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REPORTS: No

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NEWSPAPER ARTICLES: Yes

"New law hailed, but concerns still remain," The Courier-Post, 1-17-10.

"Medical marijuana law ready to burn in New Jersey," Gloucester County Times, 1-17-10.

"Shore man recalls wife's medical-marijuana fight," Asbury Park Press, 1-17-10.

"Push for Looser Pot Laws Gains Momentum," The Wall Street Journal, 1-16-10.

"Changing of the guard in N.J.," Courier-Post, 1-19-10.

"Gov signs marijuana legislation," Courier News, 1-19-10.

"Medical marijuana bill, others signed into law," Burlington County Times, 1-19-10.

"Medical marijuana gets Corzine's OK," The Record, 1-19-10.

"Signing off: Lame duck Oks medical pot," The Trentonian, 1-19-10.

"Corzine signs marijuana bill on last day in office," The Star-Ledger, 1-19-10.

"Medical marijuana legislation among bills signed by Corzine," The Times, 1-19-10.

"Corzine signs bill legalizing medical marijuana, Asbury Park Press, 1-19-10.

"Corzine ends term by legalizing medical pot," The Press of Atlantic City, 1-19-10.

"Is Marijuana a Medicine?" The Wall Street Journal, 1-19-10.

"Medical marijuana becomes law in New Jersey, NewJerseyNewsroom.com, 1-18-10,

<http://www.newjerseynewsroom.com/state/medical-marijuana-becomes-law-in-new-jersey>

"Medical marijuana legal in New Jersey," The Philadelphia Inquirer, 1-19-10.

LAW/KR

[Third Reprint]

SENATE, No. 119

STATE OF NEW JERSEY
213th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2008 SESSION

Sponsored by:

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Senator JIM WHELAN

District 2 (Atlantic)

Assemblyman REED GUSCIORA

District 15 (Mercer)

Assemblyman MICHAEL PATRICK CARROLL

District 25 (Morris)

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Co-Sponsored by:

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Assemblywoman Vainieri Huttler, Assemblyman Giblin, Assemblywomen
Wagner, Oliver, Assemblyman Prieto, Assemblywoman Tucker,
Assemblyman Johnson, Assemblywomen Jasey and Stender**

SYNOPSIS

"New Jersey Compassionate Use Medical Marijuana Act."

CURRENT VERSION OF TEXT

As amended by the General Assembly Senate on January 7, 2010.

(Sponsorship Updated As Of: 1/12/2010)

1 AN ACT concerning the medical use of marijuana ²[and
2 supplementing Title 24 of the Revised Statutes] ³and³ revising
3 parts of statutory law².

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

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

10
11 2. ³(New section)³ The Legislature finds and declares that:

12 a. Modern medical research has discovered a beneficial use for
13 marijuana in treating or alleviating the pain or other symptoms
14 associated with certain debilitating medical conditions, as found by
15 the National Academy of Sciences' Institute of Medicine in March
16 1999;

17 b. According to the U.S. Sentencing Commission and the
18 Federal Bureau of Investigation, 99 out of every 100 marijuana
19 arrests in the country are made under state law, rather than under
20 federal law. Consequently, changing state law will have the
21 practical effect of protecting from arrest the vast majority of
22 seriously ill people who have a medical need to use marijuana²[.];²

23 c. Although federal law currently prohibits the use of
24 marijuana, the laws of Alaska, California, Colorado, Hawaii, Maine,
25 'Michigan, Montana,¹ Nevada, 'New Mexico,¹ Oregon, 'Rhode
26 Island,¹ Vermont, 'and¹ Washington '[and Montana]¹ permit the
27 use of marijuana for medical purposes, and in Arizona doctors are
28 permitted to prescribe marijuana. New Jersey joins this effort for
29 the health and welfare of its citizens²[.];²

30 d. States are not required to enforce federal law or prosecute
31 people for engaging in activities prohibited by federal law;
32 therefore, compliance with this act does not put the State of New
33 Jersey in violation of federal law²[.]; and²

34 e. Compassion dictates that a distinction be made between
35 medical and non-medical uses of marijuana. Hence, the purpose of
36 this act is to protect from arrest, prosecution, property forfeiture,
37 and criminal and other penalties, those patients 'who use marijuana
38 to alleviate¹ suffering from debilitating medical conditions, '[and]
39 as well as¹ their physicians '[and] ²[¹ primary caregivers,]² '[if
40 such patients engage in the medical use of marijuana] ³, primary
41 caregivers,³ and those who are authorized to produce marijuana for
42 medical purposes¹.

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.

²Assembly AHE committee amendments adopted June 4, 2009.

³Assembly floor amendments adopted January 7, 2010.

1 ²[3. As used in this act:

2 “Bona fide physician-patient relationship” means a physician has
3 completed a full assessment of the patient's medical history and
4 current medical condition, including a personal physical
5 examination.

6 “Commissioner” means the Commissioner of Health and Senior
7 Services.

8 “Debilitating medical condition” means:

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

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

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

20 “Department” means the Department of Health and Senior
21 Services.

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

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

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

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

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

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

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

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

12 “Written certification” means the qualifying patient's medical
13 records, or a statement signed by a physician with whom the patient
14 has a bona fide physician-patient relationship, stating that in the
15 physician's professional opinion, after having completed a full
16 assessment of the qualifying patient's medical history and current
17 medical condition, the qualifying patient has a debilitating medical
18 condition for which recognized drugs or treatments are not or would
19 not be effective and the potential benefits of the medical use of
20 marijuana would likely outweigh the health risks for the qualifying
21 patient.]²

22

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

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

37 (3) A qualifying patient may assert the medical use of marijuana
38 as an affirmative defense to any prosecution involving marijuana
39 unless the patient was in violation of section ¹[5] 7¹ of this act
40 when the events giving rise to the prosecution occurred. The
41 defense shall be presumed valid where the evidence shows that:

42 (a) at the time of the events giving rise to the prosecution, the
43 patient's medical records indicated or a physician stated that, in the
44 physician's professional opinion, after having completed a full
45 assessment of the patient's medical history and current medical
46 condition made in the course of a bona fide physician-patient

1 relationship, the potential benefits of the medical use of marijuana
2 would likely outweigh the health risks for the patient; and

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

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

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

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

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

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

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

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

46 (3) A primary caregiver may assert the medical use of marijuana
47 as an affirmative defense to any prosecution involving marijuana

1 unless the caregiver was in violation of section '[5] 7' of this act
2 when the events giving rise to the prosecution occurred. The
3 defense shall be presumed valid where the evidence shows that:

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

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

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

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

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

32 e. No person shall be subject to arrest or prosecution for
33 constructive possession, conspiracy or any other offense for simply
34 being in the presence or vicinity of the medical use of marijuana as
35 permitted under this act.]²

36

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

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

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

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

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

1 (4) the registry identification card number of each cardholder for
2 whom marijuana is to be produced; and

3 (5) any other information that the department considers
4 necessary.

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

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

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

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

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

31 h. A registered patient or the designated primary caregiver of the
32 patient may reimburse the alternative treatment center for
33 reasonable costs associated with the production of marijuana for the
34 cardholder.¹²

35
36 ²[¹⁶. A medical marijuana alternative treatment center permit
37 holder or his employee shall not be subject to arrest or prosecution,
38 penalized in any manner, including, but not limited to, being subject
39 to any civil penalty, or denied any right or privilege, including, but
40 not limited to, being subject to any disciplinary action by a
41 professional licensing board, for the acquisition, distribution,
42 possession, cultivation, or transportation of marijuana or
43 paraphernalia related to marijuana on behalf of a registered patient,
44 provided the amount of any marijuana so acquired, distributed,
45 possessed, cultivated, or transported, together with the combined
46 amount of marijuana possessed by the registered patient and his
47 primary caregiver, shall not exceed six marijuana plants and one

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

7
8 ¹~~[5.]~~ ²~~[7.]~~ ¹ The provisions of this act shall not be construed to
9 permit any person to operate, navigate, or be in actual physical
10 control of any motor vehicle, aircraft or motorboat while under the
11 influence of marijuana; or smoke marijuana in a school bus or other
12 form of public transportation, on any school grounds, in any
13 correctional facility, at any public park or beach, or at any
14 recreation center. A person who commits an act as provided in this
15 section shall be subject to such penalties as provided by law. ¹ ²

16
17 ¹~~[6.]~~ ²~~[8.]~~ ¹ It shall be a disorderly persons offense for a person
18 to fabricate or misrepresent a registry identification card ¹or a
19 medical marijuana alternative treatment center permit ¹ to a law
20 enforcement official. ¹ ²

21
22 ¹~~[7.]~~ ²~~[9.]~~ ¹ a. The department shall establish a registry and shall
23 issue a registry identification card to a qualifying patient who
24 submits the following, in accordance with the department's
25 regulations:

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

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

45 b. The department shall issue a registry identification card to the
46 caregiver named in a patient's approved application, if the caregiver
47 signs a statement agreeing to provide marijuana only to the patient

1 who has named him as caregiver. However, the department shall
2 not issue a registry identification card to a proposed caregiver who
3 has previously been convicted of a felony drug offense.

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

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

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

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

11 (4) photo identification of the cardholder; and

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

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

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

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

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

31

32 ¹[8.] ²[10.]¹ The commissioner may accept from any
33 governmental department or agency, public or private body or any
34 other source grants or contributions to be used in carrying out the
35 purposes of this act.]²

36

37 ¹[9.] ²[11.]¹ The commissioner shall report annually to the
38 Governor and the Legislature on the number of applications for
39 registry identification cards, the number of qualifying patients and
40 primary caregivers ¹[approved] registered¹, ¹the number of medical
41 marijuana alternative treatment center permits issued,¹ the nature of
42 the debilitating medical conditions of the patients, the number of
43 registry identification cards ¹and alternative treatment center
44 permits¹ revoked, and the number of physicians providing written
45 certifications for patients. The report shall not contain any
46 identifying information of patients, caregivers¹, alternative
47 treatment centers,¹ or physicians.]²

1 ²3. (New section) As used in this act:

2 “Bona fide physician-patient relationship” means a relationship
3 in which the physician has ³[the]³ ongoing ³[primary]³
4 responsibility for the assessment, care and treatment of a patient’s
5 debilitating medical condition.

6 ³“Certification” means a statement signed by a physician with
7 whom a qualifying patient has a bona fide physician-patient
8 relationship, which attests to the physician’s authorization for the
9 patient to apply for registration for the medical use of marijuana.³

10 “Commissioner” means the Commissioner of Health and Senior
11 Services.

