SENATE BILL  409-FN

AN ACT relative to the use of marijuana for medicinal purposes.


COMMITTEE:  Health and Human Services

ANALYSIS

This bill permits the use of marijuana for medicinal purposes in New Hampshire.

Explanation:  Matter added to current law appears in bold italics.  
Matter removed from current law appears in brackets and struckthrough.  
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.
AN ACT relative to the use of marijuana for medicinal purposes.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 New Chapter; Use of Marijuana for Medicinal Purposes. Amend RSA by inserting after chapter 126-U the following new chapter:

CHAPTER 126-V

USE OF MARIJUANA FOR MEDICINAL PURPOSES

126-V:1 Definitions. In this chapter:

I. “Cardholder” means a qualifying patient or a designated caregiver who has been issued and possesses a valid registry identification card.

II. “Debilitating medical condition” means the presence of either:

(a) Cancer, glaucoma, positive status for human immunodeficiency virus, acquired immune deficiency syndrome, hepatitis C currently receiving antiviral treatment, amyotrophic lateral sclerosis, muscular dystrophy, Crohn’s disease, agitation of Alzheimer’s disease, multiple sclerosis, or post-traumatic stress disorder; or

(b) Symptoms or treatment results that include at least one of the following: cachexia or wasting syndrome, severe pain that has not responded to previously prescribed medication or surgical measures for more than 3 months, or for which other treatment options produced serious side effects, severe nausea, severe vomiting, seizures, or severe, persistent muscle spasms.

III. “Department” means the department of health and human services.

IV. “Designated caregiver” means an individual who is at least 21 years of age including a licensed health care professional, and who has agreed to assist with a patient’s medical use of marijuana and who has never been convicted of any drug-related offense. Except for a licensed health care professional, a designated caregiver may serve as a designated caregiver for only one qualifying patient at a time.

V. “Marijuana” means all parts of any plant of the Cannabis genus of plants, whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, salt, derivative, mixture, or preparation of such plant, its seeds, or resin. Such term shall not include the mature stalks of such plants, fiber produced from such stalks, oil, or cake made from the seeds of such plants, any other compound, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil or cake, or the sterilized seeds of such plants which are incapable of germination.

VI. “Medical use” means the acquisition, possession, cultivation, preparation, use, delivery, transfer, or transportation of marijuana or paraphernalia relating to the administration of
marijuana to treat or alleviate a qualifying patient’s debilitating medical condition or symptoms or 
results of treatment associated with the qualifying patient’s debilitating medical condition. It shall 
not include the use of marijuana by a designated caregiver who is not a qualifying patient.

VII. “Physician” means an individual licensed to prescribe drugs to humans under RSA 329 
and who possesses certification from the United States Drug Enforcement Administration to 
 prescribe controlled substances, except that in relation to a visiting qualifying patient, “physician” 
means an individual licensed to prescribe drugs to humans in the state of the patient’s residence and 
who possesses certification from the United States Drug Enforcement Administration to prescribe 
controlled substances. If the qualifying patient’s debilitating medical condition is post-traumatic 
stress disorder, the physician who signs the qualifying patient’s written certification shall also be a 
psychiatrist.

VIII. “Qualifying patient” means an individual who has been diagnosed by a physician as 
having a debilitating medical condition.

IX. “Registry identification card” means a document issued by the department that identifies 
an individual as a qualifying patient or a designated caregiver.

X. “Seedling” means a marijuana plant that has no flowers and is less than 12 inches in 
height and less than 12 inches in diameter. A seedling shall meet all 3 criteria set forth in this 
paragraph.

XI. “Unusable marijuana” means any marijuana other than usable marijuana. It includes 
seeds, stalks, and roots of the plant.

XII. “Usable marijuana” means the dried leaves and flowers of the marijuana plant and any 
mixture or preparation thereof, but does not include the seeds, stalks, and roots of the plant and does 
not include the weight of any non-marijuana ingredients combined with marijuana and prepared for 
consumption as food or drink.

