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HOUSE BILL 431

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

Joseph M Thompson

AN ACT

**RELATING TO MARIJUANA; ENACTING THE COMPASSIONATE USE MEDICAL
MARIJUANA ACT; AMENDING PROVISIONS OF THE CONTROLLED
SUBSTANCES ACT; REPEALING THE CONTROLLED SUBSTANCES
THERAPEUTIC RESEARCH ACT.**

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**Section 1. [NEW MATERIAL] SHORT TITLE. --Sections 1
through 10 of this act may be cited as the "Compassionate Use
Medical Marijuana Act".**

**Section 2. [NEW MATERIAL] LEGISLATIVE FINDING--
PURPOSE. --**

A. The legislature finds that:

**(1) recent research has shown that the use of
marijuana is a medically valuable treatment for a variety of
medical conditions;**

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1 (2) state law should make a distinction
2 between medical and non-medical use of marijuana;

3 (3) practitioners should not be penalized for
4 discussing marijuana as a treatment option for their patients;
5 and

6 (4) seriously ill patients who engage in
7 medical use of marijuana on their treating practitioner's
8 advice should not be arrested and incarcerated for violation
9 of drug laws.

10 B. The purpose of the Compassionate Use Medical
11 Marijuana Act is to allow the beneficial use of marijuana in
12 treating debilitating medical conditions and their symptoms.

13 Section 3. [NEW MATERIAL] DEFINITIONS. --As used in the
14 Compassionate Use Medical Marijuana Act:

15 A. "certified patient" means a person who has been
16 determined to be qualified to participate in the program and
17 has been certified by the secretary of health for
18 participation;

19 B. "debilitating medical condition" means:

20 (1) a chronic or debilitating disease,
21 condition or its treatment that produces one or more of the
22 following:

23 (a) cachexia or wasting syndrome;

24 (b) severe pain;

25 (c) severe nausea;

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(d) seizures, including those characteristic of epilepsy; or
(e) severe muscle spasms, including those characteristic of multiple sclerosis or Crohn's disease; or

(2) a condition that the department designates by adopted rule as being a debilitating medical condition;

C. "department" means the department of health;

D. "practitioner" means a physician licensed to prescribe and administer drugs that are subject to the Controlled Substances Act;

E. "primary caregiver" means a person who has reached his eighteenth birthday and who has agreed to take responsibility for managing the well-being of a certified patient with respect to the medical use of marijuana pursuant to the Compassionate Use Medical Marijuana Act; and

F. "program" means the medical use of marijuana program established and administered by the department pursuant to the Compassionate Use Medical Marijuana Act.

Section 4. [NEW MATERIAL] RULEMAKING BY SECRETARY FOR ESTABLISHING PROGRAM --The secretary of health shall promulgate rules establishing a program for medical use of marijuana to treat qualified patients. The rules shall provide for:

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- 1 A. the establishment of an advisory board:
- 2 (1) having a number of members determined by
- 3 the secretary of health and appointed by him;
- 4 (2) of individuals knowledgeable about the
- 5 medical use of marijuana;
- 6 (3) to establish requirements and procedures
- 7 for patients to qualify for participation in the program,
- 8 including a requirement that a patient must be certified by a
- 9 practitioner to have a debilitating medical condition; and
- 10 (4) to recommend certification of qualified
- 11 patients by the secretary;
- 12 B. requirements to be met by persons other than
- 13 qualified patients who wish to participate in the program,
- 14 such as individuals who dispense, administer and distribute
- 15 marijuana for use in the program; and
- 16 C. a registration system for persons meeting the
- 17 requirements established pursuant to Subsection B of this
- 18 section.

19 Section 5. [NEW MATERIAL] STATUTORY REQUIREMENTS FOR

20 PARTICIPATION IN PROGRAM --A patient may participate in the

21 program if he:

- 22 A. is a resident of the state at the time of
- 23 application and continues to be a resident during
- 24 participation;
- 25 B. suffers from a debilitating medical condition;

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1 and

2 C. has been certified by the secretary of health
3 to participate in the program.

4 Section 6. [NEW MATERIAL] LAWFUL ACTIVITIES. --

5 A. Except as provided in Section 8 of the
6 Compassionate Use Medical Marijuana Act, a certified patient
7 and his primary caregiver are not subject to arrest,
8 prosecution, civil or criminal penalty or denial of any right
9 or privilege for possessing marijuana if the amount of
10 marijuana possessed collectively is not more than is
11 reasonably necessary to ensure the uninterrupted availability
12 of marijuana for the purpose of alleviating the symptoms or
13 effects of the person's debilitating medical condition.

