

[First Reprint]

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)

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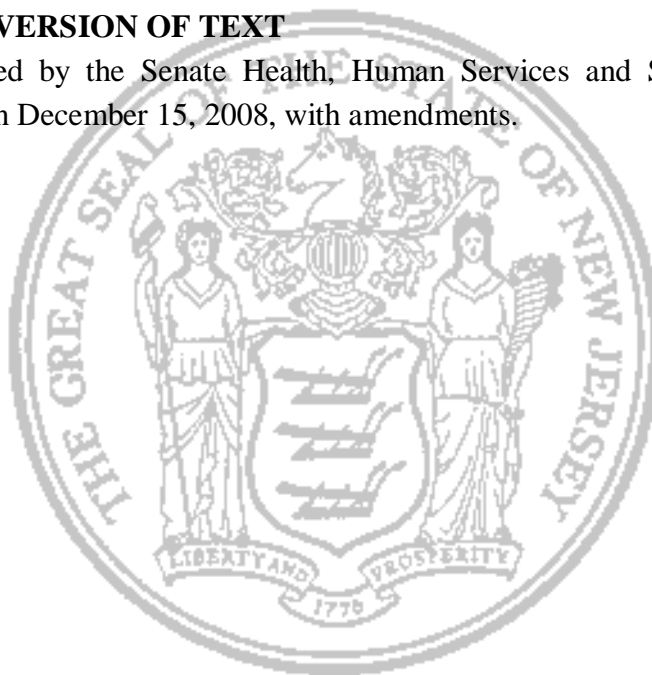
Senators Cunningham, Lesniak, Stack, Sweeney, Weinberg and Vitale

SYNOPSIS

Establishes "New Jersey Compassionate Use Medical Marijuana Act."

CURRENT VERSION OF TEXT

As reported by the Senate Health, Human Services and Senior Citizens Committee on December 15, 2008, with amendments.



(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,
 24 'Michigan, Montana,¹ Nevada, 'New Mexico,¹ Oregon, 'Rhode
 25 Island,¹ Vermont, 'and¹ Washington '[and Montana]¹ permit the
 26 use of marijuana for medical purposes, and in Arizona doctors are
 27 permitted to prescribe marijuana. New Jersey joins this effort for
 28 the health and welfare of its citizens.

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

33 e. Compassion dictates that a distinction be made between
 34 medical and non-medical uses of marijuana. Hence, the purpose of
 35 this act is to protect from arrest, prosecution, property forfeiture,
 36 and criminal and other penalties, those patients 'who use marijuana
 37 to alleviate¹ suffering from debilitating medical conditions, '[and]
 38 as well as¹ their physicians '[and],¹ primary caregivers, '[if such
 39 patients engage in the medical use of marijuana] and those who are
 40 authorized to produce marijuana for medical purposes¹.

41
 42 3. As used in this act:

43 "Bona fide physician-patient relationship" means a physician has

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SHH committee amendments adopted December 15, 2008.

1 completed a full assessment of the patient's medical history and
2 current medical condition, including a personal physical
3 examination.

4 “Commissioner” means the Commissioner of Health and Senior
5 Services.

6 “Debilitating medical condition” means:

7 (1) cancer, glaucoma, positive status for human
8 immunodeficiency virus, acquired immune deficiency syndrome, or
9 the treatment of these conditions;

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

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

18 “Department” means the Department of Health and Senior
19 Services.

20 “Marijuana” has the meaning given in section 2 of the “New
21 Jersey Controlled Dangerous Substances Act,” P.L.1970, c.226
22 (C.24:21-2).

