

HOUSE CONSUMER AND PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR
HOUSE BILL 431

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

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 9 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;

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 of
9 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) cancer;
- 21 (2) human immunodeficiency virus or acquired
22 immune deficiency syndrome;
- 23 (3) glaucoma;
- 24 (4) neuromuscular conditions that include
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1 spasticity or seizures; or

2 (5) other debilitating illnesses or conditions
3 for which marijuana has a therapeutic benefit and that the
4 department designates by adopted rule as being a debilitating
5 medical condition;

6 C. "department" means the department of health;

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

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

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

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

22 A. the establishment of an advisory board:

23 (1) having a number of members determined by
24 the secretary of health and appointed by him;

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1 (2) of individuals knowledgeable about the
2 medical use of marijuana; and

3 (3) to recommend requirements and procedures
4 for patients to qualify for participation in the program,
5 including a requirement that a patient must be certified by a
6 practitioner to have a debilitating medical condition;

7 B. requirements to be met by persons other than
8 qualified patients and primary caregivers who produce, possess,
9 distribute, dispense or sell marijuana for use in the program;
10 and

11 C. a registration system for persons meeting the
12 requirements established pursuant to Subsection B of this
13 section.

14 Section 5. [NEW MATERIAL] STATUTORY REQUIREMENTS FOR
15 PARTICIPATION IN PROGRAM -- A patient may participate in the
16 program if he:

17 A. is a resident of the state at the time of
18 application and continues to be a resident during
19 participation;

20 B. suffers from a debilitating medical condition;
21 and

22 C. has been certified by the secretary of health to
23 participate in the program.

24 Section 6. [NEW MATERIAL] LAWFUL ACTIVITIES. --
25

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

10 B. A practitioner is not subject to arrest,
11 prosecution, civil or criminal penalty or denial of any right
12 or privilege for certification of a patient's condition for the
13 purpose of qualifying the patient for participation in the
14 program if the person is registered with the department as a
15 participating practitioner in the program.

16 C. Persons who have been approved by the department
17 to produce, possess, distribute, dispense or sell marijuana for
18 purposes of the Compassionate Use Medical Marijuana Act are not
19 subject to arrest, prosecution, civil or criminal penalty or
20 denial of a right or privilege for engaging in the approved
21 activities.

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

2 A. the patient's attending practitioner has
3 explained the potential risks and benefits of the program to
4 the patient and the patient's parents, guardian or person
5 having legal custody of the patient; and

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

8 (1) the patient's participation in the
9 program;

10 (2) serve as the patient's primary caregiver;

11 and

12 (3) control the acquisition of the marijuana,
13 the dosage and the frequency of use of the marijuana by the
14 patient.

15 Section 8. [NEW MATERIAL] PROHIBITIONS, RESTRICTIONS AND
16 LIMITATIONS ON THE MEDICAL USE OF MARIJUANA. -- Participation in
17 the program by a certified patient or primary caregiver does
18 not relieve the certified patient or primary caregiver from:

19 A. criminal prosecution or civil penalties for
20 activities not authorized in Subsection A of Section 6 of the
21 Compassionate Use Medical Marijuana Act;

22 B. liability for damages or criminal prosecution
23 arising out of the operation of a vehicle while under the
24 influence of marijuana; and

1 C. criminal prosecution or civil penalty for
2 possession or use of marijuana:

- 3 (1) in a school bus or public vehicle;
- 4 (2) on school grounds or property;
- 5 (3) in the workplace of the patient's
6 employment; or
- 7 (4) at a public park, beach recreation center,
8 youth center or other public place where the use or possession
9 of marijuana is prohibited.

