SENATE, No. 119

STATE OF NEW JERSEY
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PRE-FILED FOR INTRODUCTION IN THE 2008 SESSION

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SYNOPSIS
Establishes "New Jersey Compassionate Use Medical Marijuana Act."

CURRENT VERSION OF TEXT
Introduced Pending Technical Review by Legislative Counsel

(Sponsorship Updated As Of: 10/7/2008)
AN ACT concerning the medical use of marijuana and supplementing Title 24 of the Revised Statutes.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. This act shall be known and may be cited as the "New Jersey Compassionate Use Medical Marijuana Act."

2. The Legislature finds and declares that:
   a. Modern medical research has discovered a beneficial use for marijuana in treating or alleviating the pain or other symptoms associated with certain debilitating medical conditions, as found by the National Academy of Sciences’ Institute of Medicine in March 1999;
   b. According to the U.S. Sentencing Commission and the Federal Bureau of Investigation, 99 out of every 100 marijuana arrests in the country are made under state law, rather than under federal law. Consequently, changing state law will have the practical effect of protecting from arrest the vast majority of seriously ill people who have a medical need to use marijuana.
   c. Although federal law currently prohibits the use of marijuana, the laws of Alaska, California, Colorado, Hawaii, Maine, Nevada, Oregon, Vermont, Washington and Montana permit the use of marijuana for medical purposes, and in Arizona doctors are permitted to prescribe marijuana. New Jersey joins this effort for the health and welfare of its citizens.
   d. States are not required to enforce federal law or prosecute people for engaging in activities prohibited by federal law; therefore, compliance with this act does not put the State of New Jersey in violation of federal law.
   e. Compassion dictates that a distinction be made between medical and non-medical uses of marijuana. Hence, the purpose of this act is to protect from arrest, prosecution, property forfeiture, and criminal and other penalties, those patients suffering from debilitating medical conditions, and their physicians and primary caregivers, if such patients engage in the medical use of marijuana.

3. As used in this act:
   "Bona fide physician-patient relationship" means a physician has completed a full assessment of the patient's medical history and current medical condition, including a personal physical examination.
   "Commissioner" means the Commissioner of Health and Senior Services.
   "Debilitating medical condition" means:
   (1) cancer, glaucoma, positive status for human immunodeficiency virus, acquired immune deficiency syndrome, or
the treatment of these conditions;
(2) a chronic or debilitating disease or medical condition or its
treatment that produces one or more of the following: cachexia or
wasting syndrome; severe or chronic pain; severe nausea; seizures,
including, but not limited to, those characteristic of epilepsy; severe
and persistent muscle spasms, including, but not limited to, those
characteristic of multiple sclerosis or Crohn's disease; or
(3) any other medical condition or its treatment that is approved
by the department by regulation.
"Department" means the Department of Health and Senior
Services.
"Marijuana" has the meaning given in section 2 of the "New
(C.24:21-2).
"Medical use" means the acquisition, possession, cultivation,
manufacture, use, delivery, transfer or transportation of marijuana
or paraphernalia relating to a qualifying patient's consumption of
marijuana to alleviate the symptoms or effects of the patient's
debilitating medical condition.
"Physician" means a person licensed to practice medicine and
surgery pursuant to Title 45 of the Revised Statutes.
"Primary caregiver" or "caregiver" means a person who is at
least 18 years old, who has never been convicted of a felony drug
offense, has agreed to assist with a qualifying patient's medical use
of marijuana and has been designated as primary caregiver on the
qualifying patient's application or renewal for a registry
identification card or in other written notification to the department.
A primary caregiver shall only have one qualifying patient at any
one time. "Primary caregiver" shall not include the qualifying
patient's physician.
"Qualifying patient" or "patient" means a person who has been
diagnosed by a physician as having a debilitating medical condition.
"Registry identification card" means a document issued by the
department that identifies a person as a qualifying patient or
primary caregiver, and shall include a registry identification card or
its equivalent, issued by another state government to permit the
medical use of marijuana by a qualifying patient or to permit a
person to assist with a qualifying patient's medical use of marijuana.
"Usable marijuana" means the dried leaves and flowers of
marijuana, and any mixture or preparation thereof, and does not
include the seeds, stalks and roots of the plant.
"Written certification" means the qualifying patient's medical
records, or a statement signed by a physician with whom the patient
has a bona fide physician-patient relationship, stating that in the
physician's professional opinion, after having completed a full
assessment of the qualifying patient's medical history and current
medical condition, the qualifying patient has a debilitating medical
condition for which recognized drugs or treatments are not or would
not be effective and the potential benefits of the medical use of marijuana would likely outweigh the health risks for the qualifying patient.

