
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1393 Session of
2009

INTRODUCED BY COHEN, MUNDY, SABATINA, VITALI, MCGEEHAN, BROWN
AND M. O'BRIEN, APRIL 30, 2009

REFERRED TO COMMITTEE ON HEALTH AND HUMAN SERVICES, APRIL 30,
2009

AN ACT

1 Providing for the medical use of marijuana; and repealing
2 provisions of law that prohibit and penalize marijuana use.

3 The General Assembly of the Commonwealth of Pennsylvania
4 hereby enacts as follows:

5 Section 1. Short title.

6 This act shall be known and may be cited as the Compassionate
7 Use Medical Marijuana Act.

8 Section 2. Legislative intent.

9 The General Assembly finds and declares as follows:

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

15 (2) According to the United States Sentencing Commission
16 and the Federal Bureau of Investigation, 99 out of every 100
17 marijuana arrests in this nation are made under the laws of

1 states, rather than under Federal law. Consequently, changing
2 the law of this Commonwealth on this subject will have the
3 practical effect of protecting from arrest seriously ill
4 people who have a medical need to use marijuana.

5 (3) Although Federal law currently prohibits the use of
6 marijuana, the laws of Alaska, California, Colorado, Hawaii,
7 Maine, Michigan, Montana, Nevada, New Mexico, Oregon, Rhode
8 Island, Vermont and Washington permit the use of marijuana
9 for medical purposes, and in Arizona doctors are permitted to
10 prescribe marijuana. Pennsylvania joins this effort for the
11 health and welfare of its citizens.

12 Section 3. Definitions.

13 The following words and phrases when used in this act shall
14 have the meanings given to them in this section unless the
15 context clearly indicates otherwise:

16 "Bona fide physician-patient relationship." A physician who
17 has completed a full assessment of the patient's medical history
18 and current medical condition, including a personal physical
19 examination.

20 "Compassion center." A facility where usable marijuana may
21 be dispensed for medical use.

22 "Controlled Substance, Drug, Device and Cosmetic Act." The
23 act of April 14, 1972 (P.L.233, No.64), known as The Controlled
24 Substance, Drug, Device and Cosmetic Act.

25 "Debilitating medical condition." This term includes any of
26 the following:

27 (1) cancer, glaucoma, positive status for human
28 immunodeficiency virus, acquired immune deficiency syndrome
29 or the treatment of these conditions;

30 (2) a chronic or debilitating disease or medical

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

7 (3) any other weakening medical condition or its
8 treatment that is recognized by licensed medical authorities
9 as being treatable with marijuana in a manner that is
10 superior to treatment without marijuana.

11 "Department." The Department of Health of the Commonwealth.

12 "Marijuana." As the term is defined using the spelling
13 "marihuana" under the act of April 14, 1972 (P.L.233, No.64),
14 known as The Controlled Substance, Drug, Device and Cosmetic
15 Act.

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

21 "Physician." A person licensed to practice medicine and
22 surgery under the laws of this Commonwealth.

23 "Primary caregiver" or "caregiver." A person who is at least
24 18 years of age, who has never been convicted of a felony drug
25 offense, has agreed to assist with a qualifying patient's
26 medical use of marijuana and has been designated as primary
27 caregiver on the qualifying patient's application or renewal for
28 a registry identification card or in other written notification
29 to the Department of Health. A primary caregiver shall only have
30 one qualifying patient at any one time. A primary caregiver

1 shall not include the qualifying patient's physician.

2 "Qualifying patient" or "patient." A person who has been
3 diagnosed by a physician as having a debilitating medical
4 condition.

5 "Registry identification card." A document issued by the
6 Department of Health that identifies a person as a qualifying
7 patient or primary caregiver. The term shall include a registry
8 identification card or its equivalent issued by another state
9 government to permit the medical use of marijuana by a
10 qualifying patient or to permit a person to assist with a
11 qualifying patient's medical use of marijuana.

12 "Secretary." The Secretary of Health of the Commonwealth.