XIII. “Visiting qualifying patient” means a patient with a debilitating medical condition who is 
not a resident of New Hampshire or who has been a resident of New Hampshire for fewer than 30 days.

XIV. “Written certification” means a document signed by a physician 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 made in the course of a bona fide physician-patient 
relationship as defined in RSA 329:1-c of at least 3 months in duration, the qualifying patient has a 
deilitating medical condition, and the potential benefits of the medical use of marijuana would 
likely outweigh the health risks for the qualifying patient. If the qualifying patient’s debilitating 
medical condition is of recent or sudden onset and the certifying physician is primarily responsible 
for the patient’s care related to his or her debilitating medical condition, the 3-month requirement 
for the bona-fide physician-patient relationship required in this paragraph shall not apply. The 
written certification shall be valid for up to one year. The date of expiration and the qualifying 
patient’s debilitating medical condition shall be specified on the written certification.
126-V:2 Restrictions on the Possession of Medical Marijuana by a Qualifying Patient or Designated Caregiver.

I. A qualifying patient who has been issued and possesses a registry identification card shall not be subject to arrest, prosecution, or penalty, or denied any right or privilege, including but not limited to a civil penalty or disciplinary action by a court or occupational or professional licensing board or bureau, for the medical use of marijuana in accordance with this chapter, if the qualifying patient possesses an amount of marijuana that does not exceed the following:

(a) Six ounces of usable marijuana; and
(b) An amount of unusable marijuana from up to 6 plants; and
(c) If the qualifying patient does not have a designated caregiver, 6 mature marijuana plants and 12 seedlings, which shall be in a locked and enclosed location unless they are being moved; and

II. A designated caregiver who has been issued and possesses a registry identification card shall not be subject to arrest, prosecution, or penalty, or denied any right or privilege, including but not limited to civil penalty or disciplinary action by a court or occupational or professional licensing board or bureau, for assisting a qualifying patient if the designated caregiver possesses or cultivates an amount of marijuana that does not exceed the following:

(a) Six ounces of usable marijuana; and
(b) An amount of unusable marijuana from up to 6 plants; and
(c) Six mature marijuana plants and 12 seedlings, which shall be in a locked and enclosed location unless they are being moved.

III.(a) A qualifying patient or designated caregiver who has been issued and possesses a registry identification card shall not be subject to arrest, prosecution, or penalty for giving excess marijuana to a qualifying patient or a visiting qualifying patient where nothing of value is transferred in return, or for offering to do the same, if the person giving the marijuana does not knowingly cause the recipient to possess more marijuana than is permitted by this section.

(b) There shall be a presumption that a transfer of marijuana to a person is a transfer of marijuana for value if the transferee is required to pay anything of value to be a member of an organization or to participate in an activity in order to be eligible to receive the transfer.

IV.(a) A qualifying patient is presumed to be lawfully engaged in the medical use of marijuana in accordance with this chapter if the qualifying patient possesses a registry identification card and possesses an amount of marijuana that does not exceed the amount allowed under this chapter.

(b) A designated caregiver is presumed to be lawfully engaged in assisting with the medical use of marijuana in accordance with this chapter if the designated caregiver possesses a registry identification card and possesses an amount of marijuana that does not exceed the amount allowed under this chapter.
(c) The presumptions made in subparagraphs (a) and (b) may be rebutted by evidence that conduct related to marijuana was not for the purpose of treating or alleviating the qualifying patient’s debilitating medical condition or symptoms or effects of the treatment associated with the debilitating medical condition, in accordance with this chapter.

V. A person otherwise entitled to custody of, or visitation or parenting time with, a minor shall not be denied such a right solely for conduct allowed under this chapter and there shall be no presumption of neglect or child endangerment.