4.  a. (1) A qualifying patient shall not be subject to arrest, prosecution or penalty in any manner, or denied any right or privilege, including, but not limited to, civil penalty or disciplinary action by a professional licensing board, for the medical use of marijuana, provided that the patient possesses a registry identification card and no more than six marijuana plants and one ounce of usable marijuana. (2) There shall exist a rebuttable presumption that a qualifying patient is engaged in the medical use of marijuana if he possesses a registry identification card and no more than six marijuana plants and one ounce of usable marijuana. The presumption may be rebutted by evidence that conduct related to marijuana was not for the purpose of alleviating the symptoms or effects of a patient's debilitating medical condition.

(3) A qualifying patient may assert the medical use of marijuana as an affirmative defense to any prosecution involving marijuana unless the patient was in violation of section 5 of this act when the events giving rise to the prosecution occurred. The defense shall be presumed valid where the evidence shows that:

(a) at the time of the events giving rise to the prosecution, the patient's medical records indicated or a physician stated that, in the physician's professional opinion, after having completed a full assessment of the patient's medical history and current medical condition made in the course of a bona fide physician-patient relationship, the potential benefits of the medical use of marijuana would likely outweigh the health risks for the patient; and
(b) the patient and his caregiver, if any, were collectively in possession of no more than six marijuana plants and one ounce of usable marijuana.

(4) Possession of, or application for, a registry identification card shall not alone constitute probable cause to search the person or the property of the person possessing or applying for the registry identification card, or otherwise subject the person or his property to inspection by any governmental agency.

(5) The provisions of section 2 of P.L.1939, c.248 (C.26:2-82), relating to destruction of marijuana determined to exist by the department, shall not apply if a qualifying patient has in his possession a registry identification card and no more than six marijuana plants and one ounce of usable marijuana.

b. The provisions of subsection a. of this section shall not apply to a qualifying patient under the age of 18 years, unless:
(1) the patient's physician has explained to the patient and the patient's custodial parent, guardian, or person having legal custody, the potential risks and benefits of the medical use of marijuana; and
(2) the custodial parent, guardian, or person having legal custody
c. (1) A primary caregiver who has in his possession a registry identification card shall not be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including, but not limited to, civil penalty or disciplinary action by a professional licensing board, for assisting a qualifying patient to whom the caregiver is connected through the department’s registration process with the medical use of marijuana, provided that the caregiver possesses no more than six marijuana plants and one ounce of usable marijuana for the patient to whom he is connected through the department’s registration process.

(2) There shall exist a rebuttable presumption that a primary caregiver is engaged in the medical use of marijuana if the caregiver possesses a registry identification card and no more than six marijuana plants and one ounce of usable marijuana. The presumption may be rebutted by evidence that conduct related to marijuana was not for the purpose of alleviating the symptoms or effects of a qualifying patient's debilitating medical condition.

(3) A primary caregiver may assert the medical use of marijuana as an affirmative defense to any prosecution involving marijuana unless the caregiver was in violation of section 5 of this act when the events giving rise to the prosecution occurred. The defense shall be presumed valid where the evidence shows that:

(a) at the time of the events giving rise to the prosecution, the patient's medical records indicated or a physician stated that, in the physician's professional opinion, after having completed a full assessment of the patient's medical history and current medical condition made in the course of a bona fide physician-patient relationship, the potential benefits of the medical use of marijuana would likely outweigh the health risks for the patient; and

(b) the patient and his caregiver, if any, were collectively in possession of no more than six marijuana plants and one ounce of usable marijuana.

(4) Possession of, or application for, a registry identification card shall not alone constitute probable cause to search a person or property of a person possessing or applying for the registry identification card, or otherwise subject the person or his property to inspection by any governmental agency.

