:

1. Possession, use, or administration of low-THC cannabis or medical cannabis by smoking.
2. Transfer of low-THC cannabis or medical cannabis to a person other than the qualified patient for whom it was ordered or the qualified patient's legal representative on behalf of the qualified patient.
3. Use or administration of low-THC cannabis or medical cannabis:
 - a. On any form of public transportation.
 - b. In any public place.

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- c. In a qualified patient's place of employment, if restricted by his or her employer.
 - d. In a state correctional institution as defined in s. 944.02 or a correctional institution as defined in s. 944.241.
 - e. On the grounds of a preschool, primary school, or secondary school.
 - f. On a school bus or in a vehicle, aircraft, or motorboat.
 - (h) "Qualified patient" means a resident of this state who has been added to the compassionate use registry by a physician licensed under chapter 458 or chapter 459 to receive low-THC cannabis or medical cannabis from a dispensing organization.
 - (i) "Smoking" means burning or igniting a substance and inhaling the smoke. Smoking does not include the use of a vaporizer.
 - (2) PHYSICIAN ORDERING.—A physician is authorized to order low-THC cannabis to treat a qualified patient suffering from cancer or a physical medical condition that chronically produces symptoms of seizures or severe and persistent muscle spasms; order low-THC cannabis to alleviate symptoms of such disease, disorder, or condition, if no other satisfactory alternative treatment options exist for the qualified patient; order medical cannabis to treat an eligible patient as defined in s. 499.0295; or order a cannabis delivery device for the medical use of low-THC cannabis or medical cannabis, only if the physician:
 - (a) Holds an active, unrestricted license as a physician under chapter 458 or an osteopathic physician under chapter 459;
 - (b) Has treated the patient for at least 3 months immediately preceding the patient's registration in the compassionate use registry;
 - (c) Has successfully completed the course and examination required under paragraph (4)(a);
 - (d) Has determined that the risks of treating the patient with low-THC cannabis or medical cannabis are reasonable in light of the potential benefit to the patient. If a patient is younger than 18 years of age, a second physician must concur with this determination, and such determination must be documented in the patient's medical record;
 - (e) Registers as the orderer of low-THC cannabis or medical cannabis for the named patient on the compassionate use registry maintained by the department and updates the registry to reflect the contents of the order, including the amount of low-THC cannabis or medical cannabis that will provide the patient with not more than a 45-day supply and a cannabis delivery device needed by the patient for the medical use of low-THC cannabis or medical cannabis. The physician must also update the registry within 7 days after any change is made to the original order to reflect the change. The physician shall deactivate the registration of the patient and the patient's legal representative when treatment is discontinued;
 - (f) Maintains a patient treatment plan that includes the dose, route of administration, planned duration, and monitoring of the patient's symptoms and other indicators of tolerance or reaction to the low-THC cannabis or medical cannabis;
 - (g) Submits the patient treatment plan quarterly to the University of Florida College of Pharmacy for research on the safety and efficacy of low-THC cannabis and medical cannabis on patients;
 - (h) Obtains the voluntary written informed consent of the patient or the patient's legal representative to treatment with low-THC cannabis after sufficiently explaining the current state of knowledge in the medical community of the effectiveness of treatment of the patient's condition with low-THC cannabis, the medically acceptable alternatives, and the potential risks and side effects;
 - (i) Obtains written informed consent as defined in and required under s. 499.0295, if the physician is ordering medical cannabis for an eligible patient pursuant to that section; and
 - (j) Is not a medical director employed by a dispensing organization.
 - (3) PENALTIES.—
 - (a) A physician commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, if the physician orders low-THC cannabis for a patient without a reasonable belief that the patient is suffering from:
 - 1. Cancer or a physical medical condition that chronically produces symptoms of seizures or severe and persistent muscle spasms that can be treated with low-THC cannabis; or

2. Symptoms of cancer or a physical medical condition that chronically produces symptoms of seizures or severe and persistent muscle spasms that can be alleviated with low-THC cannabis.