VI. A designated caregiver who is a licensed health care professional may receive compensation for costs associated with assisting a qualifying patient who has designated the designated caregiver to assist him or her with the medical use of marijuana. Such compensation shall not constitute the sale of controlled substances.

VII. A physician shall not be subject to arrest, prosecution, or penalty, or denied any right or privilege, including but not limited to a civil penalty or disciplinary action by the New Hampshire board of medicine or any other occupational or professional licensing board or bureau, solely for providing written certifications or for otherwise stating that, in the physician’s professional opinion, a patient is likely to receive therapeutic or palliative benefit from the medical use of marijuana to treat or alleviate the patient’s debilitating medical condition or symptoms or effects of treatment associated with the debilitating medical condition, provided that nothing shall prevent a professional licensing board from sanctioning a physician for failing to properly evaluate a patient’s medical condition.

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

IX. An individual shall not be subject to arrest, prosecution, or penalty, or denied any right or privilege, including but not limited to a civil penalty or disciplinary action by a court or occupational or professional licensing board or bureau, simply for being in the presence or vicinity of the medical use of marijuana as allowed under this chapter.

X. A registry identification card, or its equivalent, that is issued under the laws of another state, district, territory, commonwealth, or insular possession of the United States that allows, in the jurisdiction of issuance, a visiting qualifying patient to possess marijuana for medical purposes, shall have the same force and effect as a registry identification card issued by the department in this state, provided that a debilitating medical condition as defined in RSA 126-V:1, II exists, and that a visiting qualifying patient shall not cultivate marijuana in New Hampshire.

XI. Any cardholder who sells marijuana to an individual who is not a cardholder under this chapter shall be guilty of a class B felony, shall have his or her registry identification card revoked, and shall be subject to other penalties as provided in RSA 318-B:26. The department may revoke the registry identification card of any cardholder who violates any provision of this chapter, and the cardholder shall be subject to any other penalties established in law for the violation.
XII. Where a state or local law enforcement agency encounters an individual who, during the course of an investigation, credibly asserts that he or she is a qualifying patient or designated caregiver, the law enforcement agency shall not provide any information from any marijuana-related investigation of the individual or entity to any law enforcement authority that does not recognize the protection of this chapter, and any prosecution of the individual or entity for a violation of this chapter shall be conducted pursuant to the laws of this state. This paragraph shall not apply in cases where the state or local law enforcement agency has probable cause to believe the person is distributing marijuana to a person who is not allowed to possess it under this chapter, nor shall it prevent the sharing of information if the primary offense is unrelated to marijuana.

126-V:3 Prohibitions and Limitations On the Use of Medical Marijuana.

I. A qualifying patient may use medical marijuana on privately-owned real property only with the permission of the property owner.

II. Nothing in this chapter shall exempt any person from arrest or prosecution for:

(a) Being under the influence of marijuana while:

(1) Operating a motor vehicle, commercial vehicle, boat, or vessel, or any other vehicle propelled or drawn by power other than muscular power; or

(2) In his or her place of employment, without the written permission of the employer; or

(3) Operating heavy machinery or handling a dangerous instrumentality.

(b) The use or possession of marijuana by a qualified patient or designated caregiver:

(1) For purposes other than alleviating symptoms as permitted by this chapter; or

(2) In a manner that endangers the health, well-being, or safety of another person.

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

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

(2) A place of employment, without the written permission of the employer; or

(3) The grounds of any preschool, elementary, or secondary school; or

(4) Any correctional facility; or

(5) Any public park, public beach, public recreation center, public field, or youth center.

