
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1003 Session of
2011

INTRODUCED BY LEACH, FONTANA, FERLO AND FARNESE, APRIL 25, 2011

REFERRED TO PUBLIC HEALTH AND WELFARE, APRIL 25, 2011

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 Governor
7 Raymond Shafer Compassionate 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
18 states, rather than under Federal law. Consequently, changing

1 the law of this Commonwealth on this subject will have the
2 practical effect of protecting from arrest seriously ill
3 people who have a medical need to use marijuana.

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

11 Section 3. Definitions.

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

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

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

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

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

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

29 (2) a chronic or debilitating disease or medical
30 condition or its treatment that produces one or more of the

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

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

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

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

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

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

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

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

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

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

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

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

26 Section 4. Compassion centers.

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

29 (b) Sales tax.--State sales tax at the rate imposed under
30 Article II of the act of March 4, 1971 (P.L.6, No.2), known as

1 the Tax Reform Code of 1971, shall be imposed on all sales of
2 marijuana in this Commonwealth. If the county in which a sale of
3 marijuana for medical use occurs has a sales tax, that sales tax
4 shall be imposed on the sale also.

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

10 Section 5. Medical use of marijuana permitted.

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

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

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

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

1 occurred. The defense shall be presumed valid where the
2 evidence shows both of the following:

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

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

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

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

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

29 (1) the patient's physician has explained to the patient
30 and the patient's custodial parent, guardian or person having

1 legal custody the potential risks and benefits of the medical
2 use of marijuana; and

3 (2) the custodial parent, guardian or person having
4 legal custody consents in writing to: allow the patient's
5 medical use of marijuana; serve as the patient's primary
6 caregiver; and 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 his property to inspection by any
21 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 shall be subject to
5 arrest or prosecution for constructive possession, conspiracy or
6 any other offense for simply being in the presence or vicinity
7 of 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
10 any person to operate, navigate or be in actual physical control
11 of any motor vehicle, aircraft or motorboat while under the
12 influence of marijuana; or smoke marijuana in a school bus or
13 other form of public transportation, on any school grounds, in
14 any correctional facility, at any public park or beach, at any
15 recreation center or at any place where cigarette smoking is
16 prohibited by law or by organizational policy. A person who
17 commits an act as provided in this section shall be subject to
18 such penalties as provided by law.

19 Section 7. Misrepresentation prohibited.

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

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) such other information that the department may
6 specify in 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 such 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 shall be construed to require a
15 government medical assistance program or private health insurer
16 to reimburse a person for costs associated with the medical use
17 of marijuana, or an employer to accommodate the medical use of
18 marijuana in any workplace.

19 Section 12. Sovereign immunity.

20 The State 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 application and renewal form, process and fee
27 schedule and any limitations in the public interest on
28 debilitating medical conditions not specifically included in
29 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.