
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL
No. 1653 Session of
2011

INTRODUCED BY COHEN, BRIGGS, CALTAGIRONE, CURRY, HARKINS,
M. O'BRIEN, PAYTON, SABATINA AND SANTONI, JUNE 13, 2011

REFERRED TO COMMITTEE ON HEALTH, JUNE 13, 2011

AN ACT

1 Providing for the medical use of marijuana.

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

4 Section 1. Short title.

5 This act shall be known and may be cited as the Governor
6 Raymond P. Shafer Compassionate Use Medical Marijuana Act.

7 Section 2. Definitions.

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

11 "Bona fide physician-patient relationship." A physician who
12 has completed a full assessment of the patient's medical history
13 and current medical condition, including a personal physical
14 examination.

15 "Compassion center." A facility where usable marijuana may
16 be dispensed for medical use.

17 "Controlled Substance, Drug, Device and Cosmetic Act." The

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

3 "Debilitating medical condition." This term includes any of
4 the following:

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

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

15 (3) any other weakening medical condition or its
16 treatment that is recognized by licensed medical authorities
17 as being treatable with marijuana in a manner that is
18 superior to treatment without marijuana.

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

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

24 "Medical use." The acquisition, possession, cultivation,
25 manufacture, use, delivery, transfer or transportation of
26 marijuana or paraphernalia relating to a qualifying patient's
27 consumption of marijuana to alleviate the symptoms or effects of
28 the patient's debilitating medical condition.

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

1 "Primary caregiver" or "caregiver." A person who is at least
2 18 years of age, who has never been convicted of a felony drug
3 offense, has agreed to assist with a qualifying patient's
4 medical use of marijuana and has been designated as primary
5 caregiver on the qualifying patient's application or renewal for
6 a registry identification card or in other written notification
7 to the Department of Health. A primary caregiver shall only have
8 one qualifying patient at any one time. A primary caregiver
9 shall not include the qualifying patient's physician.

10 "Qualifying patient" or "patient." A person who has been
11 diagnosed by a physician as having a debilitating medical
12 condition.

13 "Registry identification card." A document issued by the
14 Department of Health that identifies a person as a qualifying
15 patient or primary caregiver. The term shall include a registry
16 identification card or its equivalent issued by another state
17 government to permit the medical use of marijuana by a
18 qualifying patient or to permit a person to assist with a
19 qualifying patient's medical use of marijuana.

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

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

24 "Written certification." The qualifying patient's medical
25 records, or a statement signed by a physician licensed in
26 accordance with the laws of this Commonwealth with whom the
27 patient has a bona fide physician-patient relationship, stating
28 that in the physician's professional opinion, after having
29 completed a full assessment of the qualifying patient's medical
30 history and current medical condition, the qualifying patient

1 has a debilitating medical condition for which the potential
2 benefits of the medical use of marijuana would likely outweigh
3 the health risks for the qualifying patient and would likely be
4 superior to treatment without the medical use of marijuana.

5 Section 3. Compassion centers.

6 (a) Duty of department.--The department may establish its
7 own and shall license any privately owned nonprofit compassion
8 center. The department shall award private licenses by
9 competitive bid. There shall be no more than one compassion
10 center per 250,000 residents.

11 (b) Sales tax.--State sales tax at the rate imposed under
12 Article II of the act of March 4, 1971 (P.L.6, No.2), known as
13 the Tax Reform Code of 1971, shall be imposed on all sales of
14 marijuana in this Commonwealth. If the county in which a sale of
15 marijuana for medical use occurs has a sales tax, that sales tax
16 shall be imposed on the sale also.

17 (c) Growth, processing or distribution of marijuana for
18 medical treatment.--A compassion center shall maintain records
19 of all marijuana it grows, processes or distributes for medical
20 treatment and shall make its records available for inspection by
21 the department.