12 “Debilitating medical condition” means:

13 (1) ³one of the following conditions, if resistant to conventional
14 medical therapy:³ seizure disorder, including epilepsy³[.],³
15 intractable skeletal muscular spasticity^{3,3} or glaucoma ³[that is
16 resistant to conventional medical therapy]³;

17 (2) ³one of the following conditions, if severe or chronic pain,
18 severe nausea or vomiting, cachexia, or wasting syndrome results
19 from the condition or treatment thereof:³ positive status for human
20 immunodeficiency virus, acquired immune deficiency syndrome, or
21 cancer ³[that results in severe or chronic pain, severe nausea or
22 vomiting, cachexia, or wasting syndrome]³;

23 (3) amyotrophic lateral sclerosis, multiple sclerosis, terminal
24 cancer³, muscular dystrophy, or inflammatory bowel disease,
25 including Crohn’s disease;

26 (4) terminal illness, if the physician has determined a prognosis
27 of less than 12 months of life³; or

28 ³[(4)] (5)³ any other medical condition or its treatment that is
29 approved by the department by regulation.

30 “Department” means the Department of Health and Senior
31 Services.

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

35 “Medical marijuana alternative treatment center” or “alternative
36 treatment center” means ³[a nonprofit] an³ organization approved
37 by the department to perform activities necessary to provide
38 registered qualifying patients with usable marijuana and related
39 paraphernalia in accordance with the provisions of this act. This
40 term shall include the organization’s officers, directors, board
41 members, and employees.

42 “Medical use of marijuana” means the acquisition, possession,
43 ³transport,³ or use of marijuana or paraphernalia by a registered
44 qualifying patient as authorized by this act.

1 “Minor” means a person who is under 18 years of age and who
2 has not been married or previously declared by a court or an
3 administrative agency to be emancipated.

4 “Paraphernalia” has the meaning given in N.J.S.2C:36-1.

5 “Physician” means a person licensed to practice medicine and
6 surgery pursuant to Title 45 of the Revised Statutes with whom the
7 patient has a bona fide physician-patient relationship and who is the
8 ³primary care physician, hospice physician, or³ physician
9 responsible for the ongoing ³[primary]³ treatment of a patient’s
10 debilitating medical condition ³, provided, however, that such
11 ongoing treatment shall not be limited to the provision of
12 authorization for a patient to use medical marijuana or consultation
13 solely for that purpose³.

14 ³“Primary caregiver” or “caregiver” means a resident of the State
15 who:

16 a. is at least 18 years old;

17 b. has agreed to assist with a registered qualifying patient’s
18 medical use of marijuana, is not currently serving as primary
19 caregiver for another qualifying patient, and is not the qualifying
20 patient’s physician;

21 c. has never been convicted of possession or sale of a
22 controlled dangerous substance, unless such conviction occurred
23 after the effective date of this act and was for a violation of federal
24 law related to possession or sale of marijuana that is authorized
25 under this act;

26 d. has registered with the department pursuant to section 4 of
27 this act, and has satisfied the criminal history record background
28 check requirement of section 4 of this act; and

29 e. has been designated as primary caregiver on the qualifying
30 patient’s application or renewal for a registry identification card or
31 in other written notification to the department.³

32 “Qualifying patient” or “patient” means a ³[person] resident of
33 the State³ who has been provided with a ³[written]³ certification by
34 a physician pursuant to a bona fide physician-patient relationship.

35 “Registry identification card” means a document issued by the
36 department that identifies a person as a registered qualifying patient
37 ³or primary caregiver³.

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

41 ³“Written certification” means a statement signed by a
42 physician with whom a qualifying patient has a bona fide physician-
43 patient relationship, which attests to the physician’s authorization
44 for the patient to apply for registration for the medical use of
45 marijuana.²]³

1 24. (New section) a. The department shall establish a registry of
2 qualifying patients³ and their primary caregivers,³ and shall issue a
3 registry identification card³ [that], which³ shall be valid for³ [one
4 year] two years,³ to a qualifying patient³ and primary caregiver, if
5 applicable,³ who submits the following, in accordance with
6 regulations adopted by the department:

7 (1) a³ [written]³ certification that meets the requirements of
8 section 5 of³ [P.L. , c. (C.)](pending before the Legislature
9 as this bill)] this act³;

10 (2) an application or renewal fee, which may be based on a
11 sliding scale as determined by the commissioner;

12 (3) the name, address and date of birth of the patient³ and
13 caregiver, as applicable³;³ and³

14 (4) the name, address and telephone number of the patient's
15 physician.

16 b. Before issuing a registry identification card, the department
17 shall verify the information contained in the application or renewal
18 form submitted pursuant to this section. ³In the case of a primary
19 caregiver, the department shall provisionally approve an application
20 pending the results of a criminal history record background check,
21 if the caregiver otherwise meets the requirements of this act.³ The
22 department shall approve or deny an application or renewal within
23 30 days of receipt of the³ completed³ application or renewal, and
24 shall issue a registry identification card within five days of
25 approving the application or renewal. The department may deny an
26 application or renewal only if the applicant fails to provide the
27 information required pursuant to this section, or if the department
28 determines that the information was incorrect or falsified or does
29 not meet the requirements of this act. Denial of an application shall
30 be a final agency decision, subject to review by the Superior Court,
31 Appellate Division.

32 c. ³(1) The commissioner shall require each applicant seeking to
33 serve as a primary caregiver to undergo a criminal history record
34 background check. The commissioner is authorized to exchange
35 fingerprint data with and receive criminal history record
36 background information from the Division of State Police and the
37 Federal Bureau of Investigation consistent with the provisions of
38 applicable federal and State laws, rules, and regulations. The
39 Division of State Police shall forward criminal history record
40 background information to the commissioner in a timely manner
41 when requested pursuant to the provisions of this section.

42 An applicant seeking to serve as a primary caregiver shall submit
43 to being fingerprinted in accordance with applicable State and
44 federal laws, rules, and regulations. No check of criminal history
45 record background information shall be performed pursuant to this
46 section unless the applicant has furnished his written consent to that

1 check. An applicant who refuses to consent to, or cooperate in, the
2 securing of a check of criminal history record background
3 information shall not be considered for inclusion in the registry as a
4 primary caregiver or issuance of an identification card. An
5 applicant shall bear the cost for the criminal history record
6 background check, including all costs of administering and
7 processing the check.

8 (2) The commissioner shall not approve an applicant seeking to
9 serve as a primary caregiver if the criminal history record
10 background information of the applicant reveals a disqualifying
11 conviction. For the purposes of this section, a disqualifying
12 conviction shall mean a conviction of a crime involving any
13 controlled dangerous substance or controlled substance analog as
14 set forth in chapter 35 of Title 2C of the New Jersey Statutes except
15 paragraph (4) of subsection a. of N.J.S.2C:35-10, or any similar law
16 of the United States of any other state.

17 (3) Upon receipt of the criminal history record background
18 information from the Division of State Police and the Federal
19 Bureau of Investigation, the commissioner shall provide written
20 notification to the applicant of his qualification or disqualification
21 for serving as a primary caregiver.

22 If the applicant is disqualified because of a disqualifying
23 conviction pursuant to the provisions of this section, the conviction
24 that constitutes the basis for the disqualification shall be identified
25 in the written notice.

26 (4) The Division of State Police shall promptly notify the
27 commissioner in the event that an individual who was the subject of
28 a criminal history record background check conducted pursuant to
29 this section is convicted of a crime or offense in this State after the
30 date the background check was performed. Upon receipt of that
31 notification, the commissioner shall make a determination regarding
32 the continued eligibility of the applicant to serve as a primary
33 caregiver.

34 (5) Notwithstanding the provisions of subsection b. of this
35 section to the contrary, no applicant shall be disqualified from
36 serving as a registered primary caregiver on the basis of any
37 conviction disclosed by a criminal history record background check
38 conducted pursuant to this section if the individual has affirmatively
39 demonstrated to the commissioner clear and convincing evidence of
40 rehabilitation. In determining whether clear and convincing
41 evidence of rehabilitation has been demonstrated, the following
42 factors shall be considered:

43 (a) the nature and responsibility of the position which the
44 convicted individual would hold, has held, or currently holds;

45 (b) the nature and seriousness of the crime or offense;

46 (c) the circumstances under which the crime or offense
47 occurred;

- 1 (d) the date of the crime or offense;
2 (e) the age of the individual when the crime or offense was
3 committed;
4 (f) whether the crime or offense was an isolated or repeated
5 incident;
6 (g) any social conditions which may have contributed to the
7 commission of the crime or offense; and
8 (h) any evidence of rehabilitation, including good conduct in
9 prison or in the community, counseling or psychiatric treatment
10 received, acquisition of additional academic or vocational
11 schooling, successful participation in correctional work-release
12 programs, or the recommendation of those who have had the
13 individual under their supervision.
14 d.³ A registry identification card shall contain the following
15 information:
16 (1) the name, address and date of birth of the patient ³and
17 primary caregiver, if applicable³;
18 (2) the ³[date of]³ expiration date of the registry identification
19 card;
20 (3) photo identification of the cardholder; and
21 (4) such other information that the department may specify by
22 regulation.
23 ³e. (1)³ A patient who has been issued a registry identification
24 card shall notify the department of any change in the patient's
25 name, address, or physician or change in status of the patient's
26 debilitating medical condition, within 10 days of such change, or
27 the registry identification card shall be deemed null and void.
28 ³(2) A primary caregiver who has been issued a registry
29 identification card shall notify the department of any change in the
30 caregiver's name or address within 10 days of such change, or the
31 registry identification card shall be deemed null and void.³
32 ³[d.] f.³ The department shall maintain a confidential list of the
33 persons to whom it has issued registry identification cards.
34 Individual names and other identifying information on the list, and
35 information contained in any application form, or accompanying or
36 supporting document shall be confidential, and shall not be
37 considered a public record under P.L.1963, c.73 (C.47:1A-1 et seq.)
38 or P.L.2001, c.404 (C.47:1A-5 et al.), and shall not be disclosed
39 except to:
40 (1) authorized employees of the department and the Division of
41 Consumer Affairs in the Department of Law and Public Safety as
42 necessary to perform official duties of the department and the
43 division, as applicable; and
44 (2) authorized employees of State or local law enforcement
45 agencies, only as necessary to verify that a person who is engaged
46 in the suspected or alleged medical use of marijuana is lawfully in
47 possession of a registry identification card.