14 B. A person is not subject to arrest, prosecution,
15 civil or criminal penalty or denial of any right or privilege
16 for possessing or administering marijuana or for the
17 certification of a patient's condition for the purpose of
18 qualifying the patient for participation in the program if the
19 person is registered with the department as a participating
20 practitioner in the program.

21 C. A person is not subject to arrest, prosecution,
22 civil or criminal penalty or denial of any right or privilege
23 for possessing, distributing, cultivating or selling marijuana
24 if the person is registered with the department as a
25 participant in the program, the terms of the registration

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1 include the specified activities and all conditions of the
2 registration are met.

3 Section 7. [NEW MATERIAL] PARTICIPATION BY PERSON WHO
4 HAS NOT REACHED HIS EIGHTEENTH BIRTHDAY. -- A person who has not
5 reached his eighteenth birthday may be certified as a patient
6 to participate in the program only if:

7 A. the patient's attending practitioner has
8 explained the potential risks and benefits of the program to
9 the patient and the patient's parents, guardian or person
10 having legal custody of the patient; and

11 B. a parent, guardian or person having legal
12 custody of the patient consents in writing to:

13 (1) the patient's participation in the
14 program;

15 (2) serve as the patient's primary caregiver;
16 and

17 (3) control the acquisition of the marijuana,
18 the dosage and the frequency of use of the marijuana by the
19 patient.

20 Section 8. [NEW MATERIAL] PROHIBITIONS, RESTRICTIONS AND
21 LIMITATIONS ON THE MEDICAL USE OF MARIJUANA. -- Participation in
22 the program by a certified patient does not relieve the
23 patient from:

24 A. liability for damages or criminal prosecution
25 arising out of the operation of a vehicle while under the

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1 influence of marijuana; and

2 B. criminal prosecution or civil penalty for
3 possession or use of marijuana:

4 (1) in a school bus or public vehicle;

5 (2) on school grounds or property;

6 (3) in the workplace of the patient's
7 employment; or

8 (4) at a public park, beach recreation
9 center, youth center or other public place where the use or
10 possession of marijuana is prohibited.

11 Section 9. [NEW MATERIAL] FRAUDULENT REPRESENTATION TO
12 LAW ENFORCEMENT OFFICER PUNISHABLE AS PETTY MISDEMEANOR. -- A
13 person who makes a fraudulent representation to a law
14 enforcement officer about his participation in the program to
15 avoid arrest or prosecution for a marijuana-related offense is
16 guilty of a petty misdemeanor and shall be sentenced in
17 accordance with Section 31-19-1 NMSA 1978.

18 Section 10. [NEW MATERIAL] DEFENSE OF MEDICAL USE OF
19 MARIJUANA IN PROSECUTIONS FOR MARIJUANA OFFENSES. -- A person
20 who suffers from a debilitating medical condition or a primary
21 caregiver of that person may assert the medical use of
22 marijuana as a defense to a prosecution for an offense
23 involving marijuana, and the defense is presumed valid if the
24 evidence shows that the person and the primary caregiver
25 collectively were in possession of marijuana that is no more

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1 than is reasonably necessary to ensure uninterrupted
2 availability of marijuana for the purpose of alleviating the
3 symptoms or effects of the patient's debilitating medical
4 condition.

5 Section 11. Section 30-31-6 NMSA 1978 (being Laws 1972,
6 Chapter 84, Section 6, as amended) is amended to read:

7 "30-31-6. SCHEDULE I.--The following controlled
8 substances are included in Schedule I:

9 A. any of the following opiates, including their
10 isomers, esters, ethers, salts, and salts of isomers, esters
11 and ethers, unless specifically exempted, whenever the
12 existence of these isomers, esters, ethers and salts is
13 possible within the specific chemical designation:

- 14 (1) acetyl methadol;
- 15 (2) allyl prodi ne;
- 16 (3) al phacetyl methadol;
- 17 (4) al phameprodi ne;
- 18 (5) al phamethadol;
- 19 (6) benzethi di ne;
- 20 (7) betacetyl methadol;
- 21 (8) betameprodi ne;
- 22 (9) betamethadol;
- 23 (10) betaprodi ne;
- 24 (11) cl oni tazene;
- 25 (12) dextromorami de;

- 1 (13) dextrorphan;
- 2 (14) di ampromi de;
- 3 (15) di ethyl thiambutene;
- 4 (16) di menoxadol ;
- 5 (17) di mepheptanol ;
- 6 (18) di methyl thiambutene;
- 7 (19) di oxaphetyl butyrate;
- 8 (20) di pi panone;
- 9 (21) ethyl methyl thiambutene;
- 10 (22) etonitazene;
- 11 (23) etoxeridine;
- 12 (24) furethidine;
- 13 (25) hydroxypethidine;
- 14 (26) ketobemidone;
- 15 (27) levomoramide;
- 16 (28) levophenacetylmorphan;
- 17 (29) morpheridine;
- 18 (30) noracymethadol ;
- 19 (31) norlevorphanol ;
- 20 (32) normethadone;
- 21 (33) norpipanone;
- 22 (34) phenadoxone;
- 23 (35) phenampromide;
- 24 (36) phenomorphan;
- 25 (37) phenoperidine;