22 Section 4. Medical use of marijuana permitted.

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

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

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

9 (3) A qualifying patient may assert the medical use of
10 marijuana as an affirmative defense to any prosecution
11 involving marijuana unless the patient was in violation of
12 this section when the events giving rise to the prosecution
13 occurred. The defense shall be presumed valid where the
14 evidence shows both of the following:

15 (i) At the time of the events giving rise to the
16 prosecution, the patient's medical records indicated or a
17 physician stated that, in the physician's professional
18 opinion, after having completed a full assessment of the
19 patient's medical history and current medical condition
20 made in the course of a bona fide physician-patient
21 relationship, the potential benefits of the medical use
22 of marijuana would likely outweigh the health risks for
23 the patient.

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

27 (4) Possession of, or application for, a registry
28 identification card shall not alone constitute probable cause
29 to search the person or the property of the person possessing
30 or applying for the registry identification card, or

1 otherwise subject the person or his property to inspection by
2 any governmental agency.

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

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

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

15 (2) the custodial parent, guardian or person having
16 legal custody consents in writing to: allow the patient's
17 medical use of marijuana; serve as the patient's primary
18 caregiver; and control the acquisition, dosage and frequency
19 of the medical use of marijuana by the patient.

20 (c) Immunity of primary caregiver.--

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

1 through the department's registration process.

2 (2) There shall exist a rebuttable presumption that a
3 primary caregiver is engaged in the medical use of marijuana
4 if the caregiver possesses a registry identification card and
5 no more than six marijuana plants and six ounces of usable
6 marijuana. The presumption may be rebutted by evidence that
7 conduct related to marijuana was not for the purpose of
8 alleviating the symptoms or effects of a qualifying patient's
9 debilitating medical condition.

10 (3) A primary caregiver may assert the medical use of
11 marijuana as an affirmative defense to any prosecution
12 involving marijuana unless the caregiver was in violation of
13 this section when the events giving rise to the prosecution
14 occurred. The defense shall be presumed valid where the
15 evidence shows that:

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

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

28 (4) Possession of, or application for, a registry
29 identification card shall not alone constitute probable cause
30 to search a person or property of a person possessing or

1 applying for the registry identification card or otherwise
2 subject the person or his property to inspection by any
3 governmental agency.

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

10 (d) Immunity of physician.--A physician shall not be subject
11 to arrest, prosecution or penalty in any manner, or denied any
12 right or privilege, including, but not limited to, civil penalty
13 or disciplinary action by the State Board of Medicine for
14 providing written certification for the medical use of marijuana
15 to a qualifying patient.

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

20 (f) Additional.--No more than three ounces of usable
21 marijuana may be taken from the compassion centers over any 14-
22 day period.

23 Section 5. Operation of a motorized vehicle prohibited.

24 The provisions of this act shall not be construed to permit
25 any person to operate, navigate or be in actual physical control
26 of any motor vehicle, aircraft or motorboat while under the
27 influence of marijuana; or smoke marijuana in a school bus or
28 other form of public transportation, on any school grounds, in
29 any correctional facility, at any public park or beach, at any
30 recreation center or at any place where cigarette smoking is

1 prohibited by law or by organizational policy. A person who
2 commits an act as provided in this section shall be subject to
3 such penalties as provided by law.

4 Section 6. Licit property.

5 Any marijuana, marijuana paraphernalia, licit property or
6 interest in licit property that is possessed, owned or used in
7 connection with the medical use of marijuana as allowed under
8 this act, or acts incidental to such use, shall not be seized or
9 forfeited.

10 Section 7. Misrepresentation prohibited.

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

14 Section 8. Registry identification cards.

15 (a) Registry.--The department shall establish a registry and
16 shall issue a registry identification card to a qualifying
17 patient who submits the following information in accordance with
18 the department's regulations:

19 (1) written certification that the person is a
20 qualifying patient;

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

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

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

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

29 (b) Issuance of registry identification card to qualified
30 patient.--Before issuing a registry identification card, the

1 department shall verify the information contained in the
2 application or renewal form submitted under this section. The
3 department shall approve or deny an application or renewal
4 within 15 days of receipt of the application or renewal and
5 shall issue a registry identification card within five days of
6 approving the application or renewal. The department may deny an
7 application or renewal only if the applicant fails to provide
8 the information required under this section or if the department
9 determines that the information was falsified. Denial of an
10 application is considered a final agency decision, subject to
11 review by the Commonwealth Court and the Supreme Court.

