

NO. 135. AN ACT RELATING TO MARIJUANA USE BY PERSONS WITH SEVERE ILLNESS.

(S.76)

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 18 V.S.A. chapter 86 is amended to read:

CHAPTER 86. THERAPEUTIC USE OF CANNABIS

Subchapter 1. Research Program

§ 4471. CANNABIS THERAPEUTIC RESEARCH PROGRAM;

ESTABLISHMENT; PARTICIPATION

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Subchapter 2. Marijuana Use by Persons with Severe Illness

§ 4472. DEFINITIONS

For the purposes of this subchapter:

(1) “Bona fide physician-patient relationship” means a treating or consulting relationship of not less than six months duration, in the course of which a physician has completed a full assessment of the registered patient’s medical history and current medical condition, including a personal physical examination.

(2) “Debilitating medical condition” means:

(A) end of life care for cancer or acquired immune deficiency syndrome; or

(B) cancer, acquired immune deficiency syndrome, positive status for human immunodeficiency virus, multiple sclerosis, or the treatment of these diseases or medical conditions if:

(i) the disease or condition or its treatment results in severe, persistent, and intractable symptoms; and

(ii) in the context of the specific disease or condition, reasonable medical efforts have been made over a reasonable amount of time without success in relieving the symptoms.

(3) “Marijuana” shall have the same meaning as provided in subdivision 4201(15) of this title.

(4) “Possession limit” means the amount of marijuana collectively possessed between the registered patient and the patient’s registered caregiver which is no more than one mature marijuana plant, two immature plants, and two ounces of usable marijuana.

(5) “Physician” means a person who is licensed under chapter 23 or chapter 33 of Title 26, and is licensed with authority to prescribe drugs under Title 26.

(6) “Registered caregiver” means a person who is at least 21 years old who has never been convicted of a drug-related crime and who has agreed to undertake responsibility for managing the well-being of a registered patient with respect to the use of marijuana for symptom relief.

(7) “Registered patient” means a person who has been issued a registration card by the department of public safety identifying the person as having a debilitating medical condition pursuant to the provisions of this subchapter.

(8) “Secure indoor facility” means a building or room equipped with locks or other security devices that permit access only by a registered caregiver or registered patient.

(9) “Usable marijuana” means the dried leaves and flowers of marijuana, and any mixture or preparation thereof, and does not include the seeds, stalks, and roots of the plant.

(10) “Use for symptom relief” means the acquisition, possession, cultivation, use, transfer, or transportation of marijuana or paraphernalia relating to the administration of marijuana to alleviate the symptoms or effects of a registered patient’s debilitating medical condition which is in compliance with all the limitations and restrictions of this subchapter. For the purposes of this definition, “transfer” is limited to the transfer of marijuana and paraphernalia between a registered caregiver and a registered patient.

§ 4473. REGISTERED PATIENTS; QUALIFICATION STANDARDS AND PROCEDURES

(a) To become a registered patient, a person must be diagnosed with a debilitating medical condition by a physician in the course of a bona fide physician-patient relationship.

(b) The department of public safety shall review applications to become a registered patient using the following procedures:

(1) A patient with a debilitating medical condition shall submit, under oath, a signed application for registration to the department. If the patient is under the age of 18 the application must be signed by both the patient and a parent or guardian. The application shall require identification and contact information for the patient and the patient's registered caregiver applying for authorization under section 4474 of this title, if any. The applicant shall attach to the application a copy of relevant portions of the patient's medical record sufficient to establish that the patient has a debilitating medical condition.

(2) The department shall contact the physician for purposes of verifying the existence of a bona fide physician-patient relationship and the accuracy of the medical record. The department may approve an application, notwithstanding the six-month requirement in subdivision 4472(1) of this title, if the department is satisfied that the debilitating medical condition is of recent or sudden onset and that the patient has not had a previous physician who is able to verify the nature of the disease and its symptoms.

(3) The department shall approve or deny the application for registration in writing within 30 days from receipt of a completed registration application. If the application is approved, the department shall issue the applicant a registration card which shall include the registered patient's name and

photograph, as well as a unique identifier for law enforcement verification purposes under section 4474d of this title.