1 ³[e.] g.³ Applying for or receiving a registry card does not
2 constitute a waiver of the qualifying patient's patient-physician
3 privilege.²

4
5 ²5. (New section) a. Medical use of marijuana by a qualifying
6 patient may be authorized pursuant to a ³[written]³ certification
7 which meets the requirements of this act. In order to provide such
8 ³[a written]³ certification, a physician shall be licensed and in good
9 standing to practice in the State ³[and be board-certified, if
10 available, in the specialty appropriate for the assessment, care, and
11 ongoing primary treatment of the debilitating medical condition for
12 which the medical use of marijuana is being considered]³.

13 The ³[written]³ certification shall attest that the above criteria
14 have been met.

15 b. The provisions of subsection a. of this section shall not
16 apply to a qualifying patient who is a minor unless the custodial
17 parent, guardian, or person who has legal custody of the minor,
18 consents in writing that the minor patient has that person's
19 permission for the medical use of marijuana and that the person will
20 control the acquisition and possession of the medical marijuana and
21 any related paraphernalia from the alternative treatment center.²

22
23 ²6. (New section) a. The provisions of N.J.S.2C:35-18 shall
24 apply to any qualifying patient, ³primary caregiver,³ alternative
25 treatment center, physician, or any other person acting in
26 accordance with the provisions of this act.

27 b. A qualifying patient, ³primary caregiver,³ alternative
28 treatment center, physician, or any other person acting in
29 accordance with the provisions of this act shall not be subject to any
30 civil or administrative penalty, or denied any right or privilege,
31 including, but not limited to, civil penalty or disciplinary action by
32 a professional licensing board, related to the medical use of
33 marijuana as authorized under this act.

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

39 d. The provisions of section 2 of P.L.1939, c.248 (C.26:2-82),
40 relating to destruction of marijuana determined to exist by the
41 department, shall not apply if a qualifying patient ³or primary
42 caregiver³ has in his possession a registry identification card and no
43 more than the maximum amount of usable marijuana that may be
44 obtained in accordance with section 10 of ³[P.L. , c. (C.)]
45 (pending before the Legislature as this bill)] this act³.

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

5 f. No custodial parent, guardian, or person who has legal
6 custody of a qualifying patient who is a minor shall be subject to
7 arrest or prosecution for constructive possession, conspiracy or any
8 other offense for assisting the minor in the medical use of marijuana
9 as authorized under this act.²

10
11 ²7. (New section) a. The department shall accept applications
12 from ³[nonprofit]³ entities ³for permits³ to operate as alternative
13 treatment centers, and may charge a reasonable fee for the issuance
14 of a permit under this section. The department shall seek to ensure
15 the availability of ³a sufficient number of³ alternative treatment
16 centers throughout the State, ³pursuant to need,³ including³[, to the
17 maximum extent practicable,]³ at least two each in the northern,
18 central, and southern regions of the State. ³The first two centers
19 issued a permit in each region shall be nonprofit entities, and
20 centers subsequently issued permits may be nonprofit or for-profit
21 entities.³

22 An alternative treatment center shall be authorized to acquire ³a
23 reasonable initial and ongoing inventory, as determined by the
24 department, of³ marijuana seeds or seedlings and paraphernalia,
25 possess, cultivate, plant, grow, harvest, process, display,
26 manufacture, deliver, transfer, transport, distribute, supply, sell, or
27 dispense marijuana, or related supplies to ³[registered]³ qualifying
28 patients ³or their primary caregivers³ who are registered with the
29 department pursuant to section 4 of ³[P.L. , c. (C.)](pending
30 before the Legislature as this bill)] this act³.

31 Applicants for authorization as ³[an] nonprofit³ alternative
32 treatment ³[center] centers³ shall be subject to all applicable State
33 laws governing nonprofit entities, but need not be recognized as a
34 501(c)(3) organization by the federal Internal Revenue Service.

35 b. The department shall require that an applicant provide such
36 information as the department determines to be necessary pursuant
37 to regulations adopted pursuant to this act.

38 c. A person who has been convicted of ³[possession or sale of
39 a controlled dangerous substance] a crime involving any controlled
40 dangerous substance or controlled substance analog as set forth in
41 chapter 35 of Title 2C of the New Jersey Statutes except paragraph
42 (4) of subsection a. of N.J.S.2C:35-10, or any similar law of the
43 United States or any other state³ shall not be issued a permit to
44 operate as ³[a] an³ alternative treatment center or be a director,
45 officer, or employee of an alternative treatment center, unless such

1 conviction³ occurred after the effective date of this act and³ was for
2 a violation of federal law relating to possession or sale of marijuana
3 for conduct that is authorized under this act.

4 d. ³(1) The commissioner shall require each applicant seeking a
5 permit to operate as an alternative treatment center to undergo a
6 criminal history record background check. For purposes of this
7 section, the term “applicant” shall include any owner, director,
8 officer, or employee of an alternative treatment center. The
9 commissioner is authorized to exchange fingerprint data with and
10 receive criminal history record background information from the
11 Division of State Police and the Federal Bureau of Investigation
12 consistent with the provisions of applicable federal and State laws,
13 rules, and regulations. The Division of State Police shall forward
14 criminal history record background information to the
15 commissioner in a timely manner when requested pursuant to the
16 provisions of this section.

17 An applicant shall submit to being fingerprinted in accordance
18 with applicable State and federal laws, rules, and regulations. No
19 check of criminal history record background information shall be
20 performed pursuant to this section unless the applicant has
21 furnished his written consent to that check. An applicant who
22 refuses to consent to, or cooperate in, the securing of a check of
23 criminal history record background information shall not be
24 considered for a permit to operate, or authorization to be employed
25 at, an alternative treatment center. An applicant shall bear the cost
26 for the criminal history record background check, including all
27 costs of administering and processing the check.

28 (2) The commissioner shall not approve an applicant for a permit
29 to operate, or authorization to be employed at, an alternative
30 treatment center if the criminal history record background
31 information of the applicant reveals a disqualifying conviction as
32 set forth in subsection c. of this section.

33 (3) Upon receipt of the criminal history record background
34 information from the Division of State Police and the Federal
35 Bureau of Investigation, the commissioner shall provide written
36 notification to the applicant of his qualification for or
37 disqualification for a permit to operate or be a director, officer, or
38 employee of an alternative treatment center.

39 If the applicant is disqualified because of a disqualifying
40 conviction pursuant to the provisions of this section, the conviction
41 that constitutes the basis for the disqualification shall be identified
42 in the written notice.

43 (4) The Division of State Police shall promptly notify the
44 commissioner in the event that an individual who was the subject of
45 a criminal history record background check conducted pursuant to
46 this section is convicted of a crime or offense in this State after the
47 date the background check was performed. Upon receipt of that

1 notification, the commissioner shall make a determination regarding
2 the continued eligibility to operate or be a director, officer, or
3 employee of an alternative treatment center.

4 (5) Notwithstanding the provisions of subsection b. of this
5 section to the contrary, the commissioner may offer provisional
6 authority for an applicant to be an employee of an alternative
7 treatment center for a period not to exceed three months if the
8 applicant submits to the commissioner a sworn statement attesting
9 that the person has not been convicted of any disqualifying
10 conviction pursuant to this section.

11 (6) Notwithstanding the provisions of subsection b. of this
12 section to the contrary, no employee of an alternative treatment
13 center shall be disqualified on the basis of any conviction disclosed
14 by a criminal history record background check conducted pursuant
15 to this section if the individual has affirmatively demonstrated to
16 the commissioner clear and convincing evidence of rehabilitation.
17 In determining whether clear and convincing evidence of
18 rehabilitation has been demonstrated, the following factors shall be
19 considered:

20 (a) the nature and responsibility of the position which the
21 convicted individual would hold, has held or currently holds;

22 (b) the nature and seriousness of the crime or offense;

23 (c) the circumstances under which the crime or offense
24 occurred;

25 (d) the date of the crime or offense;

26 (e) the age of the individual when the crime or offense was
27 committed;

28 (f) whether the crime or offense was an isolated or repeated
29 incident;

30 (g) any social conditions which may have contributed to the
31 commission of the crime or offense; and

32 (h) any evidence of rehabilitation, including good conduct in
33 prison or in the community, counseling or psychiatric treatment
34 received, acquisition of additional academic or vocational
35 schooling, successful participation in correctional work-release
36 programs, or the recommendation of those who have had the
37 individual under their supervision.³

38 e. The department shall issue a permit to a person to operate as
39 an alternative treatment center if the department finds that issuing
40 such a permit would be consistent with the purposes of this act and
41 the requirements of this section are met and the department has
42 verified the information contained in the application. The
43 department shall approve or deny an application within 60 days
44 after receipt of a completed application. The denial of an
45 application shall be considered a final agency decision, subject to
46 review by the Appellate Division of the Superior Court. The
47 department may suspend or revoke a permit to operate as an

1 alternative treatment center for cause, which shall be subject to
2 review by the Appellate Division of the Superior Court.

3 f. A person who has been issued a permit pursuant to this
4 section shall display the permit at the premises of the alternative
5 treatment center at all times when marijuana is being produced, or
6 dispensed to a registered qualifying patient³ or the patient's primary
7 caregiver³.

8 g. An alternative treatment center shall report any change in
9 information to the department not later than 10 days after such
10 change, or the permit shall be deemed null and void.

11 h. An alternative treatment center may charge a registered
12 qualifying patient³ or primary caregiver³ for the reasonable costs
13 associated with the production and distribution of marijuana for the
14 cardholder.

15 i. The commissioner shall adopt regulations to:

16 (1)³ [provide for the use by a registered qualifying patient of a
17 designated individual in an emergency situation to transport
18 marijuana to the patient who is otherwise unable to obtain
19 marijuana from an alternative treatment center; and

20 (2)³ require such written documentation of each delivery of
21 marijuana to, and pickup of marijuana for, a registered qualifying
22 patient, including the date and amount dispensed, to be maintained
23 in the records of the alternative treatment center, as the
24 commissioner determines necessary to ensure effective
25 documentation of the operations of each alternative treatment
26 center³;

27 (2) monitor, oversee, and investigate all activities performed by
28 an alternative treatment center; and

29 (3) ensure adequate security of all facilities 24 hours per day,
30 including production and retail locations, and security of all
31 delivery methods to registered qualifying patients^{3, 2}.

