

AN ACT

RELATING TO CONTROLLED SUBSTANCES; ENACTING THE COMPASSIONATE USE MEDICAL MARIJUANA ACT; AMENDING PROVISIONS OF THE CONTROLLED SUBSTANCES ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. [NEW MATERIAL] SHORT TITLE.--Sections 1 through 10 of this act may be cited as the "Compassionate Use Medical Marijuana Act".

Section 2. [NEW MATERIAL] LEGISLATIVE FINDINGS--PURPOSE.--

A. The legislature finds that:

- (1) recent research has shown that the use of marijuana is a medically valuable treatment for a variety of medical conditions;
- (2) state law should make a distinction between medical and nonmedical use of marijuana;
- (3) a practitioner should not be penalized for discussing marijuana as a treatment option for a patient; and
- (4) a seriously ill patient who engages in medical use of marijuana on a treating practitioner's advice should not be arrested and incarcerated for violation of drug laws.

B. The purpose of the Compassionate Use Medical Marijuana Act is to allow the beneficial use of marijuana in treating eligible medical conditions and symptoms of eligible medical conditions.

Section 3. [NEW MATERIAL] DEFINITIONS.--As used in the Compassionate Use Medical Marijuana Act:

A. "certified patient" means a person who is qualified to participate in the program and has been certified by the secretary for participation in the program based on a written statement by the patient's practitioner attesting that the patient has an eligible medical condition;

B. "department" means the department of health;

C. "eligible medical condition" means:

- (1) a chronic or debilitating disease or condition or its treatment that produces one or more of the following:
  - (a) severe pain; or
  - (b) severe muscle spasms, including those characteristic of multiple sclerosis or Crohn's disease; or
- (2) a condition that the department designates by rule as an eligible medical condition;

D. "practitioner" means a licensed physician pursuant to Chapter 61, Article 6 NMSA 1978;

E. "primary caregiver" means a person at least eighteen years of age who has agreed to take responsibility for managing the well-being of a certified patient with respect to the medical use of marijuana pursuant to the Compassionate Use Medical Marijuana Act;

F. "program" means the medical use of marijuana program established and administered by the department pursuant to the Compassionate Use Medical Marijuana Act;

G. "qualified patient" means a person with an eligible medical condition;

H. "secretary" means the secretary of health; and

I. "topical use" means a drug delivery method that does not involve ingesting or inhaling and includes application by means of a topical patch, a lotion, a gel, alcohol or a bath.

Section 4. [NEW MATERIAL] REGISTRY IDENTIFICATION CARDS--RULES--MEDICAL MARIJUANA BOARD CREATED.--

A. A certified patient, primary caregiver or practitioner qualifies for the legal protections pursuant to the Compassionate Use Medical Marijuana Act only if the certified patient, primary caregiver or practitioner is in possession of a registry identification card.

B. No later than October 1, 2007, after consulting with the medical marijuana board, the department shall adopt rules in accordance with the State Rules Act for the topical use of marijuana to treat certified patients and that govern the manner in which the department considers applications for registry identification cards and for renewing registry identification cards for certified patients, primary caregivers and practitioners.

C. The department shall issue a registry identification card to a qualified patient and also to the primary caregiver for that patient after submission of the following:

- (1) written documentation from the patient's practitioner attesting that the person is a qualified patient;
- (2) the name, address and date of birth of the patient;
- (3) the name, address and telephone number of the qualified patient's practitioner; and
- (4) the name, address and date of birth of the qualified patient's primary caregiver.

D. The department shall verify the information contained in an application submitted pursuant to this section, and the medical marijuana board shall approve or deny an application within thirty days of receipt.

E. The department shall issue a registry identification card within five days of the medical marijuana board approving an application, and a card shall expire three months after the date of issuance. A registry identification card shall contain:

- (1) the name, address and date of birth of the certified patient and primary caregiver;
- (2) the date of issuance and expiration date of the registry identification card; and
- (3) other information that the department may require by rule.

F. A person who possesses a registry identification card shall notify the department within ten days of any change in the person's name or address; the certified patient's practitioner; the certified patient's primary caregiver; or the status of the certified patient's medical condition.

G. Possession of or application for a registry identification card shall not constitute probable cause or give rise to reasonable suspicion for a governmental agency to search the person or property of the person possessing or applying for the card.