(b) A physician commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, if the physician orders medical cannabis for a patient without a reasonable belief that the patient has a terminal condition as defined in s. 499.0295.

(c) A person who fraudulently represents that he or she has cancer, a physical medical condition that chronically produces symptoms of seizures or severe and persistent muscle spasms, or a terminal condition to a physician for the purpose of being ordered low-THC cannabis, medical cannabis, or a cannabis delivery device by such physician commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(d) An eligible patient as defined in s. 499.0295 who uses medical cannabis, and such patient's legal representative who administers medical cannabis, in plain view of or in a place open to the general public, on the grounds of a school, or in a school bus, vehicle, aircraft, or motorboat, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(e) A physician who orders low-THC cannabis, medical cannabis, or a cannabis delivery device and receives compensation from a dispensing organization related to the ordering of low-THC cannabis, medical cannabis, or a cannabis delivery device is subject to disciplinary action under the applicable practice act and s. 456.072(1)(n).

(4) PHYSICIAN EDUCATION.—

(a) Before ordering low-THC cannabis, medical cannabis, or a cannabis delivery device for medical use by a patient in this state, the appropriate board shall require the ordering physician to successfully complete an 8-hour course and subsequent examination offered by the Florida Medical Association or the Florida Osteopathic Medical Association that encompasses the clinical indications for the appropriate use of low-THC cannabis and medical cannabis, the appropriate cannabis delivery devices, the contraindications for such use, and the relevant state and federal laws governing the ordering, dispensing, and possessing of these substances and devices. The course and examination shall be administered at least annually. Successful completion of the course may be used by a physician to satisfy 8 hours of the continuing medical education requirements required by his or her respective board for licensure renewal. This course may be offered in a distance learning format.

(b) The appropriate board shall require the medical director of each dispensing organization to hold an active, unrestricted license as a physician under chapter 458 or as an osteopathic physician under chapter 459 and successfully complete a 2-hour course and subsequent examination offered by the Florida Medical Association or the Florida Osteopathic Medical Association that encompasses appropriate safety procedures and knowledge of low-THC cannabis, medical cannabis, and cannabis delivery devices.

(c) Successful completion of the course and examination specified in paragraph (a) is required for every physician who orders low-THC cannabis, medical cannabis, or a cannabis delivery device each time such physician renews his or her license. In addition, successful completion of the course and examination specified in paragraph (b) is required for the medical director of each dispensing organization each time such physician renews his or her license.

(d) A physician who fails to comply with this subsection and who orders low-THC cannabis, medical cannabis, or a cannabis delivery device may be subject to disciplinary action under the applicable practice act and under s. 456.072(1)(k).

(5) DUTIES OF THE DEPARTMENT.—The department shall:

(a) Create and maintain a secure, electronic, and online compassionate use registry for the registration of physicians, patients, and the legal representatives of patients as provided under this section. The registry must be accessible to law enforcement agencies and to a dispensing organization to verify the authorization of a patient or a patient's legal representative to possess low-THC cannabis, medical cannabis, or a cannabis delivery device and record the low-THC cannabis, medical cannabis, or cannabis delivery device dispensed. The registry must prevent an active registration of a patient by multiple physicians.

(b) Authorize the establishment of five dispensing organizations to ensure reasonable statewide accessibility and availability as necessary for patients registered in the compassionate use registry and

who are ordered low-THC cannabis, medical cannabis, or a cannabis delivery device under this section, one in each of the following regions: northwest Florida, northeast Florida, central Florida, southeast Florida, and southwest Florida. The department shall develop an application form and impose an initial application and biennial renewal fee that is sufficient to cover the costs of administering this section. An applicant for approval as a dispensing organization must be able to demonstrate:

1. The technical and technological ability to cultivate and produce low-THC cannabis. The applicant must possess a valid certificate of registration issued by the Department of Agriculture and Consumer Services pursuant to s. 581.131 that is issued for the cultivation of more than 400,000 plants, be operated by a nurseryman as defined in s. 581.011, and have been operated as a registered nursery in this state for at least 30 continuous years.