23 “Medical marijuana alternative treatment center” or “alternative
24 treatment center” means an entity registered pursuant to section 5 of
25 this act, which acquires, possesses, cultivates, manufactures,
26 delivers, transfers, transports, supplies, or dispenses marijuana or
27 related supplies and educational materials to registered patients or
28 their registered primary caregivers.¹

29 “Medical use” means the acquisition, possession, cultivation,
30 manufacture, use, delivery, transfer¹,¹ or transportation of
31 marijuana or paraphernalia relating to a qualifying patient's
32 consumption of marijuana to alleviate the symptoms or effects of
33 the patient's debilitating medical condition.

34 “Physician” means a person licensed to practice medicine and
35 surgery pursuant to Title 45 of the Revised Statutes.

36 “Primary caregiver” or “caregiver” means a person who is at
37 least 18 years old, who has never been convicted of a felony drug
38 offense, has agreed to assist with a qualifying patient's medical use
39 of marijuana and has been designated as primary caregiver on the
40 qualifying patient's application or renewal for a registry
41 identification card or in other written notification to the department.
42 A primary caregiver shall only have one qualifying patient at any
43 one time. “Primary caregiver” shall not include the qualifying
44 patient's physician.

45 “Qualifying patient” or “patient” means a person who has been
46 diagnosed by a physician as having a debilitating medical condition.

1 “Registry identification card” means a document issued by the
2 department that identifies a person as a qualifying patient or
3 primary caregiver, and shall include a registry identification card or
4 its equivalent, issued by another state government to permit the
5 medical use of marijuana by a qualifying patient or to permit a
6 person to assist with a qualifying patient's medical use of marijuana.

7 “Usable marijuana” means the dried leaves and flowers of
8 marijuana, and any mixture or preparation thereof, and does not
9 include the seeds, stalks and roots of the plant.

10 “Written certification” means the qualifying patient's medical
11 records, or a statement signed by a physician with whom the patient
12 has a bona fide physician-patient relationship, stating that in the
13 physician's professional opinion, after having completed a full
14 assessment of the qualifying patient's medical history and current
15 medical condition, the qualifying patient has a debilitating medical
16 condition for which recognized drugs or treatments are not or would
17 not be effective and the potential benefits of the medical use of
18 marijuana would likely outweigh the health risks for the qualifying
19 patient.

20

21 4. a. (1) A qualifying patient shall not be subject to arrest,
22 prosecution or penalty in any manner, or denied any right or
23 privilege, including, but not limited to, civil penalty or disciplinary
24 action by a professional licensing board, for the medical use of
25 marijuana, provided that the patient possesses a registry
26 identification card and no more than six marijuana plants and one
27 ounce of usable marijuana.

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

35 (3) A qualifying patient may assert the medical use of marijuana
36 as an affirmative defense to any prosecution involving marijuana
37 unless the patient was in violation of section '[5] 7' of this act
38 when the events giving rise to the prosecution occurred. The
39 defense shall be presumed valid where the evidence shows that:

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

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

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

9 (5) The provisions of section 2 of P.L.1939, c.248 (C.26:2-82),
10 relating to destruction of marijuana determined to exist by the
11 department, shall not apply if a qualifying patient has in his
12 possession a registry identification card and no more than six
13 marijuana plants and one ounce of usable marijuana¹, or if an
14 alternative treatment center permit holder has in his possession no
15 more than six marijuana plants and one ounce of usable marijuana
16 per registry identification card holder¹.

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

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

22 (2) the custodial parent, guardian, or person having legal custody
23 consents in writing to: allow the patient's medical use of marijuana;
24 serve as the patient's primary caregiver; and control the acquisition,
25 dosage, and frequency of the medical use of marijuana by the
26 patient.

27 c. (1) A primary caregiver who has in his possession a registry
28 identification card shall not be subject to arrest, prosecution, or
29 penalty in any manner, or denied any right or privilege, including,
30 but not limited to, civil penalty or disciplinary action by a
31 professional licensing board, for assisting a qualifying patient to
32 whom the caregiver is connected through the department's
33 registration process with the medical use of marijuana, provided
34 that the caregiver possesses no more than six marijuana plants and
35 one ounce of usable marijuana for the patient to whom he is
36 connected through the department's registration process.