H. The department shall maintain a confidential file containing the names and addresses of the persons who have either applied for or received a registry identification card. Individual names in the file shall be confidential and not subject to disclosure, except:

- (1) to authorized employees or agents of the department as necessary to perform the duties of the department pursuant to the provisions of the Compassionate Use Medical Marijuana Act;
  - (2) to authorized employees of state or local law enforcement agencies for the purpose of verifying that a person is lawfully in possession of a registry identification card; or
  - (3) as provided by the federal Health Insurance Portability and Accountability Act of 1996.
- I. The "medical marijuana board" is created. The secretary shall appoint seven members to the medical marijuana board, including a medical oncologist, a gynecologist, a neurologist, a psychiatrist, an infectious disease specialist, a family practice physician and a pharmacist. Members of the board shall be practitioners who are knowledgeable about the medical use of marijuana and who are chosen from a list proposed by the New Mexico medical board. A quorum of the medical marijuana board shall consist of three members. The medical marijuana board shall:

- (1) identify criteria and establish procedures, including a petition process, public comment and public hearings, for including additional medical conditions or diseases to the list of medical conditions provided in the Compassionate Use Medical Marijuana Act;
- (2) convene at least monthly to evaluate petitions and applications, which shall be maintained as confidential personal health records;
- (3) make recommendations concerning rules of the department for issuance of registry identification cards; and
- (4) determine quantities of pharmaceutical-grade topical-use marijuana that are necessary to constitute an adequate supply for certified patients and primary caregivers.

Section 5. [NEW MATERIAL] STATUTORY REQUIREMENTS FOR PARTICIPATION IN PROGRAM.--A patient may participate in the program if the patient:

- A. is a resident of the state at the time of application to the program and continues to be a resident during participation in the program;
- B. suffers from an eligible medical condition; and
- C. is a certified patient.

Section 6. [NEW MATERIAL] LAWFUL ACTIVITIES.--

A. Except as provided in Section 8 of the Compassionate Use Medical Marijuana Act, a certified patient and the patient's primary caregiver are not subject to arrest, prosecution, civil or criminal penalty or denial of any right or privilege for manufacturing or possessing marijuana in a form approved by the department for topical use in the treatment of an eligible medical condition if the amount possessed collectively is not more than is reasonably necessary to ensure its uninterrupted availability for the purpose of alleviating the symptoms or effects of the patient's eligible medical condition.

B. A person is not subject to arrest, prosecution, civil or criminal penalty or denial of any right or privilege for manufacturing, possessing or administering marijuana or for the certification of a patient's condition for the purpose of qualifying the patient for participation in the program if the person is registered with the department as a participating practitioner in the program.

C. A person is not subject to arrest, prosecution, civil or criminal penalty or denial of any right or privilege for manufacturing, possessing, distributing or selling marijuana in a form approved by the department for topical use in the treatment of an eligible medical condition if the person is registered with the department as a participant in the program, the terms of the registration include the specified activities and all conditions of the registration are met.

Section 7. [NEW MATERIAL] PARTICIPATION BY PERSON UNDER EIGHTEEN YEARS OF AGE.--A person under eighteen years of age may be certified as a patient to participate in the program only if:

- A. the patient's attending practitioner has explained the potential risks and benefits of the program to the patient and the patient's parents or legal guardian or the person having legal custody of the patient; and
- B. a parent, legal guardian or person having legal custody of the patient consents in writing to:
  - (1) allow the patient's participation in the program;
  - (2) serve as the patient's primary caregiver;
  - (3) control the acquisition of the marijuana; and
  - (4) control the dosage and frequency of use of the marijuana by the patient.

Section 8. [NEW MATERIAL] PROHIBITIONS, RESTRICTIONS AND LIMITATIONS ON THE MEDICAL USE OF MARIJUANA.--Participation in the program by a certified patient does not relieve the patient from:

- A. liability for damages or criminal prosecution arising out of the operation of a vehicle while under the influence of marijuana; and
- B. criminal prosecution or civil penalty for possession or use of marijuana other than for topical use:
  - (1) in a school bus or public vehicle;
  - (2) on school grounds or property;
  - (3) in the workplace of the patient's employment; or
  - (4) at a public park, beach, recreation center, youth center or other public place where the use or possession of marijuana is prohibited.

Section 9. [NEW MATERIAL] FRAUDULENT REPRESENTATION TO A LAW ENFORCEMENT OFFICER PUNISHABLE AS A PETTY MISDEMEANOR.--A person who makes a fraudulent representation to a law enforcement officer about participation in the program to avoid arrest or prosecution for a marijuana-related offense is guilty of a petty misdemeanor and shall be sentenced in accordance with Section 31-19-1 NMSA 1978.