(4)(A) A review board is established. The medical practice board shall appoint three physicians licensed in Vermont to constitute the review board. If an application under subdivision (1) of this subsection is denied, within seven days the patient may appeal the denial to the board. Review shall be limited to information submitted by the patient under subdivision (1) of this subsection, and consultation with the patient's treating physician. All records relating to the appeal shall be kept confidential. An appeal shall be decided by majority vote of the members of the board.

(B) The board shall meet periodically to review studies, data, and any other information relevant to the use of marijuana for symptom relief. The board may make recommendations to the general assembly for adjustments and changes to this chapter.

(C) Members of the board shall serve for three-year terms, beginning February 1 of the year in which the appointment is made, except that the first members appointed shall serve as follows: one for a term of two years, one for a term of three years, and one for a term of four years. Members shall be entitled to per diem compensation authorized under section 1010 of Title 32. Vacancies shall be filled in the same manner as the original appointment for the unexpired portion of the term vacated.

§ 4474. REGISTERED CAREGIVERS; QUALIFICATION STANDARDS

AND PROCEDURES

(a) A person may submit a signed application to the department of public safety to become a registered patient's registered caregiver. The department shall approve or deny the application in writing within 30 days. The department shall approve a registered caregiver's application and issue the person an authorization card, including the caregiver's name, photograph, and a unique identifier, after verifying:

(1) the person will serve as the registered caregiver for one registered patient only; and

(2) the person has never been convicted of a drug-related crime.

(b) Prior to acting on an application, the department shall obtain from the Vermont criminal information center a Vermont criminal record, an out-of-state criminal record, and a criminal record from the Federal Bureau of Investigation for the applicant. For purposes of this subdivision, "criminal record" means a record of whether the person has ever been convicted of a drug-related crime. Each applicant shall consent to release of criminal records to the department on forms substantially similar to the release forms developed by the center pursuant to section 2056c of Title 20. The department shall comply with all laws regulating the release of criminal history records and the protection of individual privacy. The Vermont criminal information center shall send to the requester any record received pursuant to this section or inform the department of public safety that no record exists. If the department

disapproves an application, the department shall promptly provide a copy of any record of convictions and pending criminal charges to the applicant and shall inform the applicant of the right to appeal the accuracy and completeness of the record pursuant to rules adopted by the Vermont criminal information center. No person shall confirm the existence or nonexistence of criminal record information to any person who would not be eligible to receive the information pursuant to this subchapter.

(c) A registered caregiver may serve only one registered patient at a time, and a registered patient may have only one registered caregiver at a time.

§ 4474a. REGISTRATION; FEES

(a) The department shall collect a fee of \$100.00 for the application authorized by sections 4473 and 4474 of this title. The fees received by the department shall be deposited into a registration fee fund and used to offset the costs of processing applications under this subchapter.

(b) A registration card shall expire one year after the date of issue, with the option of renewal, provided the patient submits a new application which is approved by the department of public safety, pursuant to sections 4473 or 4474 of this title, and pays the fee required under subsection (a) of this section.

§ 4474b. EXEMPTION FROM CRIMINAL AND CIVIL PENALTIES;

SEIZURE OF PROPERTY

(a) A person who has in his or her possession a valid registration card issued pursuant to this subchapter and who is in compliance with the

requirements of this subchapter, including the possession limits in subdivision 4472(4) of this title, shall be exempt from arrest or prosecution under subsection 4230(a) of this title.

(b) A physician who has participated in a patient's application process under subdivision 4473(b)(2) of this title shall not be subject to arrest, prosecution, or disciplinary action under chapter 23 of Title 26, penalized in any manner, or denied any right or privilege under state law, except for giving false information, pursuant to section 4474c(f) of this title.

(c) No person shall be subject to arrest or prosecution for constructive possession, conspiracy, or any other offense for simply being in the presence or vicinity of a registered patient or registered caregiver engaged in use of marijuana for symptom relief.

(d) A law enforcement officer shall not be required to return marijuana or paraphernalia relating to its use seized from a registered patient or registered caregiver.

§ 4474c. PROHIBITIONS, RESTRICTIONS, AND LIMITATIONS

REGARDING THE USE OF MARIJUANA FOR SYMPTOM

RELIEF

(a) This subchapter shall not exempt any person from arrest or prosecution for:

(1) Being under the influence of marijuana while:

(A) operating a motor vehicle, boat, or vessel, or any other vehicle propelled or drawn by power other than muscular power;

(B) in a workplace or place of employment; or

(C) operating heavy machinery or handling a dangerous instrumentality.