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

17 Section 10. Section 30-31-6 NMSA 1978 (being Laws 1972,
18 Chapter 84, Section 6, as amended) is amended to read:

19 "30-31-6. SCHEDULE I. -- The following controlled
20 substances are included in Schedule I:

21 A. any of the following opiates, including their
22 isomers, esters, ethers, salts, and salts of isomers, esters
23 and ethers, unless specifically exempted, whenever the
24 existence of these isomers, esters, ethers and salts is

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possible within the specific chemical designation:

- (1) acetyl methadol ;
- (2) allyl prodi ne;
- (3) al phacetyl methadol ;
- (4) al phameprodi ne;
- (5) al phamethadol ;
- (6) benzethi di ne;
- (7) betacetyl methadol ;
- (8) betameprodi ne;
- (9) betamethadol ;
- (10) betaprodi ne;
- (11) cl oni tazene;
- (12) dextromorami de;
- (13) dextrorphan;
- (14) di ampromi de;
- (15) di ethyl thiambutene;
- (16) di menoxadol ;
- (17) di mepheptanol ;
- (18) di methyl thiambutene;
- (19) di oxaphetyl butyrate;
- (20) di pi panone;
- (21) ethyl methyl thiambutene;
- (22) etoni tazene;
- (23) etoxeri di ne;

- 1 (24) furethi di ne;
2 (25) hydroxypethi di ne;
3 (26) ketobemi done;
4 (27) l evomorami de;
5 (28) l evophenacyl morphan;
6 (29) morpheri di ne;
7 (30) noracymethadol ;
8 (31) norl evorphanol ;
9 (32) normethadone;
10 (33) norpi panone;
11 (34) phenadoxone;
12 (35) phenampromi de;
13 (36) phenomorphan;
14 (37) phenoperi di ne;
15 (38) pi ri trami de;
16 (39) proheptazi ne;
17 (40) properi di ne;
18 (41) racemorami de; and
19 (42) tri meperi di ne;

20 B. any of the following opium derivatives, their
21 salts, isomers and salts of isomers, unless specifically
22 exempted, whenever the existence of these salts, isomers and
23 salts of isomers is possible within the specific chemical
24 designation:
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- 1 (1) acetorphi ne;
- 2 (2) acetyl di hydrocodei ne;
- 3 (3) benzyl morphi ne;
- 4 (4) codei ne methyl bromi de;
- 5 (5) codei ne- N- oxi de;
- 6 (6) cyprenorphi ne;
- 7 (7) desomorphi ne;
- 8 (8) di hydromorphi ne;
- 9 (9) etorphi ne;
- 10 (10) heroi n;
- 11 (11) hydromorphi nol ;
- 12 (12) methyl desorphi ne;
- 13 (13) methyl di hydromorphi ne;
- 14 (14) morphi ne methyl bromi de;
- 15 (15) morphi ne methyl sul fonate;
- 16 (16) morphi ne- N- oxi de;
- 17 (17) myrophi ne;
- 18 (18) ni cocodei ne;
- 19 (19) ni comorphi ne;
- 20 (20) normorphi ne;
- 21 (21) phol codi ne; and
- 22 (22) thebacon;

23 C. any material, compound, mixture or preparation
24 which contains any quantity of the following hallucinogenic
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1 substances, their salts, isomers and salts of isomers, unless
 2 specifically exempted, whenever the existence of these salts,
 3 isomers, and salts of isomers is possible within the specific
 4 chemical designation:

- 5 (1) 3, 4-methylenedioxy amphetamine;
- 6 (2) 5-methoxy-3, 4-methylenedioxy amphetamine;
- 7 (3) 3, 4, 5-trimethoxy amphetamine;
- 8 (4) bufotenine;
- 9 (5) diethyltryptamine;
- 10 (6) dimethyltryptamine;
- 11 (7) 4-methyl-2, 5-dimethoxy amphetamine;
- 12 (8) ibogaine;
- 13 (9) lysergic acid diethylamide;
- 14 (10) marijuana;
- 15 (11) mescaline;
- 16 (12) peyote, except as otherwise provided in
 17 the Controlled Substances Act;
- 18 (13) N-ethyl-3-piperidyl benzilate;
- 19 (14) N-methyl-3-piperidyl benzilate;
- 20 (15) psilocybin;
- 21 (16) psilocyn;
- 22 (17) tetrahydrocannabinols; and
- 23 (18) hashish;