32
33 ²8. (New section) The provisions of this act shall not be
34 construed to permit a person to:

35 a. operate, navigate, or be in actual physical control of any
36 vehicle, aircraft, railroad train, stationary heavy equipment or vessel
37 while under the influence of marijuana; or

38 b. smoke marijuana in a school bus or other form of public
39 transportation, in a private vehicle unless the vehicle is not in
40 operation, on any school grounds, in any correctional facility, at any
41 public park or beach, at any recreation center, or in any place where
42 smoking is prohibited pursuant to N.J.S.2C:33-13.

43 A person who commits an act as provided in this section shall be
44 subject to such penalties as are provided by law.²

1 ²9. (New section) A person who knowingly sells, offers, or
2 exposes for sale, or otherwise transfers, or possesses with the intent
3 to sell, offer or expose for sale or transfer a document that falsely
4 purports to be a registration card issued pursuant to this act, or a
5 registration card issued pursuant to this act that has been altered, is
6 guilty of a crime of the third degree. A person who knowingly
7 presents to a law enforcement officer a document that falsely
8 purports to be registration card issued pursuant to this act, or a
9 registration card that has been issued pursuant to this act that has
10 been altered, is guilty of a crime of the fourth degree. The
11 provisions of this section are intended to supplement current law
12 and shall not limit prosecution or conviction for any other offense.²

13
14 ²10. (New section) a. A physician shall provide written
15 instructions for a registered ³qualifying³ patient ³or his caregiver³
16 to present to an alternative treatment center ³[, at the time of pickup
17 or delivery,]³ concerning the total amount of usable marijuana that
18 a patient may be dispensed, in weight, in a 30-day period, which
19 amount shall not exceed ³[one ounce] two ounces³. If no amount
20 is noted, the maximum amount that may be dispensed at one time is
21 ³[one ounce] two ounces³.

22 b. A physician may issue multiple written instructions at one
23 time authorizing the patient to receive a total of up to a 90-day
24 supply, provided that the following conditions are met:

25 (1) Each separate set of instructions shall be issued for a
26 legitimate medical purpose by the physician, as provided in this act;

27 (2) ³[The physician shall provide written instructions for each
28 dispensation, other than the first dispensation if it is to be filled
29 immediately, indicating] Each separate set of instructions shall
30 indicate³ the earliest date on which a center may dispense the
31 marijuana³, except for the first dispensation if it is to be filled
32 immediately³; and

33 (3) The physician has determined that providing the patient with
34 multiple instructions in this manner does not create an undue risk of
35 diversion or abuse.

36 c. A registered qualifying patient ³or his primary caregiver³
37 shall present the patient's ³or caregiver's³ registry identification
38 card³, as applicable,³ and these written instructions ³[at the time of
39 pickup or delivery, and] to³ the alternative treatment center³,
40 which³ shall verify and log the documentation presented. ³A
41 physician may provide a copy of a written instruction by electronic
42 or other means, as determined by the commissioner, directly to an
43 alternative treatment center on behalf of a registered qualifying
44 patient.³ The dispensation of marijuana pursuant to any written
45 instructions shall occur within one month of the date that the
46 instructions were written or the instructions are void.

1 d. A patient may be registered at only one alternative treatment
 2 center at any time.²

3
 4 ²11. (New section) a. A physician who provides ³[written] a³
 5 certification or written instruction for the medical use of marijuana
 6 to a qualifying patient pursuant to P.L. , c. (C.)(pending before the
 7 Legislature as this bill) and any alternative treatment center shall
 8 furnish to the Director of the Division of Consumer Affairs in the
 9 Department of Law and Public Safety such information, in such a
 10 format and at such intervals, as the director shall prescribe by
 11 regulation, for inclusion in a system established to monitor the
 12 dispensation of marijuana in this State for medical use as authorized
 13 by the provisions of P.L. , c. (C.)(pending before the
 14 Legislature as this bill), which system shall serve the same purpose
 15 as³, and be cross-referenced with,³ the electronic system for
 16 monitoring controlled dangerous substances established pursuant to
 17 section 25 of P.L.2007, c.244 (C.45:1-45).

18 b. The Director of the Division of Consumer Affairs, pursuant
 19 to the “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-
 20 1 et seq.), ³and³ in consultation with the Commissioner of Health
 21 and Senior Services, shall adopt rules and regulations to effectuate
 22 the purposes of subsection a. of this section.

23 c. Notwithstanding any provision of P.L.1968, c.410 to the
 24 contrary, the Director of the Division of Consumer Affairs shall
 25 adopt, immediately upon filing with the Office of Administrative
 26 Law and no later than the 90th day after the effective date of ³[this
 27 act] P.L. , c. (C.)(pending before the Legislature as this
 28 bill)³, such regulations as the director deems necessary to
 29 implement the provisions of subsection a. of this section.
 30 Regulations adopted pursuant to this subsection shall be effective
 31 until the adoption of rules and regulations pursuant to subsection b.
 32 of this section and may be amended, adopted, or readopted by the
 33 director in accordance with the requirements of P.L.1968, c.410.²

34
 35 ²12. N.J.S.2C:35-18 is amended to read as follows:

36 2C:35-18. Exemption; Burden of Proof. a. If conduct is
 37 authorized by the provisions of P.L.1970, c.226 (C.24:21-1 et seq.)
 38 or P.L. , c. (C.)(pending before the Legislature as this bill),
 39 that authorization shall, subject to the provisions of this section,
 40 constitute an exemption from criminal liability under this chapter or
 41 chapter 36, and the absence of such authorization shall not be
 42 construed to be an element of any offense in this chapter or chapter
 43 36. It is an affirmative defense to any criminal action arising under
 44 this chapter or chapter 36 that the defendant is the authorized holder
 45 of an appropriate registration, permit or order form or is otherwise
 46 exempted or excepted from criminal liability by virtue of any
 47 provision of P.L.1970, c 226 (C.24:21-1 et seq.) or P.L. ,

1 c. (C.) (pending before the Legislature as this bill). The
2 affirmative defense established herein shall be proved by the
3 defendant by a preponderance of the evidence. It shall not be
4 necessary for the State to negate any exemption set forth in this act
5 or in any provision of Title 24 of the Revised Statutes in any
6 complaint, information, indictment or other pleading or in any trial,
7 hearing or other proceeding under this act.

8 b. No liability shall be imposed by virtue of this chapter or
9 chapter 36 upon any duly authorized State officer, engaged in the
10 enforcement of any law or municipal ordinance relating to
11 controlled dangerous substances or controlled substance analogs.²
12 (cf: P.L.1988, c.44, s.8)

13
14 ²13. (New section) a. The commissioner may accept from any
15 governmental department or agency, public or private body or any
16 other source grants or contributions to be used in carrying out the
17 purposes of this act.

18 b. All fees collected pursuant to this act, including those from
19 qualifying patients and alternative treatment centers' initial,
20 modification and renewal applications, shall be used to offset the
21 cost of the department's administration of the provisions of this
22 act.²

23
24 ²14. (New section) a. The commissioner shall report to the
25 Governor, and to the Legislature pursuant to section 2 of P.L.1991,
26 c.164 (C.52:14-19.1):

27 (1) no later than one year after the effective date of this act, on
28 the actions taken to implement the provisions of this act; and

29 (2) annually thereafter on the number of applications for registry
30 identification cards, the number of qualifying patients registered,
31 ³the number of primary caregivers registered,³ the nature of the
32 debilitating medical conditions of the patients, the number of
33 registry identification cards revoked, ³the number of alternative
34 treatment center permits issued and revoked,³ and the number of
35 physicians providing ³[written]³ certifications for patients.

36 b. The reports shall not contain any identifying information of
37 patients³, caregivers,³ or physicians.²

38 ³c. Within two years after the effective date of this act and
39 every two years thereafter, the commissioner shall: evaluate
40 whether there are sufficient numbers of alternative treatment centers
41 to meet the needs of registered qualifying patients throughout the
42 State; evaluate whether the maximum amount of medical marijuana
43 allowed pursuant to this act is sufficient to meet the medical needs
44 of qualifying patients; and determine whether any alternative
45 treatment center has charged excessive prices for marijuana that the
46 center dispensed.

1 The commissioner shall report his findings no later than two
 2 years after the effective date of this act, and every two years
 3 thereafter, to the Governor, and to the Legislature pursuant to
 4 section 2 of P.L.1991, c.164 (C.52:14-19.1).³
 5

6 ²15. (New section) a. The Department of Health and Senior
 7 Services is authorized to exchange fingerprint data with, and
 8 receive information from, the Division of State Police in the
 9 Department of Law and Public Safety and the Federal Bureau of
 10 Investigation for use in reviewing applications ³for individuals
 11 seeking to serve as primary caregivers pursuant to section 4 of
 12 P.L. , c. (C.)(pending before the Legislature as this bill), and³
 13 for ³[a permit] permits³ to operate as, or to be a director, officer^{3,3}
 14 or employee of, ³[an]³ alternative treatment ³[center] centers³
 15 pursuant to section 7 of P.L. , c. (C.)(pending before the
 16 Legislature as this bill).

17 b. The Division of State Police shall promptly notify the
 18 Department of Health and Senior Services in the event an applicant
 19 ³seeking to serve as a primary caregiver or an applicant³ for a
 20 permit to operate as, or to be a director, officer^{3,3} or employee of,
 21 an alternative treatment center^{3,3} who was the subject of a criminal
 22 history record background check conducted pursuant to subsection
 23 a. of this section, is convicted of a crime involving possession or
 24 sale of a controlled dangerous substance.²
 25

26 ¹[10.] ²[12.1] 16. (New section)² Nothing in this act shall be
 27 construed to require a government medical assistance program or
 28 private health insurer to reimburse a person for costs associated
 29 with the medical use of marijuana, or an employer to accommodate
 30 the medical use of marijuana in any workplace.
 31

32 ¹[11.] ²[13.1 The State shall not be held liable for any
 33 deleterious outcomes from the medical use of marijuana by any
 34 qualifying patient.]²
 35

36 ¹[12.] ²[14. a.1 Pursuant to the “Administrative Procedure Act,”
 37 P.L.1968, c.410 (C.52:14B-1 et seq.), the commissioner shall
 38 promulgate rules and regulations to effectuate the purposes of this
 39 act. The regulations shall establish: the application and renewal
 40 form, process and fee schedule; and the manner in which the
 41 department will consider petitions from the public to add
 42 debilitating medical conditions to those included in this act.

