THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 770 Session of 2013

INTRODUCED BY LEACH, FERLO, FONTANA AND FARNES, APRIL 3, 2013

REFERRED TO PUBLIC HEALTH AND WELFARE, APRIL 3, 2013

AN ACT

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

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

Section 1. Short title.

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

Section 2. Legislative intent.

The General Assembly finds and declares as follows:

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

2. According to the United States Sentencing Commission and the Federal Bureau of Investigation, 99 out of every 100 marijuana arrests in this nation are made under the laws of states, rather than under Federal law. Consequently, changing
the law of this Commonwealth on this subject will have the practical effect of protecting from arrest seriously ill people who have a medical need to use marijuana.


Section 3. Definitions.

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

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

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


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

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

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

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

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

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

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

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

"Primary caregiver" or "caregiver." A person who is at least 18 years of age, 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 qualifying patient's application or renewal for a registry identification card or in other written notification to the Department of Health. A primary caregiver shall only have one qualifying patient at any one time. A primary caregiver shall not include the qualifying patient's physician.
"Qualifying patient" or "patient." A person who has been diagnosed by a physician as having a debilitating medical condition.

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

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

"Usable marijuana." The dried leaves and flowers of marijuana, and any mixture or preparation thereof, not including the seeds, stalks and roots of the plant.

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

Section 4. Compassion centers.

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

(b) Sales tax.--State sales tax at the rate imposed under Article II of the act of March 4, 1971 (P.L.6, No.2), known as 20130SB0770PN0833
the Tax Reform Code of 1971, shall be imposed on all sales of marijuana in this Commonwealth. If the county in which a sale of marijuana for medical use occurs has a sales tax, that sales tax shall be imposed on the sale also.

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

Section 5. Medical use of marijuana permitted.

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

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

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

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

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

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

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

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

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

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

(2) the custodial parent, guardian or person having
legal custody consents in writing to:

(i) allow the patient's medical use of marijuana;
(ii) serve as the patient's primary caregiver; and
(iii) control the acquisition, dosage and frequency
of the medical use of marijuana by the patient.

(c) Immunity of primary caregiver.--

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

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

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

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

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

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

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

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

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

Section 6. Operation of a motorized vehicle prohibited.

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

Section 7. Misrepresentation prohibited.

A person who fabricates or misrepresents a registry identification card to a law enforcement official commits a violation of 18 Pa.C.S. § 5503 (relating to disorderly conduct).

Section 8. Registry identification cards.

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

(1) written certification that the person is a qualifying patient;
(2) an application or renewal fee of not less than $50, which may be based on a sliding scale as determined by the secretary;

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

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

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

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

(c) Issuance of registry identification card to caregiver.--The department shall issue a registry identification card to the 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 caregiver.

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

(1) the name, address and date of birth of the patient;
(2) the name, address and date of birth of the patient's
caregiver, if any;
(3) the date of issuance and expiration date of the
registry identification card;
(4) photo identification of the cardholder; and
(5) other information that the department may specify in
its regulations.
(e) Changes in listed information.--A patient who has been
issued a registry identification card shall notify the
department of any change in the patient's name, address,
physician or caregiver, or change in status of the patient's
deilitating medical condition, within ten days of the change,
or the registry identification card shall be deemed null and
void.
(f) Right-to-Know Law inapplicable.--The department shall
maintain a confidential list of the persons to whom it has
issued registry identification cards. Individual names and other
identifying information on the list shall be confidential, and
shall not be considered a public record under the act of
February 14, 2008 (P.L.6, No.3), known as the Right-To-Know Law,
and shall not be disclosed except to:
(1) authorized employees of the department as necessary
to perform official duties of the department; or
(2) 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
identification card.
Section 9. Funding.
The secretary may accept from any governmental department or
agency, public or private body or any other source grants or contributions to be used in carrying out the purposes of this act.

Section 10. Reports by secretary.

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

Section 11. Health insurance.

Nothing in this act may 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.

Section 12. Sovereign immunity.

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

Section 13. Rules and regulations.

The secretary shall promulgate rules and regulations to effectuate the purposes of this act. The regulations shall establish the registry identification card application and renewal form, process and fee schedule and any limitations in the public interest on debilitating medical conditions not specifically included in this act.

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

Section 15. Effective date.

This act shall take effect in 90 days.