Section 10. [NEW MATERIAL] DEFENSE OF MEDICAL USE OF MARIJUANA IN PROSECUTIONS FOR MARIJUANA OFFENSES.--A certified patient or a primary caregiver of that patient may assert the medical use of marijuana as a defense to a prosecution for an offense involving marijuana and the defense is presumed valid if the evidence shows that the patient and the primary caregiver collectively were in possession of marijuana that is no more than is reasonably necessary to ensure uninterrupted availability of marijuana for the purpose of alleviating the symptoms or effects of the patient's eligible medical condition.

Section 11. Section 30-31-6 NMSA 1978 (being Laws 1972, Chapter 84, Section 6, as amended) is amended to read:

"30-31-6. SCHEDULE I.--The following controlled substances are included in Schedule I:

A. any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters and ethers, unless specifically exempted, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation:

- (1) acetylmethadol;
- (2) allylprodine;
- (3) alphacetylmethadol;
- (4) alphameprodine;
- (5) alphanmethadol;
- (6) benzethidine;
- (7) betacetylmethadol;
- (8) betameprodine;
- (9) betamethadol;
- (10) betaprodine;
- (11) clonitazene;
- (12) dextromoramide;
- (13) dextrophan;
- (14) diampridine;
- (15) diethylthiambutene;
- (16) dimenoxadol;
- (17) dimpheptanol;
- (18) dimethylthiambutene;
- (19) dioxaphetyl butyrate;
- (20) dipipanone;
- (21) ethylmethylthiambutene;
- (22) etonitazene;
- (23) etoxeridine;
- (24) furethidine;
- (25) hydroxypethidine;
- (26) ketobemidone;
- (27) levomoramide;
- (28) levophenacetylmorphan;
- (29) morpheridine;
- (30) noracetylmethadol;
- (31) norlevorphanol;
- (32) normethadone;
- (33) norpipanone;
- (34) phenadoxone;
- (35) phenampromide;
- (36) phenomorphan;
- (37) phenoperidine;
- (38) piritramide;
- (39) proheptazine;
- (40) properidine;
- (41) racemoramide; and
- (42) trimeperidine;

B. any of the following opium derivatives, their salts, isomers and salts of isomers, unless specifically exempted, whenever the existence of these salts, isomers and salts of isomers is possible within the specific chemical designation:

- (1) acetorphine;
- (2) acetyldihydrocodeine;
- (3) benzylmorphine;
- (4) codeine methylbromide;
- (5) codeine-N-oxide;
- (6) cyprenorphine;
- (7) desomorphine;
- (8) dihydromorphine;
- (9) etorphine;
- (10) heroin;
- (11) hydromorphenol;
- (12) methyl-desorphine;
- (13) methyl dihydromorphine;
- (14) morphine methylbromide;
- (15) morphine methylsulfonate;
- (16) morphine-N-oxide;
- (17) myrophine;
- (18) nicocodeine;
- (19) nicomorphine;
- (20) normorphine;
- (21) pholcodine; and
- (22) thebaine;

C. any material, compound, mixture or preparation ~~[which] that~~ contains any quantity of the following hallucinogenic substances, their salts, isomers and salts of isomers, unless specifically exempted, whenever the existence of these salts, isomers and salts of isomers is possible within the specific chemical designation:

- (1) 3,4-methylenedioxy amphetamine;
- (2) 5-methoxy-3,4-methylenedioxy amphetamine;
- (3) 3,4,5-trimethoxy amphetamine;
- (4) bufotenine;
- (5) diethyltryptamine;
- (6) dimethyltryptamine;
- (7) 4-methyl-2,5-dimethoxy amphetamine;
- (8) ibogaine;
- (9) lysergic acid diethylamide;
- (10) marijuana;
- (11) mescaline;
- (12) peyote, except as otherwise provided in the Controlled Substances Act;
- (13) N-ethyl-3-piperidyl benzilate;
- (14) N-methyl-3-piperidyl benzilate;
- (15) psilocybin;
- (16) psilocyn;
- (17) tetrahydrocannabinols; and
- (18) hashish;

D. the enumeration of peyote as a controlled substance does not apply to the use of peyote in bona fide religious ceremonies by a bona fide religious organization, and members of the organization so using peyote are exempt from registration. Any person who manufactures peyote for or distributes peyote to the organization or its members shall comply with the federal Comprehensive Drug Abuse Prevention and Control Act of 1970 and all other requirements of law;