- 1 (38) piri trami de;
- 2 (39) proheptazi ne;
- 3 (40) properi di ne;
- 4 (41) racemorami de; and
- 5 (42) tri meperi di ne;

6 B. any of the following opium derivatives, their
7 salts, isomers and salts of isomers, unless specifically
8 exempted, whenever the existence of these salts, isomers and
9 salts of isomers is possible within the specific chemical
10 designation:

- 11 (1) acetorphi ne;
- 12 (2) acetyl di hydrocodei ne;
- 13 (3) benzyl morphi ne;
- 14 (4) codei ne methyl bromi de;
- 15 (5) codei ne- N- oxi de;
- 16 (6) cyprenorphi ne;
- 17 (7) desomorphi ne;
- 18 (8) di hydromorphi ne;
- 19 (9) etorphi ne;
- 20 (10) heroi n;
- 21 (11) hydromorphi nol ;
- 22 (12) methyl desorphi ne;
- 23 (13) methyl di hydromorphi ne;
- 24 (14) morphi ne methyl bromi de;
- 25 (15) morphi ne methyl sul fonate;

1 (16) morphi ne- N- oxi de;

2 (17) myrophi ne;

3 (18) ni cocodei ne;

4 (19) ni comorphi ne;

5 (20) normorphi ne;

6 (21) phol codi ne; and

7 (22) thebacon;

8 C. any material, compound, mixture or preparation
9 which contains any quantity of the following hallucinogenic
10 substances, their salts, isomers and salts of isomers, unless
11 specifically exempted, whenever the existence of these salts,
12 isomers, and salts of isomers is possible within the specific
13 chemical designation:

14 (1) 3, 4- methylenedioxy amphetami ne;

15 (2) 5- methoxy- 3, 4- methylenedioxy amphetami ne;

16 (3) 3, 4, 5- trimethoxy amphetami ne;

17 (4) bufoteni ne;

18 (5) di ethyl tryptami ne;

19 (6) di methyl tryptami ne;

20 (7) 4- methyl - 2, 5- di methoxy amphetami ne;

21 (8) i bogai ne;

22 (9) lysergi c aci d di ethyl ami de;

23 (10) marij uana;

24 (11) mescal i ne;

25 (12) peyote, except as otherwise provided in

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1 the Controlled Substances Act;

2 (13) N-ethyl-3-piperidyl benzilate;

3 (14) N-methyl-3-piperidyl benzilate;

4 (15) psilocybin;

5 (16) psilocyn;

6 (17) tetrahydrocannabinols; and

7 (18) hashish;

8 D. the enumeration of peyote as a controlled
9 substance does not apply to the use of peyote in bona fide
10 religious ceremonies by a bona fide religious organization,
11 and members of the organization so using peyote are exempt
12 from registration. Any person who manufactures peyote for or
13 distributes peyote to the organization or its members shall
14 comply with the federal Comprehensive Drug Abuse Prevention
15 and Control Act of 1970 and all other requirements of law; and

16 E. the enumeration of marijuana,
17 tetrahydrocannabinols or chemical derivatives of
18 tetrahydrocannabinol as Schedule I controlled substances does
19 not apply to the use of marijuana, tetrahydrocannabinols or
20 chemical derivatives of tetrahydrocannabinol by certified
21 patients pursuant to the [~~Controlled Substances Therapeutic~~
22 ~~Research Act~~] Compassionate Use Medical Marijuana Act."

23 Section 12. Section 30-31-7 NMSA 1978 (being Laws 1972,
24 Chapter 84, Section 7, as amended) is amended to read:

25 "30-31-7. SCHEDULE II. --

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1 A. The following controlled substances are
2 included in Schedule II:

3 (1) any of the following substances, except
4 those narcotic drugs listed in other schedules, whether
5 produced directly or indirectly by extraction from substances
6 of vegetable origin, or independently by means of chemical
7 synthesis, or by combination of extraction and chemical
8 synthesis:

9 (a) opium and opiate, and any salt,
10 compound, derivative or preparation of opium or opiate;

11 (b) any salt, compound, isomer,
12 derivative or preparation thereof which is chemically
13 equivalent or identical with any of the substances referred to
14 in Subparagraph (a) of Paragraph (1) of Subsection A of this
15 section, but not including the isoquinoline alkaloids of
16 opium;