13 "Usable marijuana." The dried leaves and flowers of
14 marijuana, and any mixture or preparation thereof, and does not
15 include the seeds, stalks and roots of the plant.

16 "Written certification." The qualifying patient's medical
17 records, or a statement signed by a physician licensed in
18 accordance with the laws of this Commonwealth with whom the
19 patient has a bona fide physician-patient relationship, stating
20 that in the physician's professional opinion, after having
21 completed a full assessment of the qualifying patient's medical
22 history and current medical condition, the qualifying patient
23 has a debilitating medical condition for which the potential
24 benefits of the medical use of marijuana would likely outweigh
25 the health risks for the qualifying patient and would likely be
26 superior to treatment without the medical use of marijuana.

27 Section 4. Compassion centers.

28 (a) Duty of department.--The department may establish its
29 own and shall license any privately owned compassion center.

30 (b) Sales tax.--State sales tax at the rate imposed under

1 Article II of the act of March 4, 1971 (P.L.6, No.2), known as
2 the Tax Reform Code of 1971, shall be imposed on all sales of
3 marijuana in this Commonwealth. If the county in which a sale of
4 marijuana for medical use occurs has a sales tax, that sales tax
5 shall be imposed on the sale also.

6 (c) Growth, processing or distribution of marijuana for
7 medical treatment.--A compassion center shall maintain records
8 of all marijuana it grows, processes or distributes for medical
9 treatment and shall make its records available for inspection by
10 the department.

11 Section 5. Medical use of marijuana permitted.

12 (a) Freedom from arrest, prosecution or penalty.--

13 (1) A qualifying patient shall not be subject to arrest,
14 prosecution or penalty in any manner, or denied any right or
15 privilege, including, but not limited to, civil penalty or
16 disciplinary action by a professional licensing board, for
17 the medical use of marijuana, provided that the patient
18 possesses a registry identification card and no more than six
19 marijuana plants and one ounce of usable marijuana.

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

28 (3) A qualifying patient may assert the medical use of
29 marijuana as an affirmative defense to any prosecution
30 involving marijuana unless the patient was in violation of

1 this section when the events giving rise to the prosecution
2 occurred. The defense shall be presumed valid where the
3 evidence shows both of the following:

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

13 (ii) The patient and his caregiver, if any, were
14 collectively in possession of no more than six marijuana
15 plants and one ounce of usable marijuana.

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

22 (5) The provisions of the Controlled Substance, Drug,
23 Device and Cosmetic Act, relating to destruction of marijuana
24 shall not apply if a qualifying patient has in his possession
25 a registry identification card and no more than six marijuana
26 plants and one ounce of usable marijuana.

27 (b) Patients under 18 years of age.--The provisions of
28 subsection (a) shall not apply to a qualifying patient under 18
29 years of age, unless:

30 (1) the patient's physician has explained to the patient

1 and the patient's custodial parent, guardian or person having
2 legal custody the potential risks and benefits of the medical
3 use of marijuana; and

4 (2) the custodial parent, guardian or person having
5 legal custody consents in writing to: allow the patient's
6 medical use of marijuana; serve as the patient's primary
7 caregiver; and control the acquisition, dosage and frequency
8 of the medical use of marijuana by the patient.

9 (c) Immunity of primary caregiver.--

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

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

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

1 involving marijuana unless the caregiver was in violation of
2 this section when the events giving rise to the prosecution
3 occurred. The defense shall be presumed valid where the
4 evidence shows that:

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

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

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

23 (5) The provisions of the Controlled Substance, Drug,
24 Device and Cosmetic Act, relating to destruction of marijuana
25 determined to exist by the department, shall not apply if a
26 primary caregiver has in his possession a registry
27 identification card and no more than six marijuana plants and
28 one ounce of usable marijuana.

29 (d) Immunity of physician.--A physician shall not be subject
30 to arrest, prosecution or penalty in any manner, or denied any

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

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

9 Section 6. Operation of a motorized vehicle prohibited.

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

20 Section 7. Misrepresentation prohibited.

21 It shall be a violation of 18 Pa.C.S. § 5503 (relating to
22 disorderly conduct) for a person to fabricate or misrepresent a
23 registry identification card to a law enforcement official.