43 ¹b. Notwithstanding any provision of P.L.1968, c.410 to the
 44 contrary, the commissioner shall adopt, immediately upon filing
 45 with the Office of Administrative Law and no later than the 90th
 46 day after the effective date of this act, such regulations as the

1 commissioner deems necessary to implement the provisions of
2 section 9 of this act. Regulations adopted pursuant to this
3 subsection shall be effective until the adoption of rules and
4 regulations pursuant to subsection a. of this section and may be
5 amended, adopted, or readopted by the commissioner in accordance
6 with the requirements of P.L.1968, c.410. ¹]²

7
8 ¹[13.] ²[15. ¹ This act shall take effect 90 days after
9 enactment.]²

10
11 ²17. (New section) In addition to any immunity or defense
12 provided by law, the State and any employee or agent of the State
13 shall not be held liable for any actions taken in accordance with this
14 act or for any deleterious outcomes from the medical use of
15 marijuana by any registered qualifying patient.²

16
17 ²18. (New section) a. Pursuant to the “Administrative Procedure
18 Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), the commissioner shall
19 promulgate rules and regulations to effectuate the purposes of this
20 act, in consultation with the Department of Law and Public Safety.

21 ³[The regulations shall establish: the form, process and fee
22 schedule for initial, modification and renewal applications for
23 qualifying patients and alternative treatment centers that are
24 complete and accurate; the considerations to be used to determine
25 whether to approve an application for an alternative treatment
26 center, including its operational procedures; the form and manner in
27 which the department will function, including the consideration and
28 approval of petitions to add new debilitating medical conditions to
29 those included in this act; validating written certifications and other
30 information contained in applications received from prospective and
31 current qualifying patients and alternative treatment centers;
32 protections for ensuring the confidentiality of the information
33 submitted by prospective and current qualifying patients and
34 alternative treatment centers, and that contained in the registry;
35 monitoring, oversight and investigation of physicians who issue
36 written certifications, with authority to refer physicians in violation
37 of provisions of this act to the State Board of Medical Examiners;
38 procedures for the revocation or suspension of a qualifying patient’s
39 registry identification card; monitoring, oversight and investigation
40 of all activities performed by an alternative treatment center; the
41 methods for testing, authenticating and guaranteeing the quality,
42 safety and quantity of marijuana sold to registered qualifying
43 patients; which strains of marijuana shall be sold by an alternative
44 treatment center; procedures to guarantee the quality and safety of
45 paraphernalia sold to registered qualifying patients; standards to
46 ensure adequate security of all facilities, including production and
47 retail locations, and security of all delivery methods to registered

1 qualifying patients; and the authority and process for the
2 department to assume control of an alternative treatment center's
3 facilities, equipment, inventory and other items necessary for the
4 department to serve as an alternative treatment center in the event
5 an alternative treatment center is no longer able to operate or meet
6 its requirements]³.

7 b. Notwithstanding any provision of P.L.1968, c.410 to the
8 contrary, the commissioner shall adopt, immediately upon filing
9 with the Office of Administrative Law and no later than the 90th
10 day after the effective date of this act, such regulations as the
11 commissioner deems necessary to implement the provisions of this
12 act. Regulations adopted pursuant to this subsection shall be
13 effective until the adoption of rules and regulations pursuant to
14 subsection a. of this section and may be amended, adopted, or
15 readopted by the commissioner in accordance with the requirements
16 of P.L.1968, c.410.²

17
18 ²19. This act shall take effect on the first day of the ³[12th]
19 sixth³ month after enactment, but the commissioner ³and the
20 Director of the Division of Consumer Affairs³ may take such
21 anticipatory administrative action in advance thereof as may be
22 necessary to effectuate the provisions of this act.²

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 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.

S119 SCUTARI, WHELAN

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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.

SENATE HEALTH, HUMAN SERVICES AND SENIOR
CITIZENS COMMITTEE

STATEMENT TO

SENATE, No. 119

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 15, 2008

The Senate Health, Human Services and Senior Citizens Committee reports favorably and with amendments Senate Bill No. 119.

As amended by committee, 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. Ninety-nine percent of marijuana-related arrests in the country are made under state law rather than under federal law. Changing state law would therefore provide legal protection to the vast majority of seriously ill people who use marijuana medically. Thirteen other states permit the use of marijuana for medical purposes, and with this bill, New Jersey would join the effort to protect patients using marijuana to alleviate suffering from arrest, prosecution, and other legal sanctions, as well as provide protection to their physicians, caregivers, alternative treatment centers authorized to produce marijuana for medical purposes, and persons who simply are in the vicinity of permitted medical use of marijuana.

PATIENT/CAREGIVER IDENTIFICATION CARD

The bill provides that DHSS shall issue registry identification cards containing the patient'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. A primary caregiver may only have one qualified patient at any one time. A patient's physician could not serve as a primary caregiver.

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

- written certification that the person is a qualifying patient (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, the patient has a debilitating 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 Superior Court.

DHSS shall 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. DHSS would be prohibited from issuing a registry identification card to any proposed caregiver with a felony drug offense conviction.

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.

ALTERNATIVE TREATMENT CENTERS

The bill provides that DHSS shall establish a registration program authorizing alternative treatment centers to produce and dispense marijuana for medical purposes. A person who has been convicted of possession or sale of a controlled dangerous substance shall not be issued a permit to operate, or be an employee of, an alternative treatment center, unless such conviction was for a violation of federal law relating to possession or sale of marijuana for conduct that is legal under the bill. All usable marijuana, seeds and seedlings associated with the production of marijuana for a registered qualifying patient would be the property of the patient and must be provided to the patient upon request. An alternative treatment center may be reimbursed by a patient for reasonable costs associated with the production of marijuana for that patient.

An alternative treatment center permit holder or his employee would not be subject to arrest or prosecution, or penalized in any manner for the acquisition, distribution, possession, cultivation, or transportation of marijuana or paraphernalia related to marijuana on behalf of a registered identification cardholder, provided the amount of marijuana possessed by the center, combined with the amount possessed by the registered patient and his primary caregiver, does not exceed six marijuana plants and one ounce of usable marijuana per patient

LEGAL PROTECTIONS

The bill provides that a patient and 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 possesses a registry identification card and the permissible amount of marijuana.
- The person could assert an affirmative defense of medical use of 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.
- 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 the patient and his legal guardian are advised by the patient's physician of the risks and benefits of using marijuana for medical purposes, and the legal guardian consents in writing to allow the medical use of marijuana, serve as the primary caregiver, and control the patient's acquisition, dosage and frequency of use.

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 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 in the presence or vicinity of the medical use of marijuana as permitted by the bill.

REPORT TO GOVERNOR AND LEGISLATURE

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.

NO LIABILITY BY INSURERS, EMPLOYERS, OR STATE

The bill 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.

COMMITTEE AMENDMENTS

The amendments:

--update the legislative findings to add Michigan, New Mexico and Rhode Island to the list of states which have enacted medical marijuana laws, and to incorporate into the findings that the bill would also provide legal protections to those who are authorized to produce marijuana for medical purposes;

-- define "medical marijuana alternative treatment center," provide for DHSS establishment of a permit system for a center to supply marijuana, or related supplies and educational materials to registered patients or their registered primary caregivers, and provide that a

center would receive the same legal protections that are provided under the bill to registered patients and their caregivers.

As amended this bill is similar to Assembly No. 804 (Gusciora/Carroll/Voss), which is pending in the Assembly Health and Senior Services Committee.

This bill was pre-filed for introduction in the 2008-2009 session pending technical review. As reported, the bill includes the changes required by technical review, which has been performed.

ASSEMBLY HEALTH AND SENIOR SERVICES COMMITTEE

STATEMENT TO

[First Reprint]

SENATE No. 119

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 4, 2009

The Assembly Health and Senior Services Committee reports favorably and with committee amendments Senate Bill No.119 (1R).

As amended by the committee, this bill, which is designated the “New Jersey Compassionate Use Medical Marijuana Act,” would add New Jersey to the list of states nationwide that have enacted laws to permit the use of marijuana for medical purposes.

Medical research suggests that marijuana may alleviate pain or other symptoms associated with certain debilitating medical conditions. Federal law prohibits the use of marijuana; however, 99% of marijuana-related arrests in this nation are made under state law, rather than under federal law, so that changing state law would provide legal protection to the vast majority of seriously ill people who use marijuana medically.

PATIENT IDENTIFICATION CARD

- The Department of Health and Senior Services (DHSS) is to issue registry identification (ID) cards containing the patient's photograph to qualifying patients.
- “Qualifying patient” or “patient” is defined as a person who has been provided with a written certification by a physician pursuant to a bona fide physician-patient relationship.
- “Debilitating medical condition” is defined as: (1) seizure disorder, including epilepsy, intractable skeletal muscular spasticity or glaucoma that is resistant to conventional medical therapy; (2) positive status for human immunodeficiency virus, acquired immune deficiency syndrome, or cancer that results in severe or chronic pain, severe nausea or vomiting, cachexia, or wasting syndrome; (3) amyotrophic lateral sclerosis, multiple sclerosis, terminal cancer; or (4) any other medical condition or its treatment that is approved by DHSS by regulation.
- “Physician” is defined to mean a person licensed to practice medicine and surgery pursuant to Title 45 of the Revised Statutes with whom the patient has a bona fide physician-patient relationship and who is the physician responsible for the ongoing primary

treatment of a patient's debilitating medical condition.

- DHSS is to issue registry ID cards to qualifying patients who submit the following:
 - written certification that the person is a qualifying patient (a statement signed by a physician with whom the patient has a bona fide physician-patient relationship which attests to the physician's authorization for the patient to apply for registration for the medical use of marijuana);
 - the required application or renewal fee, which may be based on a sliding scale as determined by the Commissioner of Health and Senior Services;
 - the patient's name, address, and date of birth; and
 - the physician's name, address, and telephone number.
- DHSS must: verify the submitted information prior to issuing a registry ID card; approve or deny an application or renewal within 30 days of receipt; and issue a 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 incorrect or falsified or does not meet the requirements of the bill. Denial of an application is considered a final agency decision, subject to review by the Appellate Division of the Superior Court.
- DHSS is to maintain a confidential list of the persons to whom it has issued registry ID cards. Individual names and other identifying information on the list and contained in any application form or accompanying document are to be confidential, and not subject to public access, and may only be released to authorized employees in DHSS and the Division of Consumer Affairs (DCA) in the Department of Law and Public Safety as necessary to perform official DHSS and DCA duties and to 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 ID card.

