

LEGISLATIVE REFERENCE BUREAU

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No. _____

LEGISLATIVE REFERENCE BUREAU

AN ACT

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

INTRODUCED _____ 20 _____

By _____ District NO. _____

By _____ District NO. _____

By _____ District NO. _____

By _____ District NO. _____

See next page for additional co-sponsors.

Referred to Committee on	
Date _____	20 _____
Reported _____	20 _____
As Committed-Amended	
Recommendation	

By Hon. _____	

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 Medical
7 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 at least 17 states and the District of
7 Columbia permit the use of marijuana for medical purposes.
8 Pennsylvania joins this effort for the health and welfare of
9 its citizens.

10 Section 3. Definitions.

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

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

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

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

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

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

28 (2) a chronic or debilitating disease or medical
29 condition or its treatment that produces one or more of the
30 following: cachexia or wasting syndrome; severe or chronic

1 pain; severe nausea; seizures, including, but not limited to,
2 those characteristic of epilepsy; severe and persistent
3 muscle spasms, including, but not limited to, those
4 characteristic of multiple sclerosis or Crohn's disease; or

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

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

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

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

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

21 "Primary caregiver" or "caregiver." A person who is at least
22 18 years of age, who has never been convicted of a felony drug
23 offense, has agreed to assist with a qualifying patient's
24 medical use of marijuana and has been designated as primary
25 caregiver on the qualifying patient's application or renewal for
26 a registry identification card or in other written notification
27 to the Department of Health. A primary caregiver shall only have
28 one qualifying patient at any one time. A primary caregiver
29 shall not include the qualifying patient's physician.

30 "Qualifying patient" or "patient." A person who has been

1 diagnosed by a physician as having a debilitating medical
2 condition.

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

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

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

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

25 Section 4. Compassion centers.

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

28 (b) Sales tax.--State sales tax at the rate imposed under
29 Article II of the act of March 4, 1971 (P.L.6, No.2), known as
30 the Tax Reform Code of 1971, shall be imposed on all sales of

1 marijuana in this Commonwealth. If the county in which a sale of
2 marijuana for medical use occurs has a sales tax, that sales tax
3 shall be imposed on the sale also.

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

9 Section 5. Medical use of marijuana permitted.

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

11 (1) A qualifying patient 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 the medical use of marijuana, provided that the patient
16 possesses a registry identification card and no more than six
17 marijuana plants and one ounce of usable marijuana.

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

26 (3) A qualifying patient may assert the medical use of
27 marijuana as an affirmative defense to any prosecution
28 involving marijuana unless the patient was in violation of
29 this section when the events giving rise to the prosecution
30 occurred. The defense shall be presumed valid where the

1 evidence shows both of the following:

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

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

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

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

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

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

1 use of marijuana; and

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

4 (i) allow the patient's medical use of marijuana;

5 (ii) serve as the patient's primary caregiver; and

6 (iii) control the acquisition, dosage and frequency
7 of the medical use of marijuana by the patient.

8 (c) Immunity of primary caregiver.--

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

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

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

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; and

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 a person or property of a person possessing or
19 applying for the registry identification card or otherwise
20 subject the person or the person's 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 determined to exist by the department shall not apply if a
25 primary caregiver has in his possession a registry
26 identification card and no more than six marijuana plants and
27 one ounce of usable marijuana.

28 (d) Immunity of physician.--A physician shall not be subject
29 to arrest, prosecution or penalty in any manner, or denied any
30 right or privilege, including, but not limited to, civil penalty

1 or disciplinary action by the State Board of Medicine for
2 providing written certification for the medical use of marijuana
3 to a qualifying patient.

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

8 Section 6. Operation of a motorized vehicle prohibited.

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

19 Section 7. Misrepresentation prohibited.

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

23 Section 8. Registry identification cards.

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

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

30 (2) an application or renewal fee of not less than \$50,

1 which may be based on a sliding scale as determined by the
2 secretary;

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

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

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

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

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

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

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

30 (2) the name, address and date of birth of the patient's

1 caregiver, if any;

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

4 (4) photo identification of the cardholder; and

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

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

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

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

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

28 Section 9. Funding.

29 The secretary may accept from any governmental department or
30 agency, public or private body or any other source grants or

1 contributions to be used in carrying out the purposes of this
2 act.

3 Section 10. Reports by secretary.

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

13 Section 11. Health insurance.

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

19 Section 12. Sovereign immunity.

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

23 Section 13. Rules and regulations.

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

30 Section 14. Duty of Pennsylvania State Police.

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

5 Section 15. Effective date.

6 This act shall take effect in 90 days.