III. Nothing in this chapter shall be construed to require:

(a) Any health insurance provider, health care plan, or medical assistance program to be liable for any claim for reimbursement for the medical use of marijuana;

(b) Any individual or entity in lawful possession of property to allow a guest, client, customer, or other visitor to use marijuana on or in that property. This chapter shall not limit an individual or entity in lawful possession of property, or an agent of such individual or entity, from expelling an individual who uses marijuana without permission from their property and from seeking civil and criminal penalties for the unauthorized use of marijuana on their property;

(c) Any accommodation of the medical use of marijuana on the property or premises of any place of employment or on the property or premises of any jail, correctional facility, or other type
of penal institution where prisoners reside or persons under arrest are detained. This chapter shall in no way limit an employer's ability to discipline an employee for ingesting marijuana in the workplace or for working while under the influence of marijuana;

IV. Fraudulent representation to a law enforcement official of any fact or circumstance relating to the medical use of marijuana to avoid arrest or prosecution shall be punishable by a fine of $500, which shall be in addition to any other penalties that may apply for making a false statement or for the use of marijuana other than use undertaken pursuant to this chapter.

126-V:4 Departmental Administration.

I. Except as provided for in paragraphs II and III, the department shall issue registry identification cards to qualifying patients who submit all of the following information:

(a) Written certification as defined in RSA 126-V:1.

(b) Application or renewal fee.

(c) Name, residential and mailing address, and date of birth of the qualifying patient, except that if the applicant is homeless, no residential address is required.

(d) Name, address, and telephone number of the qualifying patient’s physician.

(e) Name, address, and date of birth of the qualifying patient’s designated caregiver, if any.

(f) A statement signed by the qualifying patient, pledging not to divert marijuana to anyone who is not allowed to possess marijuana pursuant to this chapter and acknowledging that their diversion of marijuana is punishable by a class B felony and revocation of one’s registry identification card, in addition to other penalties for the illegal sale of marijuana.

(g) A complete set of fingerprints for the qualifying patient’s designated caregiver, if any.

(h) A signed statement from the designated caregiver, if any, agreeing to be designated as the patient’s designated caregiver and pledging not to divert marijuana to anyone who is not allowed to possess marijuana pursuant to this chapter and acknowledging that their diversion of marijuana is punishable by a class B felony and revocation of one’s registry identification card, in addition to other penalties for the illegal sale of marijuana.

II. The department shall not issue a registry identification card to a qualifying patient who is under the age of 18 unless:

(a) The qualifying patient’s physician has explained the potential risks and benefits of the medical use of marijuana to the custodial parent or legal guardian with responsibility for health care decisions for the qualifying patient; and

(b) The custodial parent or legal guardian with responsibility for health care decisions for the qualifying patient consents in writing to:

(1) Allow the qualifying patient’s medical use of marijuana;

(2) Serve as the qualifying patient’s designated caregiver;

(3) Control the acquisition of the marijuana and the frequency of the medical use of marijuana by the qualifying patient; and
III. The department shall verify the information contained in an application or renewal submitted pursuant to this section, and shall approve or deny an application or renewal within 15 days of receiving it. The department may deny an application or renewal only if the applicant did not provide the information required pursuant to this section, the applicant previously had a registry identification card revoked for violating the provisions of this chapter, or if the department determines that the information provided was falsified. An applicant who is aggrieved by a department decision may request an administrative hearing at the department.

IV. Any person who is applying to be a designated caregiver shall submit to a state and federal criminal records check. The department shall request the department of safety to perform the state and federal criminal records check and the department of safety shall complete such records checks and convey the findings of such checks to the department within 30 days of the request. The department and the department of safety may exchange necessary data including fingerprint data with the Federal Bureau of Investigation without disclosing that the records check is related to the provisions of this chapter and acts permitted by it. The department and the department of safety shall destroy each set of fingerprints obtained pursuant to this chapter after the criminal records check is complete.

V. The department shall issue a registry identification card to the designated caregiver, if any, who is named in a qualifying patient’s approved application and who qualifies under this chapter. The department shall notify the qualifying patient who has designated someone to serve as his or her designated caregiver if a registry identification card will not be issued to the individual.

