

SENATE, No. 119

STATE OF NEW JERSEY 213th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2008 SESSION

Sponsored by:

Senator NICHOLAS P. SCUTARI

District 22 (Middlesex, Somerset and Union)

Senator JIM WHELAN

District 2 (Atlantic)

Co-Sponsored by:

Senators Cunningham, Lesniak, Stack, Sweeney, Weinberg and Vitale

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)

1 AN ACT concerning the medical use of marijuana and
2 supplementing Title 24 of the Revised Statutes.

3

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

6

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

9

10 2. The Legislature finds and declares that:

11 a. Modern medical research has discovered a beneficial use for
12 marijuana in treating or alleviating the pain or other symptoms
13 associated with certain debilitating medical conditions, as found by
14 the National Academy of Sciences' Institute of Medicine in March
15 1999;

16 b. According to the U.S. Sentencing Commission and the
17 Federal Bureau of Investigation, 99 out of every 100 marijuana
18 arrests in the country are made under state law, rather than under
19 federal law. Consequently, changing state law will have the
20 practical effect of protecting from arrest the vast majority of
21 seriously ill people who have a medical need to use marijuana.

22 c. Although federal law currently prohibits the use of marijuana,
23 the laws of Alaska, California, Colorado, Hawaii, Maine, Nevada,
24 Oregon, Vermont, Washington and Montana permit the use of
25 marijuana for medical purposes, and in Arizona doctors are
26 permitted to prescribe marijuana. New Jersey joins this effort for
27 the health and welfare of its citizens.

28 d. States are not required to enforce federal law or prosecute
29 people for engaging in activities prohibited by federal law;
30 therefore, compliance with this act does not put the State of New
31 Jersey in violation of federal law.

32 e. Compassion dictates that a distinction be made between
33 medical and non-medical uses of marijuana. Hence, the purpose of
34 this act is to protect from arrest, prosecution, property forfeiture,
35 and criminal and other penalties, those patients suffering from
36 debilitating medical conditions, and their physicians and primary
37 caregivers, if such patients engage in the medical use of marijuana.

38

39 3. As used in this act:

40 "Bona fide physician-patient relationship" means a physician has
41 completed a full assessment of the patient's medical history and
42 current medical condition, including a personal physical
43 examination.

44 "Commissioner" means the Commissioner of Health and Senior
45 Services.

46 "Debilitating medical condition" means:

47 (1) cancer, glaucoma, positive status for human
48 immunodeficiency virus, acquired immune deficiency syndrome, or

1 the treatment of these conditions;

2 (2) a chronic or debilitating disease or medical condition or its
3 treatment that produces one or more of the following: cachexia or
4 wasting syndrome; severe or chronic pain; severe nausea; seizures,
5 including, but not limited to, those characteristic of epilepsy; severe
6 and persistent muscle spasms, including, but not limited to, those
7 characteristic of multiple sclerosis or Crohn's disease; or

8 (3) any other medical condition or its treatment that is approved
9 by the department by regulation.

10 "Department" means the Department of Health and Senior
11 Services.

12 "Marijuana" has the meaning given in section 2 of the "New
13 Jersey Controlled Dangerous Substances Act," P.L.1970, c.226
14 (C.24:21-2).

15 "Medical use" means the acquisition, possession, cultivation,
16 manufacture, use, delivery, transfer or transportation of marijuana
17 or paraphernalia relating to a qualifying patient's consumption of
18 marijuana to alleviate the symptoms or effects of the patient's
19 debilitating medical condition.

20 "Physician" means a person licensed to practice medicine and
21 surgery pursuant to Title 45 of the Revised Statutes.

22 "Primary caregiver" or "caregiver" means a person who is at
23 least 18 years old, who has never been convicted of a felony drug
24 offense, has agreed to assist with a qualifying patient's medical use
25 of marijuana and has been designated as primary caregiver on the
26 qualifying patient's application or renewal for a registry
27 identification card or in other written notification to the department.
28 A primary caregiver shall only have one qualifying patient at any
29 one time. "Primary caregiver" shall not include the qualifying
30 patient's physician.

31 "Qualifying patient" or "patient" means a person who has been
32 diagnosed by a physician as having a debilitating medical condition.

