

S.76

AN ACT RELATING TO THE MEDICAL USE OF MARIJUANA

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

Sec. 1. FINDINGS AND PURPOSE

(a) Modern medical research has discovered a beneficial use for marijuana in 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 and in the report from the Vermont Medical Marijuana Study Committee, dated December 2002.

(b) The general assembly would prefer for the federal government to permit marijuana to be prescribed by physicians and to be dispensed at pharmacies. However, the general assembly finds that the federal government has shown no indication that it will change federal policy with regard to medical marijuana, as evidenced by the federal government's reluctance to allow even FDA-approved clinical trials to move forward.

(c) According to the United States Sentencing Commission and the Federal Bureau of Investigation, more than 99 out of every 100 marijuana arrests are made under state law, rather than under federal law. Consequently, the general assembly finds that changing state law will have the practical effect of protecting from arrest the vast majority of seriously ill people who have a medical need to use marijuana.

(d) Although federal law expressly prohibits the use of marijuana, the general assembly recognizes that the laws of Alaska, California, Colorado, Hawaii, Maine, Nevada, Oregon, and Washington permit the medical use and cultivation of marijuana. The general assembly intends to join in this effort for the health and welfare of its citizens. However, the general assembly does not intend to make marijuana legally available for other than medical purposes.

(e) The general assembly recognizes that it will remain illegal to sell marijuana and marijuana seeds even if the medical use of marijuana is permitted. Patients will be forced to procure medical marijuana illegally until the federal government removes marijuana from its list of schedule I substances or allows states to permit the medical use of marijuana without violating federal law.

(f) The general assembly finds that state law should make a distinction between the medical and nonmedical use of marijuana. Hence, the purpose of this act is to ensure that physicians are not penalized for discussing marijuana as a treatment option with their patients, and that seriously ill people who engage in the medical use of marijuana are not arrested or incarcerated for limited medical use of marijuana.

Sec. 2. 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. Medical Marijuana

§ 4472. DEFINITIONS

For the purposes of this subchapter:

(1) “Bona fide physician-patient relationship” means 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) cancer, glaucoma, multiple sclerosis, positive status for human immunodeficiency virus, acquired immune deficiency syndrome, or the treatment of these conditions, if the disease or the treatment results in severe, persistent, and intractable symptoms; or

(B) a life threatening, progressive, and debilitating disease or medical condition or its treatment that produces severe, persistent, and intractable symptoms such as: cachexia or wasting syndrome; severe pain; severe nausea; or seizures.

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

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

(5) “Medical use” 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 “medical use,” the term “transfer” is limited to the transfer of marijuana and paraphernalia between a registered caregiver and a registered patient.

(6) “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.

(7) “Registered caregiver” means a person who is at least 18 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 medical use of marijuana.

(8) “Registered patient” means a person who has been issued a medical marijuana registration card by the department of health authorizing the use of marijuana for medical purposes, pursuant to the provisions of this subchapter.

(9) “Secure indoor facility” means a building or room equipped with locks or other security devices that permit access only to a person lawfully cultivating or possessing marijuana under this chapter.

§ 4472a. 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 health 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 subsection 4472a(c) of this title, if any. The applicant shall attach to the application a copy of relevant portions of the patient’s medical record identifying the patient’s debilitating medical condition and

documenting the physician's assessment that medical care of the debilitating condition might benefit from medical marijuana use.

(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.

(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 medical marijuana 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 4472c of this title.

(4)(A) The medical marijuana program review board is established. The medical practice board shall appoint three physicians licensed in Vermont to constitute the medical marijuana program review board. If an application under subdivision (1) of this subsection is denied, within seven days the patient may appeal the denial to a member of the medical marijuana program review board selected by the patient. Review by the physician hearing the appeal 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.

(B) 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.

(c)(1) A person may submit a signed application to the department of health 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:

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

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

(2)(A) 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 any person applying to become a registered patient's registered caregiver who has given written authorization on a release form prescribed by the center. The center

shall develop release forms for this purpose which shall be substantially similar to the release forms developed by the center pursuant to section 2056c of Title 20. The department shall file a user's agreement with the center which shall require the department to comply with all federal and state statutes, rules, regulations, and policies regulating the release of criminal history records and the protection of individual privacy. The user's agreement shall be signed and kept current by the commissioner. Release of interstate and Federal Bureau of Investigation criminal history records is subject to the rules and regulations of the Federal Bureau of Investigation's National Crime Information Center.

(B) For purposes of this subdivision, "criminal record" means a record of whether the person has ever been convicted of a drug-related crime.

(C) The Vermont criminal information center shall send to the requester any record received pursuant to this section or inform the department of health that no record exists.

(D) The department of health 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.

(E) 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.

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

(e) The department shall establish a fee for the medical marijuana registration card not to exceed \$100.00. The fees received by the department shall be deposited into a medical marijuana registration fee fund and used to offset the costs incurred by the department in carrying out the provisions of this subchapter. To ensure that registration fees received by the department are adequate to offset the cost of regulation, the commissioner of health shall review the fee from time to time and present proposed fee changes to the general assembly.

(f) A medical marijuana 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 health, pursuant to subsection (b) of this section, and pays the fee required under subsection (e) of this section.

§ 4472b. PROHIBITIONS, RESTRICTIONS, AND LIMITATIONS

REGARDING THE MEDICAL USE OF MARIJUANA

(a) The authorization for the medical use of marijuana in this subchapter shall not apply to:

(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 medical use 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 medical use of marijuana 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 may elect to grow marijuana solely for medical use by the patient or the registered caregiver's designated patient under this chapter only if the marijuana is cultivated in a secure indoor facility.

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

(e) Within 72 hours after the death of a registered patient, the 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.

(f) Notwithstanding any law to the contrary, a person who knowingly gives to any law enforcement officer false information relating to the medical use of

marijuana to avoid 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 nonmedical use of marijuana.

§ 4472c. LAW ENFORCEMENT VERIFICATION OF INFORMATION

(a)(1) The department of health shall maintain and keep confidential, except as provided in subdivision (2) of this subsection 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 as medical marijuana patients or registered caregivers in a secure database accessible by authorized department of health employees only.

(2) 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.

(b) 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 person is a registered patient or registered caregiver.

§ 4472d. EXEMPTION FROM CRIMINAL AND CIVIL PENALTIES:

SEIZURE OF PROPERTY

(a) A person who has in his or her possession a valid medical marijuana patient registration card or a caregiver authorization card 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 Title 18.

(b) A physician who has made an assessment under subdivision 4472a(b)(1) 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 in connection with a patient's use of medical marijuana under the provisions of this subchapter.

(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 the medical use of marijuana as permitted under this subchapter.

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

Sec. 3. EFFECTIVE DATE; IMPLEMENTATION; FORMS

(a) This act shall take effect on passage.

(b) The department of health shall implement the requirements of this act within 90 days of its effective date. If necessary to implement this act, the department may adopt emergency rules under section 844 of Title 3.

(c) The department of health shall develop forms to assist with the implementation of this act.