

H.645

AN ACT RELATING TO MEDICAL 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 treating or 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.

(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 finds that the state is not required to enforce federal law or prosecute people for engaging in activities prohibited by federal law. Therefore, compliance with this act does not put the state in violation of 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 at the advice of a physician are not arrested for using marijuana for and incarcerated medical purposes.

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) “Adequate supply” means an amount of marijuana collectively possessed between the qualifying patient and the qualifying patient’s primary caregiver that is not more than is reasonably necessary to ensure the uninterrupted availability of marijuana for the purpose of alleviating the symptoms or effects of a qualifying patient’s debilitating medical condition; provided that an “adequate supply” shall not exceed three mature marijuana plants, four immature marijuana plants, and three ounces of usable marijuana.

(2) “Debilitating medical condition” means:

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

(B) a chronic or debilitating disease or medical condition or its treatment that produces one or more of the following: cachexia or wasting syndrome; severe pain; severe nausea; seizures, including those characteristic of epilepsy; or severe and persistent muscle spasms, including those characteristic of multiple sclerosis or Crohn’s disease.

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

(4) “Mature marijuana plant” means a plant yielding not more than eight usable 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 qualifying patient’s debilitating medical condition. For the purposes of “medical use,” the term “transfer” is limited to the transfer of marijuana and paraphernalia between primary caregivers and qualifying patients.

(6) “Physician” means a person who is licensed under subchapter 3 of chapter 23 of Title 26, and is licensed with authority to prescribe drugs under chapter 23 of Title 26.

(7) “Primary caregiver” means a person who is at least 18 years old and who has agreed to undertake responsibility for managing the well-being of a person with respect to the medical use of marijuana.

(8) “Qualifying patient” means a person who has been diagnosed by a physician as having a debilitating medical condition.

(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.

(10) “Usable marijuana” means the dried leaves and flowers of marijuana, and any mixture or preparation thereof, that are appropriate for the medical use of marijuana, and does not include the seeds, stalks, and roots of the plant.

(11) “Written certification” means the qualifying patient’s medical records, or a statement signed by a physician after personally examining the qualifying patient, 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, 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.

§ 4472a. EXEMPTION FROM CRIMINAL AND CIVIL PENALTIES FOR
THE MEDICAL USE OF MARIJUANA

(a) A qualifying patient who has in his or her possession written certification shall not be subject to arrest, prosecution, or penalty in any manner for the medical use of marijuana if the quantity of marijuana does not exceed an adequate supply.

(b) Subsection (a) of this section shall not apply to a qualifying patient under the age of 18 years, unless:

(1) The qualifying patient's physician has explained the potential risks and benefits of the medical use of marijuana to the qualifying patient and to a parent, guardian, or person having legal custody of the qualifying patient; and

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

(A) allow the qualifying patient's medical use of marijuana;

(B) serve as the qualifying patient's primary caregiver; and

(C) control the acquisition of the marijuana, the dosage, and the frequency of the medical use of marijuana by the qualifying patient.

(c)(1) The legal protections established by this subchapter for a qualifying patient shall extend to the qualifying patient's primary caregiver if:

(A) the actions of the primary caregiver are necessary for the qualifying patient's medical use of marijuana; and

(B) the primary caregiver has provided written notice to the department of public safety of:

(i) the primary caregiver's name and address;

(ii) the qualifying patient's name and address; and

(iii) the primary caregiver's intent to serve as primary caregiver for the qualifying patient.

(2) A primary caregiver may only serve one qualifying patient at a time, and a qualifying patient may only have one primary caregiver at a time.

(d) A physician shall not be subject to arrest or prosecution, penalized in any manner, or denied any right or privilege under state law for providing written certification for the medical use of marijuana to a qualifying patient, provided that the physician has submitted a copy of the written certification to the department of public safety.

(e)(1) Any property interest that is possessed, owned, or used in connection with the medical use of marijuana, or acts incidental to such use, shall not be harmed, neglected, injured, or destroyed while in the possession of state or local law enforcement officials, provided that law enforcement agencies seizing live plants as evidence shall not be responsible for the care and maintenance of marijuana plants. Any such property interest shall not be forfeited under any provision of state or local law providing for the forfeiture of property other than as a sentence imposed after conviction of a criminal offense or entry of a plea of guilty to a criminal offense.