(5) The provisions of section 2 of P.L.1939, c.248 (C.26:2-82), relating to destruction of marijuana determined to exist by the department, shall not apply if a primary caregiver has in his possession a registry identification card and no more than six marijuana plants and one ounce of usable marijuana.

d. A physician shall not be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including,
but not limited to, civil penalty or disciplinary action by the State
Board of Medical Examiners, for providing written certification for
the medical use of marijuana to a qualifying patient.

e. No person shall be subject to arrest or prosecution for
constructive possession, conspiracy or any other offense for simply
being in the presence or vicinity of the medical use of marijuana as
permitted under this act.

5. The provisions of this act shall not be construed to permit any
person to operate, navigate, or be in actual physical control of any
motor vehicle, aircraft or motorboat while under the influence of
marijuana; or smoke marijuana in a school bus or other form of
public transportation, on any school grounds, in any correctional
facility, at any public park or beach, or at any recreation center. A
person who commits an act as provided in this section shall be
subject to such penalties as provided by law.

6. It shall be a disorderly persons offense for a person to
fabricate or misrepresent a registry identification card to a law
enforcement official.

7. a. The department shall establish a registry and shall issue a
registry identification card to a qualifying patient who submits the
following, in accordance with the department's regulations:
(1) written certification that the person is a qualifying patient;
(2) an application or renewal fee, which may be based on a
sliding scale as determined by the commissioner;
(3) name, address and date of birth of the patient;
(4) name, address and telephone number of the patient's
physician; and
(5) name, address and date of birth of the patient's primary
caregiver, if any.

Before issuing a registry identification card, the department shall
verify the information contained in the application or renewal form
submitted pursuant to this section. The department shall approve or
deny an application or renewal within 15 days of receipt of the
application or renewal, and shall issue a registry identification card
within five days of approving the application or renewal. The
department may deny an application or renewal only if the applicant
fails to provide the information required pursuant to this section, or
if the department determines that the information was falsified.
Denial of an application is considered a final agency decision,
subject to review by the Appellate Division of the Superior Court.

b. The department shall issue a registry identification card to the
caregiver named in a patient's approved application, if the caregiver
signs a statement agreeing to provide marijuana only to the patient
who has named him as caregiver. However, the department shall
not issue a registry identification card to a proposed caregiver who
has previously been convicted of a felony drug offense.

c. A registry identification card shall contain the following information:
  (1) the name, address and date of birth of the patient;
  (2) the name, address and date of birth of the patient's caregiver, if any;
  (3) the date of issuance and expiration date of the registry identification card;
  (4) photo identification of the cardholder; and
  (5) such other information that the department may specify in its regulations.

A patient who has been issued a registry identification card shall notify the department of any change in the patient's name, address, physician or caregiver, or change in status of the patient's debilitating medical condition, within 10 days of such change, or the registry identification card shall be deemed null and void.

d. The department shall maintain a confidential list of the persons to whom it has issued registry identification cards. Individual names and other identifying information on the list shall be confidential, and shall not be considered a public record under P.L.1963, c.73 (C.47:1A-1 et seq.) or P.L.2001, c.404 (C.47:1A-5 et al.), and shall not be disclosed except to:
  (1) authorized employees of the department as necessary to perform official duties of the department; or
  (2) authorized employees of State or local law enforcement agencies, only as necessary to verify that a person who is engaged in the suspected or alleged medical use of marijuana is lawfully in possession of a registry identification card.

8. The commissioner may accept from any governmental department or agency, public or private body or any other source grants or contributions to be used in carrying out the purposes of this act.

9. The commissioner shall report annually to the Governor and the Legislature on the number of applications for registry identification cards, the number of qualifying patients and primary caregivers approved, the nature of the debilitating medical conditions of the patients, the number of registry identification cards revoked, and the number of physicians providing written certifications for patients. The report shall not contain any identifying information of patients, caregivers or physicians.

10. Nothing in this act shall be construed to require a government medical assistance program or private health insurer to reimburse a person for costs associated with the medical use of marijuana, or an employer to accommodate the medical use of marijuana in any workplace.
11. The State shall not be held liable for any deleterious outcomes from the medical use of marijuana by any qualifying patient.

12. Pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), the commissioner shall promulgate rules and regulations to effectuate the purposes of this act. The regulations shall establish: the application and renewal form, process and fee schedule; and the manner in which the department will consider petitions from the public to add debilitating medical conditions to those included in this act.

13. This act shall take effect 90 days after enactment.

STATEMENT

This bill would establish the "New Jersey Compassionate Use Medical Marijuana Act." Medical research suggests that marijuana may alleviate pain or other symptoms associated with certain debilitating medical conditions. Federal law, however, prohibits the use of marijuana. According to the U.S. Sentencing Commission and the Federal Bureau of Investigation, 99 percent of marijuana-related arrests in the country are made under state law rather than under federal law.

Changing state law would therefore protect from arrest the vast majority of seriously ill people with a medical need to use marijuana. To that end, Alaska, California, Colorado, Hawaii, Maine, Nevada, Oregon, Vermont, Washington and Montana permit the use of marijuana for medical purposes, and in Arizona doctors are permitted to prescribe marijuana. With this bill, New Jersey would join the effort to protect from arrest, prosecution, property forfeiture, and criminal and other penalties, a qualifying patient suffering from debilitating medical conditions, as well as his physician and primary caregivers, if the patient uses marijuana for medical purposes in accordance with the provision of the bill. The bill would also provide protection to persons who simply are in the presence or vicinity of such permitted medical use of marijuana.

Under the bill, the Department of Health and Senior Services (DHSS) would issue registry identification cards containing the cardholder's photograph to qualifying patients and their primary caregivers. The bill defines "qualifying patient" or "patient" as a person who has been diagnosed by a physician with whom the patient has a bona fide physician-patient relationship as having a "debilitating medical condition." "Debilitating medical condition" is defined as: cancer, glaucoma, positive HIV/AIDS status, or the treatment of these conditions; a chronic or debilitating disease or medical condition or its treatment that produces cachexia or wasting
syndrome, severe or chronic pain, severe nausea, seizures, severe
and persistent muscle spasms; and other medical conditions that
may administratively be added by the department. "Primary
caregiver" or "caregiver" is defined as a person who is at least 18
years old, who has never been convicted of a felony drug offense,
has agreed to assist with a qualifying patient's medical use of
marijuana and has been designated as primary caregiver on the
patient's registry identification card, or in other written notification
to the department. The bill provides that a primary caregiver may
only have one qualified patient at any one time. A patient's
physician could not serve as a primary caregiver. A "registry
identification card" is defined as a document identifying a person as
a qualifying patient or primary caregiver that is issued by DHSS,
but the bill also includes in the definition a registry identification
card or its equivalent, issued by another state.

A patient or his caregiver who possess a registry identification
card and collectively possess no more than six marijuana plants and
one ounce of usable marijuana would receive the following
protections under this bill:
- The person would not be subject to arrest, prosecution or
penalty, or denied any right or privilege, including civil penalty or
disciplinary action by a professional licensing board, for the
medical use of marijuana.
- The person would be entitled to a rebuttable presumption of
medical use of marijuana if the patient or his caregiver possess a
registry identification card and the permissible amount of
marijuana. The presumption may be rebutted by evidence that the
conduct related to marijuana was not for the purpose of alleviating
the symptoms or effects of the qualifying patient's debilitating
medical condition.
- The person could assert an affirmative defense of medical use
of marijuana to any prosecution involving marijuana, unless the
person was operating a motor vehicle, aircraft or motorboat while
under the influence of marijuana, or smoking marijuana in a school
bus or other form of public transportation, on any school grounds,
in any correctional facility, or at any public park, public beach,
public recreation center or youth center. The affirmative defense is
to be presumed valid where the evidence shows that: (1) at the time
of the events giving rise to the prosecution, the patient's medical
records indicated or a physician stated that, in the physician's
professional opinion, after having completed a full assessment of
the person's medical history and current medical condition made in
the course of a bona fide physician-patient relationship, the
potential benefits of the medical use of marijuana would likely
outweigh the health risks for the patient; and (2) the patient and his
caregiver, if any, collectively possessed no more than six marijuana
plants and one ounce of usable marijuana.
- Possession of, or application for, a registry identification card
shall not alone constitute probable cause to search a person or his property.