ALTERNATIVE TREATMENT CENTERS

- DHSS is to accept applications from nonprofit entities to operate as alternative treatment centers to produce and dispense marijuana for medical purposes, and may charge a reasonable fee for the issuance of a permit to operate as an alternative treatment center.
- DHSS is to seek to ensure the availability of alternative treatment centers throughout the State, including, to the maximum extent practicable, at least two each in the northern, central, and southern regions of the State, respectively.
- An applicant for a permit to operate as, or be a director, officer, or employee of, an alternative treatment center is subject to a criminal history record background check conducted by the Division of State Police in the Department of Law and Public Safety and the Federal

Bureau of Investigation. A person who has been convicted of possession or sale of a controlled dangerous substance will not be issued a permit to operate as an alternative treatment center or be a director, officer, or employee of a center unless the conviction was for a violation of federal law relating to possession or sale of marijuana for conduct that is authorized under this bill.

- An alternative treatment center may charge a registered qualifying patient for the reasonable costs associated with the production and distribution of marijuana for that patient.
- A physician is to provide written instructions for a registered patient to present to an alternative treatment center, at the time of pickup or delivery, concerning the total amount of usable marijuana that a patient may be dispensed, in weight, in a 30-day period, which amount shall not exceed one ounce. If no amount is noted, the maximum amount that may be dispensed at one time is one ounce.
- A physician may issue multiple written instructions at one time authorizing the patient to receive a total of up to a 90-day supply, provided that the following conditions are met:
 - Each separate set of instructions is to be issued for a legitimate medical purpose by the physician, as provided in this bill;
 - The physician is to provide written instructions for each dispensing, other than the first dispensing if it is to be filled immediately, indicating the earliest date on which an alternative treatment center may dispense the marijuana; and
 - The physician must determine that providing the patient with multiple instructions in this manner does not create an undue risk of diversion or abuse.
- A registered patient is to present the patient's registry ID card and these written instructions at the time of delivery or pickup, and the alternative treatment center is to verify and log the documentation presented. The dispensing of marijuana pursuant to these written instructions must occur within one month of the date that the instructions were written.
- A patient may be registered at only one alternative treatment center at any time.
- DHSS will by regulation:
 - provide for the use by a registered qualifying patient of a designated individual in an emergency situation to transport marijuana to the patient who is otherwise unable to obtain marijuana from an alternative treatment center; and
 - require such written documentation of each delivery of marijuana to, and pickup of marijuana for, a registered qualifying patient, to be maintained in the records of the alternative treatment center, as the commissioner determines necessary to ensure effective documentation of the operations of each center.

LEGAL PROTECTIONS

- A qualifying patient, alternative treatment center, physician, or any other person acting in accordance with the provisions of this bill will not be subject to any civil or administrative penalty, and will not be denied any right or privilege, including, but not limited to, a civil penalty or disciplinary action by a professional licensing board, related to the medical use of marijuana as authorized under this bill.
- Section 2 of P.L.1939, c.248 (C.26:2-82), which authorizes the destruction of marijuana determined to exist by DHSS, will not apply in the case of a patient who has in his possession a registry ID card and the permissible amount of marijuana, or an alternative treatment center permit holder who has in his possession the permissible amount of marijuana per registry ID card holder.
- Possession of, or application for, a registry ID card will not alone constitute probable cause to search a person or his property.
- A person is protected from arrest and prosecution for constructive possession, conspiracy, or any other offense if he was in the presence or vicinity of the medical use of marijuana as permitted by the bill.
- These protections are extended to a qualified patient under 18 years of age if: the custodial parent, guardian, or person who has legal custody of the minor, consents in writing to allow the medical use of marijuana and that the person will control the acquisition and possession of the medical marijuana and any related paraphernalia from the alternative treatment center.
- A custodial parent, guardian, or person who has legal custody of a qualifying patient who is a minor will not be subject to arrest or prosecution for constructive possession, conspiracy or any other offense for assisting the minor in the medical use of marijuana as authorized under this bill.

LIABILITY FOR VIOLATIONS

- The provisions of this bill are not to be construed to permit a person to: operate, navigate, or be in actual physical control of any vehicle, aircraft, railroad train, stationary heavy equipment or vessel while under the influence of marijuana; or smoke marijuana in a school bus or other form of public transportation, in a private vehicle unless the vehicle is not in operation, on any school grounds, in any correctional facility, at any public park or beach, at any recreation center, or in any place where smoking is prohibited pursuant to N.J.S.2C:33-13. A person who commits one of these acts is subject to such penalties as are provided by law.
- A person who knowingly sells, offers or exposes for sale, or otherwise transfers, or possesses with the intent to sell, offer or expose for sale or transfer a document that falsely purports to be a registry ID card, or a registry ID card issued pursuant to this bill that has been altered, is guilty of a crime of the third degree (punishable by imprisonment for three to five years and a maximum fine of

\$15,000).

- A person who knowingly presents to a law enforcement officer a document that falsely purports to be a registry ID card issued pursuant to this bill, or a registry ID card that has been issued pursuant to this bill that has been altered, is guilty of a crime of the fourth degree (punishable by imprisonment for up to 18 months and a maximum fine of \$10,000).

REPORTS TO GOVERNOR AND LEGISLATURE

- The Commissioner of Health and Senior Services is to report to the Governor and the Legislature no later than one year after the effective date of the bill, on the actions taken to implement its provisions.
- The commissioner is to report annually thereafter to the Governor and the Legislature on the number of applications for registry ID cards, the number of qualifying patients registered, the nature of the debilitating medical conditions of the patients, the number of registry ID cards revoked, and the number of physicians providing written certifications for patients.
- The reports are to contain no identifying information about patients, or physicians.

NO LIABILITY BY INSURERS, EMPLOYERS, OR STATE

- Nothing in the bill is to 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.
- The State is not to be held liable for any deleterious outcomes from the medical use of marijuana by any registered qualifying patient.

MONITORING OF PHYSICIAN WRITTEN CERTIFICATIONS

- A physician who provides written certification for the medical use of marijuana to a qualifying patient and any medical marijuana alternative treatment center is to furnish to the Director of the Division of Consumer Affairs in the Department of Law and Public Safety such information, in such a format and at such intervals, as the director prescribes by regulation, for inclusion in a system established to monitor the dispensing of marijuana in this State for medical use as authorized by the provisions of this bill, which system is to serve the same purpose as the electronic system for monitoring controlled dangerous substances established pursuant to section 25 of P.L.2007, c.244 (C.45:1-45).

The bill takes effect on the first day of the 12th month after enactment, but authorizes the Commissioner of Health and Senior Services and the Director of the Division of Consumer Affairs to take

anticipatory administrative action in advance as necessary for implementation.

This bill is identical to the Assembly Committee Substitute for Assembly Bill No. 804 (Gusciora/Carroll/Voss), which the committee also reported on this date.

COMMITTEE AMENDMENTS

The committee amendments to the bill:

- revise the definitions of “bona fide physician-patient relationship,” “debilitating medical condition,” “medical marijuana alternative treatment center,” “medical use,” “physician,” “qualifying patient,” “registry identification card,” and “written certification,” and add a definition for “minor”;

- revise the provisions for establishing a registry of qualifying patients and issuing a registry ID card;

- require a physician to provide written instructions for a registered patient to present to an alternative treatment center, at the time of pickup or delivery, concerning the total amount of usable marijuana that a patient may be dispensed in weight in a 30-day period, and limit that amount to no more than one ounce per month;

- permit a physician to issue multiple written instructions authorizing the patient to receive a total of up to a 90-day supply, if certain stipulated conditions are met;

- require a registered patient to present the patient’s registry ID card and these written instructions at the time of delivery or pickup, and the alternative treatment center to verify and log the documentation presented;

- stipulate that the alternative treatment centers issued permits under the bill are to be nonprofit entities and that the applicant, and any director, officer and employee undergo a State and federal criminal history record background check;

- require DHSS to seek to ensure the availability of alternative treatment centers throughout the State, including, to the maximum extent practicable, at least two each in the northern, central, and southern regions of the State, respectively;

- require that a patient be registered at only one alternative treatment center at any time;

- remove the authorization for registered patients to grow their own marijuana plants;

- require the Commissioner of Health and Senior Services to adopt regulations to:

- (a) provide for the use by a registered qualifying patient of a primary caregiver in an emergency situation to transport marijuana to the patient who is otherwise unable to obtain marijuana from an alternative treatment center; and

- (b) require such written documentation of each delivery of marijuana to, and pickup of marijuana for, a registered qualifying patient, to be maintained in the records of the alternative treatment

center, as the commissioner determines necessary to ensure effective documentation of the operations of each alternative treatment center;

- delete the provisions of the bill providing for issuance of a registry ID card to the primary caregiver of a qualifying patient and other references to caregivers; and

- require that a physician who provides written certification for the medical use of marijuana to a qualifying patient and any alternative treatment center furnish to the Director of the Division of Consumer Affairs in the Department of Law and Public Safety such information, in such a format and at such intervals, as the director prescribes by regulation, for inclusion in a system established to monitor the dispensing of marijuana in this State for medical use as authorized by the provisions of this bill, which system is to serve the same purpose as the electronic system for monitoring controlled dangerous substances established pursuant to section 25 of P.L.2007, c.244 (C.45:1-45).

- revise the legal protections for registered qualifying patients, alternative treatment centers, physicians, practitioners, and other persons action in accordance with the provisions of the bill;

- revise and upgrade the penalties for violations of the provisions of the bill;

- revise the Commissioner of Health and Senior Services' reporting requirements and specify that the commissioner report one year after the effective date on actions taken to implement the provisions of the bill;

- specify the areas for which the DHSS, in consultation with the Department of Law and Public Safety, shall promulgate regulations; and

- delay the effective date of the bill from 90 days after enactment to the first day of the 12th month after enactment.