(2) Property seized from a qualifying patient or primary caregiver in connection with the claimed medical use of marijuana shall be returned immediately upon the determination by a court or prosecutor that the qualifying patient or primary caregiver is entitled to the protections of this subchapter, as may be evidenced by a decision not to prosecute, the dismissal of charges, or an acquittal. This subdivision shall not apply to marijuana or paraphernalia seized in good faith by a law enforcement officer.

(f) 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.

(g) The department of public safety shall maintain records of all written certifications submitted by physicians under subsection 4472a(d) of this section and all notifications submitted by primary caregivers under subdivision 4472a(c)(1)(B) of this section. The records may only be examined by a law enforcement officer or department of public safety employee for a proper law enforcement purpose.

(h) A qualifying patient or primary caregiver may elect to grow his or her own marijuana for medical use under this chapter only if the marijuana is cultivated in a secure indoor facility.

§ 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 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 of marijuana by a qualifying patient, primary caregiver, or any other person:

(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:

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

(B) in a workplace or place of employment;

(C) on any school grounds;

(D) in any correctional facility;

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

(F) while operating a motor vehicle or any other vehicle propelled or drawn by power other than muscular power.

(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 section 601(3) of Title 21.

(c) Within 72 hours after the death of a qualifying patient, the primary caregiver shall return to the department of public safety for disposal any marijuana or marijuana plants in the possession of the qualifying patient or primary caregiver at the time of the qualifying patient's death.

(d) Notwithstanding any law to the contrary, 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 a misdemeanor and subject to a fine of \$500.00. This penalty shall be in addition to any other penalties that may apply for the nonmedical use of marijuana.

§ 4472c. ESTABLISHING A DEFENSE IN COURT FOR PATIENTS AND
PRIMARY CAREGIVERS

A patient and a patient's primary caregivers may assert the medical use of marijuana as a defense to any prosecution involving marijuana, and such defense shall be conclusively established if it is proven by a preponderance of the evidence that:

(1) the patient's medical records indicate, or a physician has stated that, in the physician's professional opinion, after having personally examined the patient and completed a full assessment of his or her medical history and

current medical condition made in the course of a bona fide physician-patient relationship, the potential benefits of the medical use of marijuana would likely outweigh the health risks for the patient; and

(2) the patient and the patient's primary caregivers were collectively in possession of a quantity of marijuana that was not more than was reasonably necessary to ensure the uninterrupted availability of marijuana for the purpose of alleviating the symptoms or effects of the patient's medical condition.

Sec. 3. 18 V.S.A. § 4223 is amended to read:

§ 4223. FRAUD OR DECEIT

(a) No person shall obtain or attempt to obtain a regulated drug, or procure or attempt to procure the administration of a regulated drug, (1) by fraud, deceit, misrepresentation, or subterfuge; (2) by the forgery or alteration of a prescription, of a written certification of a physician prescribing medical marijuana pursuant to chapter 86 of Title 18, or of any written order; (3) by the concealment of a material fact; or (4) by the use of a false name or the giving of a false address.

* * *

(i) A person who violates this section shall be imprisoned not more than two years and one day or fined not more than \$5,000.00, or both.

Sec. 4. REPORT

The department of public safety and the department of health shall report to the house and senate committees on health and welfare and judiciary on the medical use of marijuana by January 1, 2006. The report shall include:

(1) statistics regarding the number of people using marijuana for medical purposes the number of doctors prescribing marijuana for medical use, the number of written certifications for medical use of marijuana receive by the department of health, and the types of debilitating medical conditions presented in the certifications;

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

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

(4) an analysis of whether permitting the medical use of marijuana has made it more difficult to enforce criminal laws prohibiting non-medical use of marijuana;

(5) an analysis of whether permitting the medical use of marijuana 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 fraudulent attempts to prescribe or use marijuana for medical purposes, and

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

Sec. 5. EFFECTIVE DATE; SUNSET

This act shall take effect on passage and shall be repealed on July 1, 2006.