2. The ability to secure the premises, resources, and personnel necessary to operate as a dispensing organization.

3. The ability to maintain accountability of all raw materials, finished products, and any byproducts to prevent diversion or unlawful access to or possession of these substances.

4. An infrastructure reasonably located to dispense low-THC cannabis to registered patients statewide or regionally as determined by the department.

5. The financial ability to maintain operations for the duration of the 2-year approval cycle, including the provision of certified financials to the department. Upon approval, the applicant must post a \$5 million performance bond. However, upon a dispensing organization's serving at least 1,000 qualified patients, the dispensing organization is only required to maintain a \$2 million performance bond.

6. That all owners and managers have been fingerprinted and have successfully passed a level 2 background screening pursuant to s. 435.04.

7. The employment of a medical director to supervise the activities of the dispensing organization.

(c) Upon the registration of 250,000 active qualified patients in the compassionate use registry, approve three dispensing organizations, including, but not limited to, an applicant that is a recognized class member of *Pigford v. Glickman*, 185 F.R.D. 82 (D.D.C. 1999), or *In Re Black Farmers Litig.*, 856 F. Supp. 2d 1 (D.D.C. 2011), and a member of the Black Farmers and Agriculturalists Association, which must meet the requirements of subparagraphs (b)2.-7. and demonstrate the technical and technological ability to cultivate and produce low-THC cannabis.

(d) Allow a dispensing organization to make a wholesale purchase of low-THC cannabis or medical cannabis from, or a distribution of low-THC cannabis or medical cannabis to, another dispensing organization.

(e) Monitor physician registration and ordering of low-THC cannabis, medical cannabis, or a cannabis delivery device for ordering practices that could facilitate unlawful diversion or misuse of low-THC cannabis, medical cannabis, or a cannabis delivery device and take disciplinary action as indicated.

(6) DISPENSING ORGANIZATION.—An approved dispensing organization must, at all times, maintain compliance with the criteria demonstrated for selection and approval as a dispensing organization under subsection (5) and the criteria required in this subsection.

(a) When growing low-THC cannabis or medical cannabis, a dispensing organization:

1. May use pesticides determined by the department, after consultation with the Department of Agriculture and Consumer Services, to be safely applied to plants intended for human consumption, but may not use pesticides designated as restricted-use pesticides pursuant to s. 487.042.

2. Must grow low-THC cannabis or medical cannabis within an enclosed structure and in a room separate from any other plant.

3. Must inspect seeds and growing plants for plant pests that endanger or threaten the horticultural and agricultural interests of the state, notify the Department of Agriculture and Consumer Services within 10 calendar days after a determination that a plant is infested or infected by such plant pest, and implement and maintain phytosanitary policies and procedures.

4. Must perform fumigation or treatment of plants, or the removal and destruction of infested or infected plants, in accordance with chapter 581 and any rules adopted thereunder.

(b) When processing low-THC cannabis or medical cannabis, a dispensing organization must:

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1. Process the low-THC cannabis or medical cannabis within an enclosed structure and in a room separate from other plants or products.
 2. Test the processed low-THC cannabis and medical cannabis before they are dispensed. Results must be verified and signed by two dispensing organization employees. Before dispensing low-THC cannabis, the dispensing organization must determine that the test results indicate that the low-THC cannabis meets the definition of low-THC cannabis and, for medical cannabis and low-THC cannabis, that all medical cannabis and low-THC cannabis is safe for human consumption and free from contaminants that are unsafe for human consumption. The dispensing organization must retain records of all testing and samples of each homogenous batch of cannabis and low-THC cannabis for at least 9 months. The dispensing organization must contract with an independent testing laboratory to perform audits on the dispensing organization's standard operating procedures, testing records, and samples and provide the results to the department to confirm that the low-THC cannabis or medical cannabis meets the requirements of this section and that the medical cannabis and low-THC cannabis is safe for human consumption.
 3. Package the low-THC cannabis or medical cannabis in compliance with the United States Poison Prevention Packaging Act of 1970, 15 U.S.C. ss. 1471 et seq.
 4. Package the low-THC cannabis or medical cannabis in a receptacle that has a firmly affixed and legible label stating the following information:
 - a. A statement that the low-THC cannabis or medical cannabis meets the requirements of subparagraph 2.;
 - b. The name of the dispensing organization from which the medical cannabis or low-THC cannabis originates; and
 - c. The batch number and harvest number from which the medical cannabis or low-THC cannabis originates.
 5. Reserve two processed samples from each batch and retain such samples for at least 9 months for the purpose of testing pursuant to the audit required under subparagraph 2.
 - (c) When dispensing low-THC cannabis, medical cannabis, or a cannabis delivery device, a dispensing organization:
 1. May not dispense more than a 45-day supply of low-THC cannabis or medical cannabis to a patient or the patient's legal representative.
 2. Must have the dispensing organization's employee who dispenses the low-THC cannabis, medical cannabis, or a cannabis delivery device enter into the compassionate use registry his or her name or unique employee identifier.
 3. Must verify in the compassionate use registry that a physician has ordered the low-THC cannabis, medical cannabis, or a specific type of a cannabis delivery device for the patient.
 4. May not dispense or sell any other type of cannabis, alcohol, or illicit drug-related product, including pipes, bongs, or wrapping papers, other than a physician-ordered cannabis delivery device required for the medical use of low-THC cannabis or medical cannabis, while dispensing low-THC cannabis or medical cannabis.
 5. Must verify that the patient has an active registration in the compassionate use registry, the patient or patient's legal representative holds a valid and active registration card, the order presented matches the order contents as recorded in the registry, and the order has not already been filled.
 6. Must, upon dispensing the low-THC cannabis, medical cannabis, or cannabis delivery device, record in the registry the date, time, quantity, and form of low-THC cannabis or medical cannabis dispensed and the type of cannabis delivery device dispensed.
 - (d) To ensure the safety and security of its premises and any off-site storage facilities, and to maintain adequate controls against the diversion, theft, and loss of low-THC cannabis, medical cannabis, or cannabis delivery devices, a dispensing organization shall:
 - 1.a. Maintain a fully operational security alarm system that secures all entry points and perimeter windows and is equipped with motion detectors; pressure switches; and duress, panic, and hold-up alarms; or
 - b. Maintain a video surveillance system that records continuously 24 hours each day and meets at least one of the following criteria:

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- (I) Cameras are fixed in a place that allows for the clear identification of persons and activities in controlled areas of the premises. Controlled areas include grow rooms, processing rooms, storage rooms, disposal rooms or areas, and point-of-sale rooms;
 - (II) Cameras are fixed in entrances and exits to the premises, which shall record from both indoor and outdoor, or ingress and egress, vantage points;
 - (III) Recorded images must clearly and accurately display the time and date; or
 - (IV) Retain video surveillance recordings for a minimum of 45 days or longer upon the request of a law enforcement agency.
2. Ensure that the organization's outdoor premises have sufficient lighting from dusk until dawn.
 3. Establish and maintain a tracking system approved by the department that traces the low-THC cannabis or medical cannabis from seed to sale. The tracking system shall include notification of key events as determined by the department, including when cannabis seeds are planted, when cannabis plants are harvested and destroyed, and when low-THC cannabis or medical cannabis is transported, sold, stolen, diverted, or lost.
 4. Not dispense from its premises low-THC cannabis, medical cannabis, or a cannabis delivery device between the hours of 9 p.m. and 7 a.m., but may perform all other operations and deliver low-THC cannabis and medical cannabis to qualified patients 24 hours each day.
 5. Store low-THC cannabis or medical cannabis in a secured, locked room or a vault.
 6. Require at least two of its employees, or two employees of a security agency with whom it contracts, to be on the premises at all times.
 7. Require each employee to wear a photo identification badge at all times while on the premises.
 8. Require each visitor to wear a visitor's pass at all times while on the premises.
 9. Implement an alcohol and drug-free workplace policy.
 10. Report to local law enforcement within 24 hours after it is notified or becomes aware of the theft, diversion, or loss of low-THC cannabis or medical cannabis.
- (e) To ensure the safe transport of low-THC cannabis or medical cannabis to dispensing organization facilities, independent testing laboratories, or patients, the dispensing organization must:
1. Maintain a transportation manifest, which must be retained for at least 1 year.
 2. Ensure only vehicles in good working order are used to transport low-THC cannabis or medical cannabis.
 3. Lock low-THC cannabis or medical cannabis in a separate compartment or container within the vehicle.
 4. Require at least two persons to be in a vehicle transporting low-THC cannabis or medical cannabis, and require at least one person to remain in the vehicle while the low-THC cannabis or medical cannabis is being delivered.
 5. Provide specific safety and security training to employees transporting or delivering low-THC cannabis or medical cannabis.
- (7) DEPARTMENT AUTHORITY AND RESPONSIBILITIES.—
- (a) The department may conduct announced or unannounced inspections of dispensing organizations to determine compliance with this section or rules adopted pursuant to this section.
 - (b) The department shall inspect a dispensing organization upon complaint or notice provided to the department that the dispensing organization has dispensed low-THC cannabis or medical cannabis containing any mold, bacteria, or other contaminant that may cause or has caused an adverse effect to human health or the environment.
 - (c) The department shall conduct at least a biennial inspection of each dispensing organization to evaluate the dispensing organization's records, personnel, equipment, processes, security measures, sanitation practices, and quality assurance practices.
 - (d) The department may enter into interagency agreements with the Department of Agriculture and Consumer Services, the Department of Business and Professional Regulation, the Department of Transportation, the Department of Highway Safety and Motor Vehicles, and the Agency for Health Care Administration, and such agencies are authorized to enter into an interagency agreement with the department, to conduct inspections or perform other responsibilities assigned to the department under this section.

(e) The department must make a list of all approved dispensing organizations and qualified ordering physicians and medical directors publicly available on its website.

(f) The department may establish a system for issuing and renewing registration cards for patients and their legal representatives, establish the circumstances under which the cards may be revoked by or must be returned to the department, and establish fees to implement such system. The department must require, at a minimum, the registration cards to:

1. Provide the name, address, and date of birth of the patient or legal representative.
2. Have a full-face, passport-type, color photograph of the patient or legal representative taken within the 90 days immediately preceding registration.
3. Identify whether the cardholder is a patient or legal representative.
4. List a unique numeric identifier for the patient or legal representative that is matched to the identifier used for such person in the department's compassionate use registry.
5. Provide the expiration date, which shall be 1 year after the date of the physician's initial order of low-THC cannabis or medical cannabis.
6. For the legal representative, provide the name and unique numeric identifier of the patient that the legal representative is assisting.
7. Be resistant to counterfeiting or tampering.