24 Section 8. Registry identification cards.

25 (a) Registry.--The department shall establish a registry and
26 shall issue a registry identification card to a qualifying
27 patient who submits the following information in accordance with
28 the department's regulations:

29 (1) written certification that the person is a
30 qualifying patient;

1 (2) an application or renewal fee of not less than \$50,
2 which may be based on a sliding scale as determined by the
3 secretary;

4 (3) name, address and date of birth of the patient;

5 (4) name, address and telephone number of the patient's
6 physician; and

7 (5) name, address and date of birth of the patient's
8 primary caregiver, if any.

9 (b) Issuance of registry identification card to qualified
10 patient.--Before issuing a registry identification card, the
11 department shall verify the information contained in the
12 application or renewal form submitted under this section. The
13 department shall approve or deny an application or renewal
14 within 15 days of receipt of the application or renewal and
15 shall issue a registry identification card within five days of
16 approving the application or renewal. The department may deny an
17 application or renewal only if the applicant fails to provide
18 the information required under this section or if the department
19 determines that the information was falsified. Denial of an
20 application is considered a final agency decision, subject to
21 review by the Commonwealth Court and the Supreme Court.

22 (c) Issuance of registry identification card to caregiver.--
23 The department shall issue a registry identification card to the
24 caregiver named in a patient's approved application if the
25 caregiver signs a statement agreeing to provide marijuana only
26 to the patient who has named him as caregiver.

27 (d) Information on face of registry identification card.--A
28 registry identification card shall contain the following
29 information:

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

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

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

5 (4) photo identification of the cardholder; and

6 (5) such other information that the department may
7 specify in its regulations.

8 (e) Changes in listed information.--A patient who has been
9 issued a registry identification card shall notify the
10 department of any change in the patient's name, address,
11 physician or caregiver, or change in status of the patient's
12 debilitating medical condition, within ten days of such change,
13 or the registry identification card shall be deemed null and
14 void.

15 (f) Right-to-Know Law inapplicable.--The department shall
16 maintain a confidential list of the persons to whom it has
17 issued registry identification cards. Individual names and other
18 identifying information on the list shall be confidential, and
19 shall not be considered a public record under the act of
20 February 14, 2008 (P.L.6, No.3), known as the Right-To-Know Law,
21 and shall not be disclosed except to:

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

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

29 Section 9. Funding.

30 The secretary may accept from any governmental department or

1 agency, public or private body or any other source grants or
2 contributions to be used in carrying out the purposes of this
3 act.

4 Section 10. Reports by secretary.

5 The secretary shall report annually to the Governor and the
6 General Assembly on the number of applications for registry
7 identification cards, the number of qualifying patients and
8 primary caregivers approved, the nature of the debilitating
9 medical conditions of the patients, the number of registry
10 identification cards revoked and the number of physicians
11 providing written certifications for patients. The report shall
12 not contain any identifying information of patients, caregivers
13 or physicians.

14 Section 11. Health insurance.

15 Nothing in this act shall be construed to require a
16 government medical assistance program or private health insurer
17 to reimburse a person for costs associated with the medical use
18 of marijuana, or an employer to accommodate the medical use of
19 marijuana in any workplace.

20 Section 12. Sovereign immunity.

21 The State shall not be held liable for any deleterious
22 outcomes from the medical use of marijuana by any qualifying
23 patient.

24 Section 13. Rules and regulations.

25 The secretary shall promulgate rules and regulations to
26 effectuate the purposes of this act. The regulations shall
27 establish the application and renewal form, process and fee
28 schedule and any limitations in the public interest on
29 debilitating medical conditions not specifically included in
30 this act.

1 Section 14. Duty of Pennsylvania State Police.

2 The Pennsylvania State Police shall advise the department and
3 caregivers on effective security measures for the possession and
4 transportation of medical marijuana and shall inspect sites if
5 requested.

6 Section 15. Effective date.

7 This act shall take effect in 90 days.