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

44 (3) A primary caregiver may assert the medical use of marijuana
45 as an affirmative defense to any prosecution involving marijuana
46 unless the caregiver was in violation of section '[5] 7¹ of this act

1 when the events giving rise to the prosecution occurred. The
2 defense shall be presumed valid where the evidence shows that:

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

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

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

18 (5) The provisions of section 2 of P.L.1939, c.248 (C.26:2-82),
19 relating to destruction of marijuana determined to exist by the
20 department, shall not apply if a primary caregiver has in his
21 possession a registry identification card and no more than six
22 marijuana plants and one ounce of usable marijuana¹, or if an
23 alternative treatment center permit holder has in his possession no
24 more than six marijuana plants and one ounce of usable marijuana
25 per registry identification card holder¹.

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

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

35

36 ¹5. a. The department shall establish a registration program
37 authorizing medical marijuana alternative treatment centers to
38 produce marijuana for medical purposes, and may charge a
39 reasonable fee for the issuance of a registration permit under this
40 section.

41 b. The department shall require that a permit applicant provide
42 information that includes, but is not limited to:

43 (1) the name of the person responsible for operating the
44 alternative treatment center;

45 (2) the names of all employees, whether volunteer or paid;

46 (3) the location of the alternative treatment center;

47 (4) the registry identification card number of each cardholder for

1 whom marijuana is to be produced; and
2 (5) any other information that the department considers
3 necessary.

4 c. A person who has been convicted of possession or sale of a
5 controlled dangerous substance shall not be issued a permit to
6 operate an alternative treatment center or be an employee of an
7 alternative treatment center, unless such conviction was for a
8 violation of federal law relating to possession or sale of marijuana
9 for conduct that is legal under this act.

10 d. The department shall issue a permit to a person to operate an
11 alternative treatment center if the requirements of this section are
12 met and the department has verified the information contained in
13 the application. The department shall approve or deny an
14 application within 60 days after receipt of a completed application.
15 The denial of an application shall be considered a final agency
16 decision, subject to review by the Appellate Division of the
17 Superior Court.

18 e. A person who has been issued a permit pursuant to this
19 section shall display the permit at the alternative treatment center at
20 all times when marijuana is being produced, or dispensed to a
21 registered qualifying patient or designated primary caregiver of the
22 patient.

23 f. An alternative treatment center permit holder shall report any
24 change in information to the department not later than 10 days after
25 such change, or the permit shall be deemed null and void.

26 g. All usable marijuana, plants, seedlings and seeds associated
27 with the production of marijuana for a registry identification
28 cardholder are the property of the registered patient and must be
29 provided to the patient upon request.

30 h. A registered patient or the designated primary caregiver of the
31 patient may reimburse the alternative treatment center for
32 reasonable costs associated with the production of marijuana for the
33 cardholder.¹

34
35 ¹6. A medical marijuana alternative treatment center permit
36 holder or his employee shall not be subject to arrest or prosecution,
37 penalized in any manner, including, but not limited to, being subject
38 to any civil penalty, or denied any right or privilege, including, but
39 not limited to, being subject to any disciplinary action by a
40 professional licensing board, for the acquisition, distribution,
41 possession, cultivation, or transportation of marijuana or
42 paraphernalia related to marijuana on behalf of a registered patient,
43 provided the amount of any marijuana so acquired, distributed,
44 possessed, cultivated, or transported, together with the combined
45 amount of marijuana possessed by the registered patient and his
46 primary caregiver, shall not exceed six marijuana plants and one
47 ounce of usable marijuana for each registered patient for whom the

1 alternative treatment center permit holder is authorized to produced
2 marijuana. For the purposes of this subsection, “distribution” or
3 “distributed” means the transfer of marijuana and paraphernalia
4 related to marijuana from the alternative treatment center permit
5 holder to the registered patient or his primary caregiver.¹

6
7 ¹[5.] 7.¹ The provisions of this act shall not be construed to
8 permit any person to operate, navigate, or be in actual physical
9 control of any motor vehicle, aircraft or motorboat while under the
10 influence of marijuana; or smoke marijuana in a school bus or other
11 form of public transportation, on any school grounds, in any
12 correctional facility, at any public park or beach, or at any
13 recreation center. A person who commits an act as provided in this
14 section shall be subject to such penalties as provided by law.