33 "Registry identification card" means a document issued by the
34 department that identifies a person as a qualifying patient or
35 primary caregiver, and shall include a registry identification card or
36 its equivalent, issued by another state government to permit the
37 medical use of marijuana by a qualifying patient or to permit a
38 person to assist with a qualifying patient's medical use of marijuana.

39 "Usable marijuana" means the dried leaves and flowers of
40 marijuana, and any mixture or preparation thereof, and does not
41 include the seeds, stalks and roots of the plant.

42 "Written certification" means the qualifying patient's medical
43 records, or a statement signed by a physician with whom the patient
44 has a bona fide physician-patient relationship, stating that in the
45 physician's professional opinion, after having completed a full
46 assessment of the qualifying patient's medical history and current
47 medical condition, the qualifying patient has a debilitating medical
48 condition for which recognized drugs or treatments are not or would

1 not be effective and the potential benefits of the medical use of
2 marijuana would likely outweigh the health risks for the qualifying
3 patient.

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

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

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

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

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

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

43 b. The provisions of subsection a. of this section shall not apply
44 to a qualifying patient under the age of 18 years, unless:

45 (1) the patient's physician has explained to the patient and the
46 patient's custodial parent, guardian, or person having legal custody,
47 the potential risks and benefits of the medical use of marijuana; and

48 (2) the custodial parent, guardian, or person having legal custody

1 consents in writing to: allow the patient's medical use of marijuana;
2 serve as the patient's primary caregiver; and control the acquisition,
3 dosage, and frequency of the medical use of marijuana by the
4 patient.

5 c. (1) A primary caregiver who has in his possession a registry
6 identification card shall not be subject to arrest, prosecution, or
7 penalty in any manner, or denied any right or privilege, including,
8 but not limited to, civil penalty or disciplinary action by a
9 professional licensing board, for assisting a qualifying patient to
10 whom the caregiver is connected through the department's
11 registration process with the medical use of marijuana, provided
12 that the caregiver possesses no more than six marijuana plants and
13 one ounce of usable marijuana for the patient to whom he is
14 connected through the department's registration process.

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

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

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

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

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

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

47 d. A physician shall not be subject to arrest, prosecution, or
48 penalty in any manner, or denied any right or privilege, including,

1 but not limited to, civil penalty or disciplinary action by the State
2 Board of Medical Examiners, for providing written certification for
3 the medical use of marijuana to a qualifying patient.

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

8
9 5. The provisions of this act shall not be construed to permit any
10 person to operate, navigate, or be in actual physical control of any
11 motor vehicle, aircraft or motorboat while under the influence of
12 marijuana; or smoke marijuana in a school bus or other form of
13 public transportation, on any school grounds, in any correctional
14 facility, at any public park or beach, or at any recreation center. A
15 person who commits an act as provided in this section shall be
16 subject to such penalties as provided by law.

17
18 6. It shall be a disorderly persons offense for a person to
19 fabricate or misrepresent a registry identification card to a law
20 enforcement official.

21
22 7. a. The department shall establish a registry and shall issue a
23 registry identification card to a qualifying patient who submits the
24 following, in accordance with the department's regulations:

- 25 (1) written certification that the person is a qualifying patient;
26 (2) an application or renewal fee, which may be based on a
27 sliding scale as determined by the commissioner;
28 (3) name, address and date of birth of the patient;
29 (4) name, address and telephone number of the patient's
30 physician; and
31 (5) name, address and date of birth of the patient's primary
32 caregiver, if any.

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

44 b. The department shall issue a registry identification card to the
45 caregiver named in a patient's approved application, if the caregiver
46 signs a statement agreeing to provide marijuana only to the patient
47 who has named him as caregiver. However, the department shall
48 not issue a registry identification card to a proposed caregiver who