STATEMENT TO

[Second Reprint] **SENATE No. 119**

with Assembly Floor Amendments
(Proposed by Assemblyman GUSCIORA)

ADOPTED: JANUARY 7, 2010

These amendments:

- make the following changes to definitions in the bill:
 - delete the requirement in the definitions of “bona fide physician-patient relationship” and “physician” that the patient’s physician have ongoing “primary” responsibility for the patient’s care,
 - change “written certification” to “certification” throughout the bill, since the certification is a statement signed by a physician and the word “written” is redundant,
 - revise the definition of “debilitating medical condition” to include severe or chronic pain, severe nausea or vomiting, cachexia, or wasting syndrome resulting from positive status for HIV/AIDS, cancer “or the treatment thereof,” and add muscular dystrophy, inflammatory bowel disease, including Crohn’s disease, and terminal illness if a physician determines that the patient has 12 months or less to live, and
 - include “transport” in the definition of “medical use of marijuana,” and
 - include “primary care” and “hospice” physicians in the definition of “physician” and specify that ongoing treatment shall not be limited to the provision of authorization for a patient to use medical marijuana or consultation solely for that purpose;
- delete the requirement that physicians providing certifications must be board-certified, if certification is available, in the specialty appropriate for the assessment, care, and ongoing primary treatment of the debilitating medical condition for which the medical use of marijuana is being considered;
- limit the bill to patients and caregivers who are State residents;
- delete the provision allowing for a designated individual in an emergency situation to transport marijuana to a patient, and instead provide for a patient to designate a primary caregiver who:
 - is a State resident, at least 18 years old,
 - agrees to assist with the patient's medical use of marijuana, is not a primary caregiver for another qualifying patient, and is not the patient's physician,
 - has not been convicted of possession or sale of a controlled dangerous substance, unless it was for a violation of federal law related to possession or sale of marijuana authorized under the bill that occurred after its effective date, and

- has registered with the Department of Health and Senior Services (DHSS) and satisfied the criminal history record background check requirements of the bill;
- require that primary caregivers undergo a State and federal criminal history record background check as a condition of serving as a caregiver, and that the caregivers bear the cost of the background checks;
- provide that patient and caregiver registry identification cards shall include both the patient's and caregiver's name (if there is a caregiver), and that the cards are valid for two years instead of one year;
- regarding applications to DHSS for registry identification cards:
 - provide that both qualified patients and primary caregivers be issued registry identification cards; and
 - allow for provisional approval for primary caregivers pending receipt of criminal history record background check results;
- regarding alternative treatment centers (ATCs):
 - allow both for-profit and nonprofit ATCs, but require that the first two ATCs in each of the three regions of the State be nonprofit, and direct DHSS to seek to ensure "a sufficient number" of ATCs throughout the State "pursuant to need,"
 - authorize ATCs to acquire "a reasonable initial and ongoing inventory," to be determined by DHSS,
 - clarify that applicants seeking to operate, direct, or work at ATCs shall not be issued permits if they were convicted of a crime involving a controlled dangerous substance (except of possession of 50 grams or less of marijuana) under state or federal law,
 - provide for provisional authority for employees pending results of criminal history record background check;
- change the total amount of usable marijuana that may be dispensed in a 30-day period and at any one time, if no amount is noted in the instructions, from one ounce to two ounces;
- allow physicians to provide a copy of a written instruction by electronic or other means, as determined by the commissioner, directly to an ATC on behalf of a registered qualifying patient;
- require that the Commissioner of Health and Senior Services:
 - include in the annual report to the Governor and Legislature the number of primary caregivers who register and the number of ATC permits issued and revoked, and
 - report to the Governor and Legislature within two years after the effective date of the bill and every two years thereafter, evaluating whether:
 - (1) there are sufficient numbers of ATCs to meet the needs of registered patients throughout the State,
 - (2) the maximum amount of medical marijuana allowed pursuant to the bill is sufficient to meet the medical needs of qualifying patients, and
 - (3) any ATCs charged excessive prices for the marijuana they dispensed;

- revise the DHSS rule-making authority provisions of the bill by:
 - moving to section 7 of the bill (governing ATCs) DHSS' authority to: monitor, oversee, and investigate all activities performed by ATCs; ensure adequate security of all facilities and specifying that the rules shall ensure 24-hour-per-day security of all facilities, and
 - deleting the language in section 18 that detailed various aspects of regulations DHSS would be required to adopt to implement the provisions of the bill, and replacing that language with more general authority for DHSS to adopt regulations to implement the provisions of the bill;
- specify that the system established to monitor the dispensation of marijuana for medical use serve the same purpose as, and be cross-referenced with, the electronic system for monitoring controlled dangerous substances established pursuant to section 25 of P.L.2007, c.244 (C.45:1-45).
- change the effective date from 12 months after enactment to six months after enactment.

ASSEMBLY, No. 804

STATE OF NEW JERSEY

213th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2008 SESSION

Sponsored by:

Assemblyman REED GUSCIORA

District 15 (Mercer)

Assemblyman MICHAEL PATRICK CARROLL

District 25 (Morris)

Assemblywoman JOAN M. VOSS

District 38 (Bergen)

Co-Sponsored by:

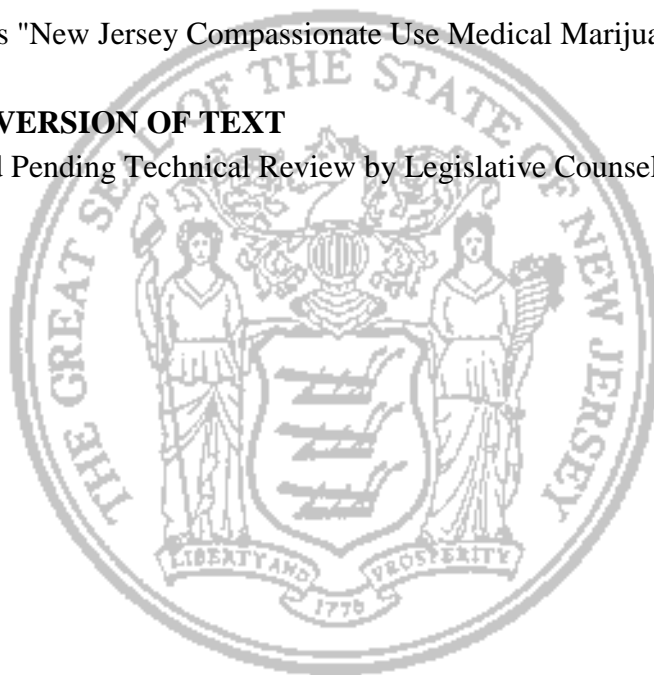
Assemblywoman Vainieri Huttle, Assemblyman Giblin, Assemblywomen Wagner, Oliver, Assemblyman Prieto, Assemblywoman Tucker, Assemblyman Johnson, Assemblywomen Jasey and Stender

SYNOPSIS

Establishes "New Jersey Compassionate Use Medical Marijuana Act."

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



(Sponsorship Updated As Of: 11/24/2009)

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.

ASSEMBLY HEALTH AND SENIOR SERVICES COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR ASSEMBLY, No. 804

STATE OF NEW JERSEY

DATED: JUNE 4, 2009

The Assembly Health and Senior Services Committee reports favorably an Assembly Committee Substitute for Assembly Bill No. 804.

This committee substitute, which is designated the “New Jersey Compassionate Use Medical Marijuana Act,” would add New Jersey to the list of states nationwide that have enacted laws to permit the use of marijuana for medical purposes.

Medical research suggests that marijuana may alleviate pain or other symptoms associated with certain debilitating medical conditions. Federal law prohibits the use of marijuana; however, 99% of marijuana-related arrests in this nation are made under state law, rather than under federal law, so that changing state law would provide legal protection to the vast majority of seriously ill people who use marijuana medically.

The substitute provides specifically as follows:

PATIENT IDENTIFICATION CARD

- The Department of Health and Senior Services (DHSS) is to issue registry identification (ID) cards containing the patient's photograph to qualifying patients.
- “Qualifying patient” or “patient” is defined as a person who has been provided with a written certification by a physician pursuant to a bona fide physician-patient relationship.
- “Debilitating medical condition” is defined as: (1) seizure disorder, including epilepsy, intractable skeletal muscular spasticity or glaucoma that is resistant to conventional medical therapy; (2) positive status for human immunodeficiency virus, acquired immune deficiency syndrome, or cancer that results in severe or chronic pain, severe nausea or vomiting, cachexia, or wasting syndrome; (3) amyotrophic lateral sclerosis, multiple sclerosis, terminal cancer; or (4) any other medical condition or its treatment that is approved by DHSS by regulation.
- “Physician” is defined to mean a person licensed to practice medicine and surgery pursuant to Title 45 of the Revised Statutes

with whom the patient has a bona fide physician-patient relationship and who is the physician responsible for the ongoing primary treatment of a patient's debilitating medical condition.

- DHSS is to issue registry ID cards to qualifying patients who submit the following:
 - written certification that the person is a qualifying patient (a statement signed by a physician with whom the patient has a bona fide physician-patient relationship which attests to the physician's authorization for the patient to apply for registration for the medical use of marijuana);
 - the required application or renewal fee, which may be based on a sliding scale as determined by the Commissioner of Health and Senior Services;
 - the patient's name, address, and date of birth; and
 - the physician's name, address, and telephone number.
- DHSS must: verify the submitted information prior to issuing a registry ID card; approve or deny an application or renewal within 30 days of receipt; and issue a 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 incorrect or falsified or does not meet the requirements of the substitute. Denial of an application is considered a final agency decision, subject to review by the Appellate Division of the Superior Court.
- DHSS is to maintain a confidential list of the persons to whom it has issued registry ID cards. Individual names and other identifying information on the list and contained in any application form or accompanying document are to be confidential, and not subject to public access, and may only be released to authorized employees in DHSS and the Division of Consumer Affairs (DCA) in the Department of Law and Public Safety as necessary to perform official DHSS and DCA duties and to 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 ID card.

ALTERNATIVE TREATMENT CENTERS

- DHSS is to accept applications from nonprofit entities to operate as alternative treatment centers to produce and dispense marijuana for medical purposes, and may charge a reasonable fee for the issuance of a permit to operate as an alternative treatment center.
- DHSS is to seek to ensure the availability of alternative treatment centers throughout the State, including, to the maximum extent practicable, at least two each in the northern, central, and southern regions of the State, respectively.
- An applicant for a permit to operate as, or be a director, officer, or employee of, an alternative treatment center is subject to a criminal

history record background check conducted by the Division of State Police in the Department of Law and Public Safety and the Federal Bureau of Investigation. A person who has been convicted of possession or sale of a controlled dangerous substance will not be issued a permit to operate as an alternative treatment center or be a director, officer, or employee of a center unless the conviction was for a violation of federal law relating to possession or sale of marijuana for conduct that is authorized under this substitute.