- If a patient has in his possession a registry identification card and the permissible amount of marijuana, N.J.S.A.26:2-82 (authorizing the destruction of marijuana determined to exist by the Department of Health and Senior Services) would not apply.

The bill extends these protections to a qualified patient who is under 18 years of age if: (1) he and his legal guardian are advised by the patient's physician of the risks and benefits of using marijuana for medical purposes; and (2) the legal guardian consents in writing to allow the medical use of marijuana, to serve as the primary caregiver and to control the acquisition, dosage and frequency of medical use by the patient.

Under the bill, a physician who provides written certification for the medical use of marijuana to a qualifying patient would not be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including a civil penalty or disciplinary action by the State Board of Medical Examiners. In addition, the bill would protect persons from arrest and prosecution for constructive possession, conspiracy or any other offense if they were simply in the presence or vicinity of the medical use of marijuana as permitted by the bill.

DHSS would issue registry identification cards to qualifying patients who submit the following:

- written certification that the person is a qualifying patient ("written certification" is defined as the medical records or a statement signed by a physician with whom the patient has a bona fide physician-patient relationship, stating that in the physician's professional opinion, after completing a full assessment of the patient's medical history and current medical condition in the course of a bona fide physician-patient relationship, the patient has a debilitating medical condition medical condition for which recognized drugs or treatments are or would not be effective and the potential benefits of the medical use of marijuana would likely outweigh the health risks for the patient);

- the required application or renewal fee, which may be based on a sliding scale as determined by the commissioner;

- the patient's and caregiver's name, address and date of birth; and

- the physician's name, address and telephone number.

The bill requires that DHSS verify the information prior to issuing a registry identification card, and approve or deny an application or renewal within 15 days of receipt and issue a registry identification card within five days of approval. DHSS may deny an application or renewal only if the applicant fails to provide the required information, or if it determines that the information was falsified. Denial of an application is considered a final agency decision, subject to review by the Appellate Division of the
DHSS would issue a registry identification card to the primary caregiver named in a patient’s approved application if the caregiver signs a statement agreeing to provide marijuana only to the patient who has named him as primary caregiver. However, DHSS would be prohibited from issuing a registry identification card to any proposed caregiver with a felony drug offense conviction.

Each registry identification card would contain the name, address and date of birth of the patient and caregiver, if any; the date of issuance and expiration; photo identification of the cardholder, and such other information that the commissioner specifies by regulation.

Under the bill, it would be a disorderly persons offense, punishable by up to 180 days in jail and a $1,000 fine, for a person to fabricate or misrepresent a registry identification card to a law enforcement official.

DHSS is to maintain a confidential list of the persons to whom it has issued registry identification cards. Individual names and other identifying information on the list are to be confidential, and not subject to public access, but could be released to authorized DHSS employees as necessary to perform official department duties and to authorized employees of State or local law enforcement agencies when necessary to verify that a person who is engaged in the suspected or alleged medical use of marijuana is lawfully in possession of a registry identification card.

Application fees would be used to offset the cost of administering the registry. The commissioner is also authorized to accept grants or contributions from any governmental department or agency, public or private body or any other source.

The bill requires the commissioner to report annually to the Governor and Legislature on the number of applications for registry identification cards, the number of patients and caregivers approved, the number of registry identification cards revoked, the nature of the debilitating medical conditions, and the number of physicians providing written certification for patients. The report is to contain no identifying information of patients, caregivers or physicians.

The provisions of this bill should not to be construed to condone the diversion of marijuana for nonmedical purposes, nor should it be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others. Indeed, the bill expressly states that it does not permit any person to operate, navigate, or be in actual physical control of any motor vehicle, aircraft or motorboat while under the influence of marijuana; or smoke marijuana in a school bus or other form of public transportation, on any school grounds, in any correctional facility, or at any public park, public beach, public recreation center or youth center.
The bill also states that nothing in it should be construed to require a government medical assistance program or private health insurer to reimburse a person for costs associated with the medical use of marijuana, or an employer to accommodate the medical use of marijuana in any workplace. Finally, the bill provides that the State would not be held liable for any deleterious outcomes from the medical use of marijuana by any qualifying patient.