

A RESOLUTION

24-540

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

June 2, 2022

To declare the existence of an emergency with respect to the need to amend the Legalization of Marijuana for Medical Treatment Initiative of 1999 to allow individuals 21 years of age and older to self-certify that they are utilizing marijuana for medical purposes.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Medical Marijuana Self-Certification Emergency Declaration Resolution of 2022”.

Sec. 2. (a) Currently, District law permits and regulates the possession, use, and sale of marijuana for medical purposes. It is further legal to possess, use, and transfer without remuneration marijuana for recreational use. However, due to a 2014 Congressional budget rider imposed on the District by Congress (proposed by Representative Andy Harris, and so commonly referred to as the “Harris Rider”), the District is prohibited from spending funds to legalize and regulate the sale of recreational marijuana (i.e., marijuana not used for medical purposes).

(b) This unique state of the law has led to the development of what has been termed a “gray” market for the purchase of marijuana. Over the past 7 years, a number of shops have opened in the District, which incorrectly purport to legally sell marijuana by including marijuana as a gift accompanying the purchase of generally significantly overpriced digital art, stickers, clothing, food, or other items (“gifting shops”). Because these shops are operating outside of the law, there is no requirement or enforcement of customer registration, including no verification that purchasers are of legal age. In addition, for gray market products there is no assurance that the marijuana has been tested or adequately labeled, raising concerns that products could be contaminated or otherwise unsafe for consumers and that the potency of the marijuana purchased could differ from what was advertised.

(c) On the other hand, a patient wishing to buy legal marijuana for medical purposes from the existing regulated dispensaries must adhere to numerous regulatory requirements. Patients must submit an application to the Alcoholic Beverage Regulation Administration (“ABRA”), which requires the patient to provide a recommendation from an authorized practitioner issued within the past 2 years—a requirement made all the more burdensome by the fact that only 620

authorized practitioners (out of thousands of healthcare providers in the District) are registered with ABRA and able to provide these recommendations. Lack of access means treatment may be delayed as patients work to identify and secure an appointment with an authorized practitioner, and later wait for the authorized practitioner to provide their recommendation. This requirement also creates barriers for medical marijuana patients who are underinsured, low-income residents, or members of other vulnerable communities who may not have the time or financial resources to obtain an authorized practitioner's recommendation despite having medical need. This has had real consequences for legal medical dispensaries; because gray market shops do not require customers to provide an authorized practitioner's recommendation many medical marijuana patients choose to shop at these illegal gifting stores.

(d) Due to the lower barriers to access in the gray market, a significant number of medical marijuana patients have shifted from purchasing their medical marijuana from legal medical dispensaries to the illicit gray market, creating a significant risk to the long-term viability of the District's legal medical marijuana industry. The gray market is estimated to log a staggering \$600 million in sales annually, sapping medical marijuana patients from legal, regulated dispensaries. ABRA reports that the number of patients purchasing marijuana from medical dispensaries in the District has been in decline since December 2021. This loss of sales from medical marijuana patients is calamitous for the District's legal market. Even under the best of circumstances, the medical marijuana industry faces extremely slim profit margins due to the federal government's prohibition on these businesses claiming deductions accessible to most other businesses, in effect requiring these businesses to pay taxes on their revenue, rather than their profit. If this trend continues, it is possible that gray market sales could completely eliminate the District's legal marijuana dispensaries. Given the benefits that regulated and safe legal dispensaries provide to medical marijuana users in the District, it is vital that the industry survive until the District has a strong regulated recreational market and can transition toward full regulation of recreational marijuana products.

(e) On April 5, 2022, the Council considered the Medical Marijuana Patient Access Supplemental Extension and Civil Enforcement Emergency Amendment Act of 2022, as introduced on April 4, 2022 (Bill 24-747), which would have established an enforcement scheme against gray-market businesses and would have allowed certain residents to self-certify in order to access medical marijuana products. That legislation failed, with several members raising concerns about the impact the enforcement provisions would have on employees and business owners participating in the gray market.

(f) This emergency legislation moves only the portion of that prior legislation regarding self-certification. Specifically, it would allow medical marijuana patients 21 years of age and older to self-certify that they are utilizing marijuana for medical purposes. Patients will still be formally registered in the medical marijuana program, issued a patient identification number, and recorded in ABRA's private and secure Metrc track-and-trace system. While not a panacea for all the issues facing our legal marijuana market, this emergency legislation provides a small

amount of relief by increasing the ability of medical marijuana patients to access the legal and regulated medical market. The language of the legislation mirrors the self-certification provision in permanent legislation pending before the Committee on the Judiciary and Public Safety, Committee on Business and Economic Development, and Committee of the Whole, which hopefully will move before the end of this Council Period.

(g) In the meantime, permitting patients to self-certify now will provide a critical temporary measure to help legal marijuana dispensaries retain and perhaps even win back medical marijuana patients from the illicit gray market. While the Council heard concerns from gray market businesses last April regarding the emergency legislation being proposed at that time and the effect enforcement would have on their businesses and employees, the same concerns cannot be raised regarding this measure. Unlike the prior emergency legislation, this bill does not include any enforcement provisions and, therefore, will not have a direct effect on the gray-market businesses or their employees beyond perhaps increasing competition for services. That is, instead of attempting to constrain the gray market, this legislation aims to expand access to the legal medical market for medical marijuana patients. Of note, where this legislation does result in medical marijuana patients choosing legal dispensaries over gifting shops, that shift should result in better health outcomes for patients due to those dispensaries selling only regulated marijuana products, which have a lower risk of contamination and higher rates of consistent labeling and potency compared to unregulated marijuana.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Medical Marijuana Self-Certification Emergency Amendment Act of 2022 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.