15
16 ¹[6.] 8.¹ It shall be a disorderly persons offense for a person to
17 fabricate or misrepresent a registry identification card ¹or a medical
18 marijuana alternative treatment center permit¹ to a law enforcement
19 official.

20
21 ¹[7.] 9.¹ a. The department shall establish a registry and shall
22 issue a registry identification card to a qualifying patient who
23 submits the following, in accordance with the department's
24 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

1 not issue a registry identification card to a proposed caregiver who
2 has previously been convicted of a felony drug offense.

3 c. A registry identification card shall contain the following
4 information:

5 (1) the name, address and date of birth of the patient;

6 (2) the name, address and date of birth of the patient's caregiver,
7 if any;

8 (3) the date of issuance and expiration date of the registry
9 identification card;

10 (4) photo identification of the cardholder; and

11 (5) such other information that the department may specify in its
12 regulations.

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

18 d. The department shall maintain a confidential list of the
19 persons to whom it has issued registry identification cards.
20 Individual names and other identifying information on the list shall
21 be confidential, and shall not be considered a public record under
22 P.L.1963, c.73 (C.47:1A-1 et seq.) or P.L.2001, c.404 (C.47:1A-5 et
23 al.), and shall not be disclosed except to:

24 (1) authorized employees of the department as necessary to
25 perform official duties of the department; or

26 (2) authorized employees of State or local law enforcement
27 agencies, only as necessary to verify that a person who is engaged
28 in the suspected or alleged medical use of marijuana is lawfully in
29 possession of a registry identification card.
30

31 **'[8.] 10.'** The commissioner may accept from any
32 governmental department or agency, public or private body or any
33 other source grants or contributions to be used in carrying out the
34 purposes of this act.
35

36 **'[9.] 11.'** The commissioner shall report annually to the
37 Governor and the Legislature on the number of applications for
38 registry identification cards, the number of qualifying patients and
39 primary caregivers **'[approved] registered'**, **'the number of medical
40 marijuana alternative treatment center permits issued,'** the nature of
41 the debilitating medical conditions of the patients, the number of
42 registry identification cards **'and alternative treatment center
43 permits'** revoked, and the number of physicians providing written
44 certifications for patients. The report shall not contain any
45 identifying information of patients, caregivers', **alternative
46 treatment centers,'** or physicians.

1 '【10.】 12.' Nothing in this act shall be construed to require a
2 government medical assistance program or private health insurer to
3 reimburse a person for costs associated with the medical use of
4 marijuana, or an employer to accommodate the medical use of
5 marijuana in any workplace.
6

7 '【11.】 13.' The State shall not be held liable for any deleterious
8 outcomes from the medical use of marijuana by any qualifying
9 patient.
10

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

18 'b. Notwithstanding any provision of P.L.1968, c.410 to the
19 contrary, the commissioner shall adopt, immediately upon filing
20 with the Office of Administrative Law and no later than the 90th
21 day after the effective date of this act, such regulations as the
22 commissioner deems necessary to implement the provisions of
23 section 9 of this act. Regulations adopted pursuant to this
24 subsection shall be effective until the adoption of rules and
25 regulations pursuant to subsection a. of this section and may be
26 amended, adopted, or readopted by the commissioner in accordance
27 with the requirements of P.L.1968, c.410.'
28

29 '【13.】 15.' This act shall take effect 90 days after enactment.