(2) The use or possession of marijuana by a registered patient or a registered caregiver:

(A) for purposes other than symptom relief as permitted by this subchapter; or

(B) in a manner that endangers the health or well-being of another person.

(3) The smoking of marijuana in any public place, including:

(A) a school bus, public bus, or other public vehicle;

(B) a workplace or place of employment;

(C) any school grounds;

(D) any correctional facility; or

(E) any public park, public beach, public recreation center, or youth center.

(b) This chapter shall not be construed to require that coverage or reimbursement for the use of marijuana for symptom relief be provided by:

(1) a health insurer as defined by subdivision 9402(7) of this title, or any insurance company regulated under Title 8;

(2) an employer; or

(3) for purposes of worker's compensation, an employer as defined in subdivision 601(3) of Title 21.

(c) A registered patient or registered caregiver who elects to grow marijuana to be used for symptom relief by the patient may do so only if the marijuana is cultivated in a single, secure indoor facility.

(d) A registered patient or registered caregiver may not transport marijuana in public unless it is secured in a locked container.

(e) Within 72 hours after the death of a registered patient, the patient's registered caregiver shall return to the department of public safety for disposal any marijuana or marijuana plants in the possession of the patient or registered caregiver at the time of the patient's death. If the patient did not have a registered caregiver, the patient's next of kin shall contact the department of public safety within 72 hours after the patient's death and shall ask the department to retrieve such marijuana and marijuana plants for disposal.

(f) Notwithstanding any law to the contrary, a person who knowingly gives to any law enforcement officer false information to avoid arrest or prosecution, or to assist another in avoiding arrest or prosecution, shall be imprisoned for not more than one year or fined not more than \$1,000.00 or both. This penalty shall be in addition to any other penalties that may apply for the possession or use of marijuana.

§ 4474d. LAW ENFORCEMENT VERIFICATION OF INFORMATION;RULEMAKING

(a) The department of public safety shall maintain and keep confidential, except as provided in subsection (b) of this section and except for purposes of a prosecution for false swearing under section 2904 of Title 13, the records of all persons registered under this subchapter or registered caregivers in a secure database accessible by authorized department of health employees only.

(b) In response to a person-specific or property-specific inquiry by a law enforcement officer or agency made in the course of a bona fide investigation or prosecution, the department may verify the identities and registered property addresses of the registered patient and the patient's registered caregiver.

(c) The department shall maintain a separate secure electronic database accessible to law enforcement personnel 24 hours a day that uses a unique identifier system to allow law enforcement to verify that a person is a registered patient or registered caregiver.

(d) The department of public safety shall implement the requirements of this act within 120 days of its effective date. The department may adopt rules under chapter 25 of Title 3 and shall develop forms to implement this act.

Sec. 2. REPORT

The department of public safety, with input from the review board and the department of health, shall report by January 1, 2006 to the house and senate

committees on health and welfare and judiciary on the use of marijuana for symptom relief. The report shall include:

(1) statistics regarding the number of people using marijuana for symptom relief, the number of applications received by the department for persons to become registered patients or registered caregivers, and the types of debilitating medical conditions presented in the applications;

(2) a summary of the current research, including the conclusions of the Institute of Medicine, regarding whether there are legitimate medical uses of marijuana;

(3) an evaluation of the costs of permitting the use of marijuana for symptom relief, including any costs to law enforcement officers and costs of any litigation;

(4) an analysis of whether permitting the use of marijuana for symptom relief has made it more difficult to enforce criminal laws relating to substance abuse;

(5) an analysis of whether permitting the use of marijuana for symptom relief has increased illegal marijuana use by creating a public perception that arrests for possession and use of marijuana have become less likely to occur and criminal charges have become more difficult to prosecute;

(6) statistics regarding the number of prosecutions brought against doctors and other persons for violations of this act; and

(7) whether the United States Food and Drug Administration has altered its position regarding the use of marijuana for medical purposes or has approved alternative delivery systems for marijuana.

Approved: Became law without Governor's signature