17 (c) opium poppy and poppy straw;

18 (d) coca leaves and any salt, compound,
19 derivative or preparation of coca leaves, and any salt,
20 compound, derivative or preparation thereof which is
21 chemically equivalent or identical with any of these
22 substances, but not including decocainized coca leaves or
23 extractions which do not contain cocaine or ecgonine;

24 (e) marijuana, but only for the use by
25 certified patients pursuant to the [~~Controlled Substances~~

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1 ~~Therapeutic Research Act]~~ Compassionate Use Medical Marijuana
2 Act; and

3 (f) tetrahydrocannabinols or chemical
4 derivatives of tetrahydrocannabinol, but only for the use of
5 certified patients pursuant to the ~~[Controlled Substances~~
6 ~~Therapeutic Research Act]~~ Compassionate Use Medical Marijuana
7 Act.

8 Marijuana, tetrahydrocannabinols or chemical derivatives
9 of tetrahydrocannabinol shall be considered Schedule II
10 controlled substances only for the purposes enumerated in the
11 ~~[Controlled Substances Therapeutic Research Act]~~ Compassionate
12 Use Medical Marijuana Act;

13 (2) any of the following opiates, including
14 their isomers, esters, ethers, salts and salts of isomers,
15 whenever the existence of these isomers, esters, ethers and
16 salts is possible within the specific chemical designation;

- 17 (a) alphaprodine;
- 18 (b) anileridine;
- 19 (c) bezitramide;
- 20 (d) dihydrocodeine;
- 21 (e) diphenoxylate;
- 22 (f) fentanyl;
- 23 (g) hydromorphone;
- 24 (h) isomethadone;
- 25 (i) levomethorphan;

- 1 (j) levorphanol;
- 2 (k) meperidine;
- 3 (l) metazocine;
- 4 (m) methadone;
- 5 (n) methadone- - intermediate, 4-cyano-2-
- 6 diethylamino-4, 4-diphenyl butane;
- 7 (o) moramide- - intermediate, 2-methyl-3-
- 8 morpholino-1, 1-diphenyl-propane-carboxylic acid;
- 9 (p) oxycodone;
- 10 (q) pethidine;
- 11 (r) pethidine- - intermediate- - A, 4-
- 12 cyano-1-methyl-4-phenylpiperidine;
- 13 (s) pethidine- - intermediate- - B, ethyl-
- 14 4-phenyl-piperidine-4-carboxylate;
- 15 (t) pethidine- - intermediate- - C, 1-
- 16 methyl-4-phenylpiperidine-4-carboxylic acid;
- 17 (u) phenazocine;
- 18 (v) piminodine;
- 19 (w) racemethorphan; and
- 20 (x) racemorphan; and

21 (3) unless listed in another schedule, any
22 material, compound, mixture or preparation which contains any
23 quantity of the following substances having a potential for
24 abuse associated with a stimulant effect on the central
25 nervous system:

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- 1 (a) amphetamine, its salts, optical
2 isomers and salts of its optical isomers;
3 (b) phenmetrazine and its salts;
4 (c) methamphetamine, its salts, isomers
5 and salts of isomers; and
6 (d) methylphenidate.

7 B. Where methadone is prescribed, administered or
8 dispensed by a practitioner of a drug abuse rehabilitation
9 program as defined [~~in Paragraph (3) of Subsection A of~~
10 ~~Section 26-2-13 NMSA 1978~~] by the department of health while
11 acting in the course of his professional practice, or
12 otherwise lawfully obtained or possessed by a person, such
13 person shall not possess such methadone beyond the date
14 stamped or typed on the label of the container of the
15 methadone, nor shall any person possess methadone except in
16 the container in which it was originally administered or
17 dispensed to such person, and such container [~~must~~] shall
18 include a label showing the name of the prescribing physician
19 or practitioner, the identity of methadone, the name of the
20 ultimate user, the date when the methadone is to be
21 administered to or used or consumed by the named ultimate user
22 shown on the label and a warning on the label of the methadone
23 container that the ultimate user ~~must~~ use, consume or
24 administer to himself the methadone in such container. Any
25 person who violates this subsection is guilty of a felony and

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1 shall be punished by imprisonment for not less than one year
2 nor more than five years, or by a fine of up to five thousand
3 dollars (\$5,000), or both. "

4 Section 13. REPEAL. -- Sections 26-2A-1 through 26-2A-7
5 NMSA 1978 (being Laws 1978, Chapter 22, Sections 1 through 7,
6 as amended) are repealed.

7 Section 14. SEVERABILITY. -- If any part of application of
8 the Compassionate Use Medical Marijuana Act is held invalid,
9 the remainder or its application to other situations or
10 persons shall not be affected.