VI. The department shall issue registry identification cards to qualifying patients and to designated caregivers within 5 days of approving an application or renewal. Each registry identification card shall expire one year after the date of issuance, unless the physician states in the written certification that he or she believes the qualifying patient would benefit from medical marijuana only until a specified earlier date, then the registry identification card shall expire on that date. Registry identification cards shall contain all of the following:

(a) Name, mailing address, and date of birth of the cardholder.
(b) The date of issuance and expiration date of the registry identification card.
(c) A random 10-digit identification number, containing at least 4 numbers and at least 4 letters, that is unique to the cardholder.
(d) A designation that the cardholder is either a “qualifying patient” or a “designated caregiver.” If the cardholder is a designated caregiver, the random 10-digit identification number of the qualifying patient for which he or she is providing care.
(e) A photograph of the cardholder.
(f) A statement that the cardholder is permitted under state law to possess marijuana pursuant to this chapter for the medical use of the qualifying patient.
(g) A statement that either:
(1) The cardholder is a qualifying patient who has not designated a caregiver and is therefore exempt from state penalties for cultivating marijuana; or

(2) The cardholder is a qualifying patient who has designated a caregiver, and therefore shall not be permitted to cultivate marijuana.

VII. The following notifications and department responses shall be required:

(a) A qualifying patient shall notify the department of any change in his or her name, address, or designated caregiver within 10 days of such change. If the qualifying patient’s certifying physician notifies the department in writing that either the qualifying patient no longer suffers from a debilitating medical condition or that the physician no longer believes the patient would receive benefit from the medical use of marijuana, the registry identification card shall become void upon notification by the department to the qualifying patient.

(b) When a qualifying patient or a designated caregiver shall notify the department of any change to a name, address, or designated caregiver, the department shall issue the cardholder a new registry identification card with a new random 10-digit identification number within 15 days of receiving the updated information and a $10 fee.

(c) A qualifying patient or designated caregiver who fails to notify the department of any changes to his or her name, address, or designated caregiver shall be guilty of a violation and may be subject to a fine not to exceed $150.

(d) If a cardholder loses his or her registry identification card, he or she shall notify the department and submit a $10 fee within 10 days of losing the card. Within 5 days after such notification, the department shall issue a new registry identification card with a new random 10-digit identification number.

VIII. Mere possession of, or application for, a registry identification card shall not constitute probable cause or reasonable suspicion, nor shall it be used to support the search of the individual or property of the individual possessing or applying for the registry identification card. The possession of, or application for, a registry identification card shall not preclude the existence of probable cause if probable cause exists on other grounds.

IX.(a) The department shall create and maintain a confidential registry of qualifying patients and designated caregivers who have applied for and are entitled to receive a registry identification card in accordance with the provisions of this chapter.

(b)(1) Except as specifically provided in this chapter, no person shall be permitted to gain access to any information about qualifying patients or designated caregivers in the department’s confidential registry, or any information otherwise maintained by the department about physicians, except for authorized employees of the department in the course of their official duties and authorized employees of local and state law enforcement agencies who have stopped or arrested an individual who claims to be engaged in the medical use of marijuana. Authorized employees of local and state law enforcement agencies shall be granted access to the information
within the department’s confidential registry only for the purpose of verifying that an individual who has presented a registry identification card to the state or local law enforcement official is lawfully in possession of such card. In addition, if a state or local law enforcement agent has obtained a search or arrest warrant for a specific individual or address for which the law enforcement agent has probable cause to believe possesses, cultivates, or distributes marijuana, the department shall confirm or deny whether the individual is a qualifying patient or designated caregiver.

(2) An employer, landlord, court, administrative hearings officer, or health care provider that has been presented with a registry identification card by a person asserting that they are entitled to protections under RSA 126-V:2 may contact the department to verify the validity of the registry identification card. The department shall verify a registry identification card to an employer, landlord, court, or health care provider who requests verification pursuant to this paragraph, provided that the employer, landlord, court, or health care provider provides the random identification card number on the registry identification card. In verifying the validity of a registry identification card, the department shall confirm only whether a card bearing the random identification card number is valid and the name of the person to whom it was issued.