1 has previously been convicted of a felony drug offense.
2 c. A registry identification card shall contain the following
3 information:
4 (1) the name, address and date of birth of the patient;
5 (2) the name, address and date of birth of the patient's caregiver,
6 if any;
7 (3) the date of issuance and expiration date of the registry
8 identification card;
9 (4) photo identification of the cardholder; and
10 (5) such other information that the department may specify in its
11 regulations.
12 A patient who has been issued a registry identification card shall
13 notify the department of any change in the patient's name, address,
14 physician or caregiver, or change in status of the patient's
15 debilitating medical condition, within 10 days of such change, or
16 the registry identification card shall be deemed null and void.
17 d. The department shall maintain a confidential list of the
18 persons to whom it has issued registry identification cards.
19 Individual names and other identifying information on the list shall
20 be confidential, and shall not be considered a public record under
21 P.L.1963, c.73 (C.47:1A-1 et seq.) or P.L.2001, c.404 (C.47:1A-5 et
22 al.), and shall not be disclosed except to:
23 (1) authorized employees of the department as necessary to
24 perform official duties of the department; or
25 (2) authorized employees of State or local law enforcement
26 agencies, only as necessary to verify that a person who is engaged
27 in the suspected or alleged medical use of marijuana is lawfully in
28 possession of a registry identification card.
29
30 8. The commissioner may accept from any governmental
31 department or agency, public or private body or any other source
32 grants or contributions to be used in carrying out the purposes of
33 this act.
34
35 9. The commissioner shall report annually to the Governor and
36 the Legislature on the number of applications for registry
37 identification cards, the number of qualifying patients and primary
38 caregivers approved, the nature of the debilitating medical
39 conditions of the patients, the number of registry identification
40 cards revoked, and the number of physicians providing written
41 certifications for patients. The report shall not contain any
42 identifying information of patients, caregivers or physicians.
43
44 10. Nothing in this act shall be construed to require a
45 government medical assistance program or private health insurer to
46 reimburse a person for costs associated with the medical use of
47 marijuana, or an employer to accommodate the medical use of
48 marijuana in any workplace.

1 11. The State shall not be held liable for any deleterious
2 outcomes from the medical use of marijuana by any qualifying
3 patient.

4
5 12. Pursuant to the "Administrative Procedure Act," P.L.1968,
6 c.410 (C.52:14B-1 et seq.), the commissioner shall promulgate rules
7 and regulations to effectuate the purposes of this act. The
8 regulations shall establish: the application and renewal form,
9 process and fee schedule; and the manner in which the department
10 will consider petitions from the public to add debilitating medical
11 conditions to those included in this act.

12
13 13. This act shall take effect 90 days after enactment.

14
15
16 STATEMENT

17
18 This bill would establish the "New Jersey Compassionate Use
19 Medical Marijuana Act."

20 Medical research suggests that marijuana may alleviate pain or
21 other symptoms associated with certain debilitating medical
22 conditions. Federal law, however, prohibits the use of marijuana.
23 According to the U.S. Sentencing Commission and the Federal
24 Bureau of Investigation, 99 percent of marijuana-related arrests in
25 the country are made under state law rather than under federal law.
26 Changing state law would therefore protect from arrest the vast
27 majority of seriously ill people with a medical need to use
28 marijuana. To that end, Alaska, California, Colorado, Hawaii,
29 Maine, Nevada, Oregon, Vermont, Washington and Montana permit
30 the use of marijuana for medical purposes, and in Arizona doctors
31 are permitted to prescribe marijuana. With this bill, New Jersey
32 would join the effort to protect from arrest, prosecution, property
33 forfeiture, and criminal and other penalties, a qualifying patient
34 suffering from debilitating medical conditions, as well as his
35 physician and primary caregivers, if the patient uses marijuana for
36 medical purposes in accordance with the provision of the bill. The
37 bill would also provide protection to persons who simply are in the
38 presence or vicinity of such permitted medical use of marijuana.

39 Under the bill, the Department of Health and Senior Services
40 (DHSS) would issue registry identification cards containing the
41 cardholder's photograph to qualifying patients and their primary
42 caregivers. The bill defines "qualifying patient" or "patient" as a
43 person who has been diagnosed by a physician with whom the
44 patient has a bona fide physician-patient relationship as having a
45 "debilitating medical condition." "Debilitating medical condition"
46 is defined as: cancer, glaucoma, positive HIV/AIDS status, or the
47 treatment of these conditions; a chronic or debilitating disease or
48 medical condition or its treatment that produces cachexia or wasting