- An alternative treatment center may charge a registered qualifying patient for the reasonable costs associated with the production and distribution of marijuana for that patient.
- A physician is to provide written instructions for a registered patient to present to an alternative treatment center, at the time of pickup or delivery, concerning the total amount of usable marijuana that a patient may be dispensed, in weight, in a 30-day period, which amount shall not exceed one ounce. If no amount is noted, the maximum amount that may be dispensed at one time is one ounce.
- A physician may issue multiple written instructions at one time authorizing the patient to receive a total of up to a 90-day supply, provided that the following conditions are met:
 - Each separate set of instructions is to be issued for a legitimate medical purpose by the physician, as provided in this substitute;
 - The physician is to provide written instructions for each dispensing, other than the first dispensing if it is to be filled immediately, indicating the earliest date on which an alternative treatment center may dispense the marijuana; and
 - The physician must determine that providing the patient with multiple instructions in this manner does not create an undue risk of diversion or abuse.
- A registered patient is to present the patient's registry ID card and these written instructions at the time of delivery or pickup, and the alternative treatment center is to verify and log the documentation presented. The dispensing of marijuana pursuant to these written instructions must occur within one month of the date that the instructions were written.
- A patient may be registered at only one alternative treatment center at any time.
- DHSS will by regulation:
 - provide for the use by a registered qualifying patient of a designated individual in an emergency situation to transport marijuana to the patient who is otherwise unable to obtain marijuana from an alternative treatment center; and
 - require such written documentation of each delivery of marijuana to, and pickup of marijuana for, a registered qualifying patient, to be maintained in the records of the alternative treatment center, as the commissioner determines necessary to ensure effective documentation of the operations of each center.

LEGAL PROTECTIONS

- A qualifying patient, alternative treatment center, physician, or any other person acting in accordance with the provisions of this substitute will not be subject to any civil or administrative penalty, and will not be denied any right or privilege, including, but not limited to, a civil penalty or disciplinary action by a professional licensing board, related to the medical use of marijuana as authorized under this substitute.
- Section 2 of P.L.1939, c.248 (C.26:2-82), which authorizes the destruction of marijuana determined to exist by DHSS, will not apply in the case of a patient who has in his possession a registry ID card and the permissible amount of marijuana, or an alternative treatment center permit holder who has in his possession the permissible amount of marijuana per registry ID card holder.
- Possession of, or application for, a registry ID card will not alone constitute probable cause to search a person or his property.
- A person is protected from arrest and prosecution for constructive possession, conspiracy, or any other offense if he was in the presence or vicinity of the medical use of marijuana as permitted by the substitute.
- These protections are extended to a qualified patient under 18 years of age if: the custodial parent, guardian, or person who has legal custody of the minor, consents in writing to allow the medical use of marijuana and that the person will control the acquisition and possession of the medical marijuana and any related paraphernalia from the alternative treatment center.
- A custodial parent, guardian, or person who has legal custody of a qualifying patient who is a minor will not be subject to arrest or prosecution for constructive possession, conspiracy or any other offense for assisting the minor in the medical use of marijuana as authorized under this substitute.

LIABILITY FOR VIOLATIONS

- The provisions of this substitute are not to be construed to permit a person to: operate, navigate, or be in actual physical control of any vehicle, aircraft, railroad train, stationary heavy equipment or vessel while under the influence of marijuana; or smoke marijuana in a school bus or other form of public transportation, in a private vehicle unless the vehicle is not in operation, on any school grounds, in any correctional facility, at any public park or beach, at any recreation center, or in any place where smoking is prohibited pursuant to N.J.S.2C:33-13. A person who commits one of these acts is subject to such penalties as are provided by law.
- A person who knowingly sells, offers or exposes for sale, or otherwise transfers, or possesses with the intent to sell, offer or expose for sale or transfer a document that falsely purports to be a registry ID card, or a registry ID card issued pursuant to this

substitute that has been altered, is guilty of a crime of the third degree (punishable by imprisonment for three to five years and a maximum fine of \$15,000).

- A person who knowingly presents to a law enforcement officer a document that falsely purports to be a registry ID card issued pursuant to this substitute, or a registry ID card that has been issued pursuant to this substitute that has been altered, is guilty of a crime of the fourth degree (punishable by imprisonment for up to 18 months and a maximum fine of \$10,000).

REPORTS TO GOVERNOR AND LEGISLATURE

- The Commissioner of Health and Senior Services is to report to the Governor and the Legislature no later than one year after the effective date of the substitute, on the actions taken to implement its provisions.
- The commissioner is to report annually thereafter to the Governor and the Legislature on the number of applications for registry ID cards, the number of qualifying patients registered, the nature of the debilitating medical conditions of the patients, the number of registry ID cards revoked, and the number of physicians providing written certifications for patients.
- The reports are to contain no identifying information about patients or physicians.

NO LIABILITY BY INSURERS, EMPLOYERS, OR STATE

- Nothing in the bill is to 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.
- The State is not to be held liable for any deleterious outcomes from the medical use of marijuana by any registered qualifying patient.

MONITORING OF PHYSICIAN WRITTEN CERTIFICATIONS

- A physician who provides written certification for the medical use of marijuana to a qualifying patient and any medical marijuana alternative treatment center is to furnish to the Director of the Division of Consumer Affairs in the Department of Law and Public Safety such information, in such a format and at such intervals, as the director prescribes by regulation, for inclusion in a system established to monitor the dispensing of marijuana in this State for medical use as authorized by the provisions of this substitute, which system is to serve the same purpose as the electronic system for monitoring controlled dangerous substances established pursuant to section 25 of P.L.2007, c.244 (C.45:1-45).

The substitute takes effect on the first day of the 12th month after

enactment, but authorizes the Commissioner of Health and Senior Services and the Director of the Division of Consumer Affairs to take anticipatory administrative action in advance as necessary for implementation.

As reported by the committee, this substitute is identical to Senate Bill No. 119 (1R) ACA (Scutari/Whelan), which the committee also reported on this date.

STATEMENT TO

**ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 804**

with Assembly Floor Amendments
(Proposed by Assemblyman GUSCIORA)

ADOPTED: JANUARY 7, 2010

These amendments:

- make the following changes to definitions in the committee substitute:
 - delete the requirement in the definitions of “bona fide physician-patient relationship” and “physician” that the patient’s physician have ongoing “primary” responsibility for the patient’s care,
 - change “written certification” to “certification” throughout the substitute, since the certification is a statement signed by a physician and the word “written” is redundant,
 - revise the definition of “debilitating medical condition” to include severe or chronic pain, severe nausea or vomiting, cachexia, or wasting syndrome resulting from positive status for HIV/AIDS, cancer “or the treatment thereof,” and add muscular dystrophy, inflammatory bowel disease, including Crohn’s disease, and terminal illness if a physician determines that the patient has 12 months or less to live,
 - include “transport” in the definition of “medical use of marijuana,” and
 - include “primary care” and “hospice” physicians in the definition of “physician” and specify that ongoing treatment shall not be limited to the provision of authorization for a patient to use medical marijuana or consultation solely for that purpose;
- delete the requirement that physicians providing certifications must be board-certified, if certification is available, in the specialty appropriate for the assessment, care, and ongoing primary treatment of the debilitating medical condition for which the medical use of marijuana is being considered;
- limit the substitute to patients and caregivers who are State residents;
- delete the provision allowing for a designated individual in an emergency situation to transport marijuana to a patient, and instead provide for a patient to designate a primary caregiver who:
 - is a State resident, at least 18 years old,
 - agrees to assist with the patient's medical use of marijuana, is not a primary caregiver for another qualifying patient, and is not the patient's physician,

- has not been convicted of possession or sale of a controlled dangerous substance, unless it was for a violation of federal law related to possession or sale of marijuana authorized under the substitute that occurred after its effective date, and
- has registered with the Department of Health and Senior Services (DHSS) and satisfied the criminal history record background check requirements of the substitute;
- require that primary caregivers undergo a State and federal criminal history record background check as a condition of serving as a caregiver, and that the caregivers bear the cost of the background checks;
- provide that patient and caregiver registry identification cards shall include both the patient's and caregiver's name (if there is a caregiver), and that the cards are valid for two years instead of one year;
- regarding applications to DHSS for registry identification cards:
 - provide that both qualified patients and primary caregivers be issued registry identification cards; and
 - allow for provisional approval for primary caregivers pending receipt of criminal history record background check results;
- regarding alternative treatment centers (ATCs):
 - allow both for-profit and nonprofit ATCs, but require that the first two ATCs in each of the three regions of the State be nonprofit, and direct DHSS to seek to ensure "a sufficient number" of ATCs throughout the State "pursuant to need,"
 - authorize ATCs to acquire "a reasonable initial and ongoing inventory," to be determined by DHSS,
 - clarify that applicants seeking to operate, direct, or work at ATCs shall not be issued permits if they were convicted of a crime involving a controlled dangerous substance (except of possession of 50 grams or less of marijuana) under state or federal law,
 - provide for provisional authority for employees pending results of criminal history record background check;
- change the total amount of usable marijuana that may be dispensed in a 30-day period and at any one time, if no amount is noted in the instructions, from one ounce to two ounces;
- allow physicians to provide a copy of a written instruction by electronic or other means, as determined by the commissioner, directly to an ATC on behalf of a registered qualifying patient;
- require that the Commissioner of Health and Senior Services:
 - include in the annual report to the Governor and Legislature the number of primary caregivers who register and the number of ATC permits issued and revoked, and
 - report to the Governor and Legislature within two years after the effective date of the substitute and every two years thereafter, evaluating whether:
 - (1) there are sufficient numbers of ATCs to meet the needs of registered patients throughout the State,

(2) the maximum amount of medical marijuana allowed pursuant to the substitute is sufficient to meet the medical needs of qualifying patients, and

(3) any ATCs charged excessive prices for the marijuana they dispensed;

- revise the DHSS rule-making authority provisions of the substitute by:
 - moving to section 7 of the substitute (governing ATCs) DHSS' authority to: monitor, oversee, and investigate all activities performed by ATCs; ensure adequate security of all facilities and specifying that the rules shall ensure 24-hour-per-day security of all facilities, and
 - deleting the language in section 18 that detailed various aspects of regulations DHSS would be required to adopt to implement the provisions of the substitute, and replacing that language with more general authority for DHSS to adopt regulations to implement the provisions of the substitute;
- specify that the system to be established to monitor the dispensation of marijuana for medical use serve the same purpose as, and be cross-referenced with, the electronic system for monitoring controlled dangerous substances established pursuant to section 25 of P.L.2007, c.244 (C.45:1-45); and
- change the effective date from 12 months after enactment to six months after enactment.