(c) An individual shall be guilty of a class B misdemeanor for breaching the confidentiality of information obtained pursuant to this chapter, except that department employees shall be exempt for notifying law enforcement officials about falsified or fraudulent information submitted to the department, provided the employee who suspects that falsified or fraudulent information has been submitted confers with his or her supervisor, and both agree that circumstances exist that warrant the notification.

XII. The department shall submit to the legislature an annual report that does not disclose any identifying information about qualifying patients, designated caregivers, or physicians, but does contain, at a minimum, all of the following information:

(a) The number of applications and renewals filed for registry identification cards.
(b) The number of qualifying patients and designated caregivers approved in the state.
(c) The nature of the debilitating medical conditions of the qualifying patients.
(d) The number of registry identification cards revoked.
(e) The number of physicians providing written certifications for qualifying patients.

XIII. Not later than one year after the effective date of this chapter, the department shall adopt rules, pursuant to RSA 541-A, governing the manner in which it shall consider applications for issuance and renewals of registry identification cards for qualifying patients and designated caregivers. The department’s rules shall establish application and renewal fees for registry identification cards in accordance with the following:

(a) The fee structure by the department for registry identification cards shall generate revenues sufficient to offset all state expenses of implementing and administering this chapter; however,
(b) The department may accept donations or other funds from private sources without the approval of the governor and council in order to reduce the application and renewal fees.
126-V:5 Affirmative Defense.

I. Except as provided in RSA 126-V:3, it is an affirmative defense to any prosecution of an offense involving marijuana intended for medical use that:

(a) The defendant is a qualifying patient in possession of a valid registry identification card and at the time of arrest or prosecution was in possession of a quantity of marijuana that was not more than is allowed under this chapter; or

(b)(1) The defendant is a designated caregiver in possession of a valid registry identification card and at the time of arrest or prosecution was in possession of a quantity of marijuana that was not more than is allowed under this chapter; and

(2) The qualifying patient or the qualifying patient’s designated caregiver was engaged in the acquisition, possession, preparation, use, or transportation of marijuana, paraphernalia, or both, relating to the administration of marijuana solely to treat or alleviate the qualifying patient’s debilitating medical condition or symptoms or effects of treatment associated with the qualifying patient’s debilitating medical condition.

II. A qualifying patient who is arrested prior to the date on which the department begins accepting registry card applications may raise as an affirmative defense that he or she is a qualifying patient who is not yet in possession of a valid registry identification card by producing a written statement signed by a physician 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 made in the course of a bona fide physician-patient relationship as defined in RSA 329:1-c of at least 3 months duration, unless the qualifying patient’s debilitating medical condition is of recent or sudden onset in which case the 3 month time requirement shall not apply, the qualifying patient has a debilitating medical condition and the potential benefits of the medical use of marijuana would likely outweigh the health risks for the qualifying patient.

126-V:6 Enforcement.

I. If the department fails to issue a valid registry identification card in response to a completed application for issuance or renewal submitted by a qualifying patient by certified mail pursuant to this chapter within 20 days of the application for issuance or renewal, the registry identification card application shall be deemed granted, and together with a qualifying patient’s written certification, the copy of the registry identification card application or renewal shall be deemed a valid registry identification card.

II. If at any time after one year following the effective date of this chapter the department is not accepting applications, including if it has not adopted rules allowing qualifying patients to submit applications, a notarized statement by a qualifying patient containing the information required in an application, pursuant to RSA 126-V:4, I together with a written certification shall be deemed a valid registry identification card.

2 Effective Date. This act shall take effect upon its passage.
AN ACT relative to the use of marijuana for medicinal purposes.

FISCAL IMPACT:
Due to time constraints, the Office of Legislative Budget Assistant is unable to provide a fiscal note for this bill at this time. When completed, the fiscal note will be forwarded to the Senate Clerk's Office.