12 (c) Issuance of registry identification card to caregiver.--
13 The department shall issue a registry identification card to the
14 caregiver named in a patient's approved application if the
15 caregiver signs a statement agreeing to provide marijuana only
16 to the patient who has named him as caregiver.

17 (d) Information on face of registry identification card.--A
18 registry identification card shall contain the following
19 information:

- 20 (1) the name, address and date of birth of the patient;
21 (2) the name, address and date of birth of the patient's
22 caregiver, if any;
23 (3) the date of issuance and expiration date of the
24 registry identification card;
25 (4) photo identification of the cardholder; and
26 (5) such other information that the department may
27 specify in its regulations.

28 (e) Changes in listed information.--A patient who has been
29 issued a registry identification card shall notify the
30 department of any change in the patient's name, address,

1 physician or caregiver, or change in status of the patient's
2 debilitating medical condition, within ten days of such change,
3 or the registry identification card shall be deemed null and
4 void.

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

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

14 (2) authorized employees of State or local law
15 enforcement agencies, only as necessary to verify that a
16 person who is engaged in the suspected or alleged medical use
17 of marijuana is lawfully in possession of a registry
18 identification card.

19 Section 9. Discrimination prohibited.

20 (a) Prohibition.--The following acts are prohibited:

21 (1) A school or landlord refusing to enroll or lease to,
22 or otherwise penalize, a person solely for being a registered
23 qualifying patient or a registered designated caregiver,
24 unless failing to do so would cause the school or landlord to
25 lose a monetary or licensing-related benefit under Federal
26 law or regulations.

27 (2) Disqualifying an otherwise qualified patient from
28 needed medical care. For the purposes of medical care,
29 including organ transplants, a registered qualifying
30 patient's authorized use of marijuana in accordance with this

chapter shall be considered the equivalent of the authorized use of any other medication used at the direction of a physician and shall not constitute the use of an illicit substance.

(3) Unless a failure to do so would cause an employer to lose a monetary or licensing-related benefit under Federal law or Federal regulations, an employer may not discriminate against a person in hiring, termination or any term or condition of employment or otherwise penalize a person, if the discrimination is based on either of the following:

(i) The person's status as a card holder.

(ii) A registered qualifying patient's positive drug test for marijuana components or metabolites, unless the patient used, possessed or was impaired by marijuana on the premises of the place of employment or during the hours of employment.

(b) Custody.--A person otherwise entitled to custody or visitation or parenting time with a minor shall not be denied such a right, and there shall be no presumption of neglect or child endangerment, for conduct allowed under this chapter, unless the person's actions in relation to marijuana were such that they created an unreasonable danger to the safety of the minor as established by clear and convincing evidence.

(c) State benefit.--No school, landlord or employer may be penalized or denied any benefit under State law for enrolling, leasing to or employing a card holder.

Section 10. Safety compliance.

The department is to monitor or to create a monitoring system that will test the potency and contamination of marijuana that is offered under this act. A monitor licensed by the department

1 may remove from distribution any product that does not meet
2 department standards.

3 Section 11. Funding.

4 The secretary may accept from any governmental department or
5 agency, public or private body or any other source grants or
6 contributions to be used in carrying out the purposes of this
7 act.

8 Section 12. Reports by secretary.

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

18 Section 13. Health insurance.

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

24 Section 14. Sovereign immunity.

25 The State shall not be held liable for any deleterious
26 outcomes from the medical use of marijuana by any qualifying
27 patient.

28 Section 15. Rules and regulations.

29 The secretary shall promulgate rules and regulations to
30 effectuate the purposes of this act. The regulations shall

1 establish the application and renewal form, process and fee
2 schedule and any limitations in the public interest on
3 debilitating medical conditions not specifically included in
4 this act.

5 Section 16. Duty of Pennsylvania State Police.

6 The Pennsylvania State Police shall advise the department and
7 caregivers on effective security measures for the possession and
8 transportation of medical marijuana and shall inspect sites if
9 requested.

10 Section 17. Effective date.

11 This act shall take effect in 90 days.