1 syndrome, severe or chronic pain, severe nausea, seizures, severe
2 and persistent muscle spasms; and other medical conditions that
3 may administratively be added by the department. "Primary
4 caregiver" or "caregiver" is defined as a person who is at least 18
5 years old, who has never been convicted of a felony drug offense,
6 has agreed to assist with a qualifying patient's medical use of
7 marijuana and has been designated as primary caregiver on the
8 patient's registry identification card, or in other written notification
9 to the department. The bill provides that a primary caregiver may
10 only have one qualified patient at any one time. A patient's
11 physician could not serve as a primary caregiver. A "registry
12 identification card" is defined as a document identifying a person as
13 a qualifying patient or primary caregiver that is issued by DHSS,
14 but the bill also includes in the definition a registry identification
15 card or its equivalent, issued by another state.

16 A patient or his caregiver who possess a registry identification
17 card and collectively possess no more than six marijuana plants and
18 one ounce of usable marijuana would receive the following
19 protections under this bill:

20 - The person would not be subject to arrest, prosecution or
21 penalty, or denied any right or privilege, including civil penalty or
22 disciplinary action by a professional licensing board, for the
23 medical use of marijuana.

24 - The person would be entitled to a rebuttable presumption of
25 medical use of marijuana if the patient or his caregiver possess a
26 registry identification card and the permissible amount of
27 marijuana. The presumption may be rebutted by evidence that the
28 conduct related to marijuana was not for the purpose of alleviating
29 the symptoms or effects of the qualifying patient's debilitating
30 medical condition.

31 - The person could assert an affirmative defense of medical use
32 of marijuana to any prosecution involving marijuana, unless the
33 person was operating a motor vehicle, aircraft or motorboat while
34 under the influence of marijuana, or smoking marijuana in a school
35 bus or other form of public transportation, on any school grounds,
36 in any correctional facility, or at any public park, public beach,
37 public recreation center or youth center. The affirmative defense is
38 to be presumed valid where the evidence shows that: (1) at the time
39 of the events giving rise to the prosecution, the patient's medical
40 records indicated or a physician stated that, in the physician's
41 professional opinion, after having completed a full assessment of
42 the person's medical history and current medical condition made in
43 the course of a bona fide physician-patient relationship, the
44 potential benefits of the medical use of marijuana would likely
45 outweigh the health risks for the patient; and (2) the patient and his
46 caregiver, if any, collectively possessed no more than six marijuana
47 plants and one ounce of usable marijuana.

48 - Possession of, or application for, a registry identification card

1 shall not alone constitute probable cause to search a person or his
2 property.

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

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

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

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

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

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

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

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

41 The bill requires that DHSS verify the information prior to
42 issuing a registry identification card, and approve or deny an
43 application or renewal within 15 days of receipt and issue a registry
44 identification card within five days of approval. DHSS may deny
45 an application or renewal only if the applicant fails to provide the
46 required information, or if it determines that the information was
47 falsified. Denial of an application is considered a final agency
48 decision, subject to review by the Appellate Division of the

1 Superior Court.

2 DHSS would issue a registry identification card to the primary
3 caregiver named in a patient's approved application if the caregiver
4 signs a statement agreeing to provide marijuana only to the patient
5 who has named him as primary caregiver. However, DHSS would
6 be prohibited from issuing a registry identification card to any
7 proposed caregiver with a felony drug offense conviction.

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

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

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

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

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

38 The provisions of this bill should not to be construed to condone
39 the diversion of marijuana for nonmedical purposes, nor should it
40 be construed to supersede legislation prohibiting persons from
41 engaging in conduct that endangers others. Indeed, the bill
42 expressly states that it does not permit any person to operate,
43 navigate, or be in actual physical control of any motor vehicle,
44 aircraft or motorboat while under the influence of marijuana; or
45 smoke marijuana in a school bus or other form of public
46 transportation, on any school grounds, in any correctional facility,
47 or at any public park, public beach, public recreation center or
48 youth center.

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1 The bill also states that nothing in it should be construed to
2 require a government medical assistance program or private health
3 insurer to reimburse a person for costs associated with the medical
4 use of marijuana, or an employer to accommodate the medical use
5 of marijuana in any workplace. Finally, the bill provides that the
6 State would not be held liable for any deleterious outcomes from
7 the medical use of marijuana by any qualifying patient.