(g) The department may impose reasonable fines not to exceed \$10,000 on a dispensing organization for any of the following violations:

1. Violating this section, s. 499.0295, or department rule.
2. Failing to maintain qualifications for approval.
3. Endangering the health, safety, or security of a qualified patient.
4. Improperly disclosing personal and confidential information of the qualified patient.
5. Attempting to procure dispensing organization approval by bribery, fraudulent misrepresentation, or extortion.
6. Being convicted or found guilty of, or entering a plea of guilty or nolo contendere to, regardless of adjudication, a crime in any jurisdiction which directly relates to the business of a dispensing organization.
7. Making or filing a report or record that the dispensing organization knows to be false.
8. Willfully failing to maintain a record required by this section or department rule.
9. Willfully impeding or obstructing an employee or agent of the department in the furtherance of his or her official duties.
10. Engaging in fraud or deceit, negligence, incompetence, or misconduct in the business practices of a dispensing organization.
11. Making misleading, deceptive, or fraudulent representations in or related to the business practices of a dispensing organization.
12. Having a license or the authority to engage in any regulated profession, occupation, or business that is related to the business practices of a dispensing organization suspended, revoked, or otherwise acted against by the licensing authority of any jurisdiction, including its agencies or subdivisions, for a violation that would constitute a violation under Florida law.
13. Violating a lawful order of the department or an agency of the state, or failing to comply with a lawfully issued subpoena of the department or an agency of the state.

(h) The department may suspend, revoke, or refuse to renew a dispensing organization's approval if a dispensing organization commits any of the violations in paragraph (g).

(i) The department shall renew the approval of a dispensing organization biennially if the dispensing organization meets the requirements of this section and pays the biennial renewal fee.

(j) The department may adopt rules necessary to implement this section.

(8) PREEMPTION.—

(a) All matters regarding the regulation of the cultivation and processing of medical cannabis or low-THC cannabis by dispensing organizations are preempted to the state.

(b) A municipality may determine by ordinance the criteria for the number and location of, and other permitting requirements that do not conflict with state law or department rule for, dispensing facilities of dispensing organizations located within its municipal boundaries. A county may determine by

ordinance the criteria for the number, location, and other permitting requirements that do not conflict with state law or department rule for all dispensing facilities of dispensing organizations located within the unincorporated areas of that county.

(9) EXCEPTIONS TO OTHER LAWS.—

(a) Notwithstanding s. 893.13, s. 893.135, s. 893.147, or any other provision of law, but subject to the requirements of this section, a qualified patient and the qualified patient's legal representative may purchase and possess for the patient's medical use up to the amount of low-THC cannabis or medical cannabis ordered for the patient, but not more than a 45-day supply, and a cannabis delivery device ordered for the patient.

(b) Notwithstanding s. 893.13, s. 893.135, s. 893.147, or any other provision of law, but subject to the requirements of this section, an approved dispensing organization and its owners, managers, and employees may manufacture, possess, sell, deliver, distribute, dispense, and lawfully dispose of reasonable quantities, as established by department rule, of low-THC cannabis, medical cannabis, or a cannabis delivery device. For purposes of this subsection, the terms "manufacture," "possession," "deliver," "distribute," and "dispense" have the same meanings as provided in s. 893.02.

(c) Notwithstanding s. 893.13, s. 893.135, s. 893.147, or any other provision of law, but subject to the requirements of this section, an approved independent testing laboratory may possess, test, transport, and lawfully dispose of low-THC cannabis or medical cannabis as provided by department rule.

(d) An approved dispensing organization and its owners, managers, and employees are not subject to licensure or regulation under chapter 465 or chapter 499 for manufacturing, possessing, selling, delivering, distributing, dispensing, or lawfully disposing of reasonable quantities, as established by department rule, of low-THC cannabis, medical cannabis, or a cannabis delivery device.

(e) An approved dispensing organization that continues to meet the requirements for approval is presumed to be registered with the department and to meet the regulations adopted by the department or its successor agency for the purpose of dispensing medical cannabis or low-THC cannabis under Florida law. Additionally, the authority provided to a dispensing organization in s. 499.0295 does not impair the approval of a dispensing organization.

(f) This subsection does not exempt a person from prosecution for a criminal offense related to impairment or intoxication resulting from the medical use of low-THC cannabis or medical cannabis or relieve a person from any requirement under law to submit to a breath, blood, urine, or other test to detect the presence of a controlled substance.