E. the enumeration of marijuana, tetrahydrocannabinols or chemical derivatives of tetrahydrocannabinol as Schedule I controlled substances does not apply to the use of marijuana, tetrahydrocannabinols or chemical derivatives of tetrahydrocannabinol by certified patients pursuant to the Controlled Substances Therapeutic Research Act and the Compassionate Use Medical Marijuana Act; and

F. controlled substances added to Schedule I by rule adopted by the board pursuant to Section 30-31-3 NMSA 1978."

Section 12. Section 30-31-7 NMSA 1978 (being Laws 1972, Chapter 84, Section 7, as amended) is amended to read:

"30-31-7. SCHEDULE II.--

A. The following controlled substances are included in Schedule II:

(1) any of the following substances, except those narcotic drugs listed in other schedules, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by combination of extraction and chemical synthesis:

- (a) opium and opiate, and any salt, compound, derivative or preparation of opium or opiate;
- (b) any salt, compound, isomer, derivative or preparation thereof ~~[which] that~~ is chemically equivalent or identical with any of the substances referred to in Subparagraph (a) of this paragraph, but not including the isoquinoline alkaloids of opium;
- (c) opium poppy and poppy straw;
- (d) coca leaves and any salt, compound, derivative or preparation of coca leaves, and any salt, compound, derivative or preparation thereof ~~[which] that~~ is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions ~~[which] that~~ do not contain cocaine or ecgonine;

(e) marijuana, but only for the use by certified patients pursuant to the Controlled Substances Therapeutic Research Act and the Compassionate Use Medical Marijuana Act; and

(f) tetrahydrocannabinols or chemical derivatives of tetrahydrocannabinol, but only for the use of certified patients pursuant to the Controlled Substances Therapeutic Research Act and the Compassionate Use Medical Marijuana Act.

Marijuana, tetrahydrocannabinols or chemical derivatives of tetrahydrocannabinol shall be considered Schedule II controlled substances only for the purposes enumerated in the Controlled Substances Therapeutic Research Act and the Compassionate Use Medical Marijuana Act;

(2) any of the following opiates, including their isomers, esters, ethers, salts and salts of isomers, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation:

- (a) alphaprodine;
- (b) anileridine;
- (c) bezitramide;
- (d) dihydrocodeine;
- (e) diphenoxylate;
- (f) fentanyl;
- (g) hydromorphone;
- (h) isomethadone;
- (i) levomethorphan;
- (j) levorphanol;
- (k) meperidine;
- (l) metazocine;
- (m) methadone;
- (n) methadone--intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane;
- (o) moramide--intermediate, 2-methyl-3-morpholino-1, 1-diphenyl-propane-carboxylic acid;
- (p) oxycodone;
- (q) pethidine;
- (r) pethidine--intermediate--A, 4-cyano-1-methyl-4-phenylpiperidine;
- (s) pethidine--intermediate--B, ethyl-4-phenyl-piperidine-4-carboxylate;
- (t) pethidine--intermediate--C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;
- (u) phenazocine;
- (v) piminodine;
- (w) racemethorphan; and
- (x) racemorphan;

(3) unless listed in another schedule, any material, compound, mixture or preparation ~~[which] that~~ contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system:

- (a) amphetamine, its salts, optical isomers and salts of its optical isomers;
- (b) phenmetrazine and its salts;
- (c) methamphetamine, its salts, isomers and salts of isomers; and
- (d) methylphenidate; and

(4) controlled substances added to Schedule II by rule adopted by the board pursuant to Section 30-31-3 NMSA 1978.

B. Where methadone is prescribed, administered or dispensed by a practitioner of a drug abuse rehabilitation program while acting in the course of ~~[his]~~ professional practice, or otherwise lawfully obtained or possessed by a person, such person shall not possess such methadone beyond the date stamped or typed on the label of the container of the methadone, nor shall any person possess methadone except in the container in which it was originally administered or dispensed to such person, and such container shall include a label showing the name of the prescribing physician or practitioner, the identity of methadone, the name of the ultimate user, the date when the methadone is to be administered to or used or consumed by the named ultimate user shown on the label and a warning on the label of the methadone container that the ultimate user must use, consume or administer to ~~[himself]~~ the ultimate user the methadone in such container. Any person who violates this subsection is guilty of a felony and shall be punished by imprisonment for not less than one year nor more than five years, or by a fine of up to five thousand dollars (\$5,000), or both."

Section 13. SEVERABILITY.--If any part or application of the Compassionate Use Medical Marijuana Act is held invalid, the remainder or its application to other situations or persons shall not be affected.