24 D. the enumeration of peyote as a controlled
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1 substance does not apply to the use of peyote in bona fide
2 religious ceremonies by a bona fide religious organization, and
3 members of the organization so using peyote are exempt from
4 registration. Any person who manufactures peyote for or
5 distributes peyote to the organization or its members shall
6 comply with the federal Comprehensive Drug Abuse Prevention and
7 Control Act of 1970 and all other requirements of law; and

8 E. the enumeration of marijuana,
9 tetrahydrocannabinols or chemical derivatives of
10 tetrahydrocannabinol as Schedule I controlled substances does
11 not apply to the use of marijuana, tetrahydrocannabinols or
12 chemical derivatives of tetrahydrocannabinol by certified
13 patients pursuant to the [~~Controlled Substances Therapeutic~~
14 ~~Research Act~~] Compassionate Use Medical Marijuana Act."

15 Section 11. Section 30-31-7 NMSA 1978 (being Laws 1972,
16 Chapter 84, Section 7, as amended) is amended to read:

17 "30-31-7. SCHEDULE II. --

18 A. The following controlled substances are included
19 in Schedule II:

20 (1) any of the following substances, except
21 those narcotic drugs listed in other schedules, whether
22 produced directly or indirectly by extraction from substances
23 of vegetable origin, or independently by means of chemical
24 synthesis, or by combination of extraction and chemical
25

1 synthesis:

2 (a) opium and opiate, and any salt,
3 compound, derivative or preparation of opium or opiate;

4 (b) any salt, compound, isomer,
5 derivative or preparation thereof which is chemically
6 equivalent or identical with any of the substances referred to
7 in Subparagraph (a) of Paragraph (1) of Subsection A of this
8 section, but not including the isoquinoline alkaloids of opium;

9 (c) opium poppy and poppy straw;

10 (d) coca leaves and any salt, compound,
11 derivative or preparation of coca leaves, and any salt,
12 compound, derivative or preparation thereof which is chemically
13 equivalent or identical with any of these substances, but not
14 including decocainized coca leaves or extractions which do not
15 contain cocaine or ecgonine;

16 (e) marijuana, but only for the use by
17 certified patients pursuant to the [~~Controlled Substances~~
18 ~~Therapeutic Research Act~~] Compassionate Use Medical Marijuana
19 Act; and

20 (f) tetrahydrocannabinols or chemical
21 derivatives of tetrahydrocannabinol, but only for the use of
22 certified patients pursuant to the [~~Controlled Substances~~
23 ~~Therapeutic Research Act~~] Compassionate Use Medical Marijuana
24 Act.

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1 Marijuana, tetrahydrocannabinols or chemical derivatives
2 of tetrahydrocannabinol shall be considered Schedule II
3 controlled substances only for the purposes enumerated in the
4 [~~Controlled Substances Therapeutic Research Act~~] Compassionate
5 Use Medical Marijuana Act;

6 (2) any of the following opiates, including
7 their isomers, esters, ethers, salts and salts of isomers,
8 whenever the existence of these isomers, esters, ethers and
9 salts is possible within the specific chemical designation;

- 10 (a) al phaprodi ne;
- 11 (b) ani leri di ne;
- 12 (c) bezi trami de;
- 13 (d) di hydrocodei ne;
- 14 (e) di phenoxy l ate;
- 15 (f) fentanyl ;
- 16 (g) hydromorphone;
- 17 (h) i somethadone;
- 18 (i) levomethorphan;
- 19 (j) levorphanol ;
- 20 (k) meperi di ne;
- 21 (l) metazoci ne;
- 22 (m) methadone;
- 23 (n) methadone- - i ntermedi ate, 4- cyano- 2-
- 24 di methyl ami no- 4, 4- di phenyl butane;
- 25

1 (o) moramide - intermediate, 2-methyl-3-
2 morpholino-1, 1-diphenyl-propane-carboxylic acid;

3 (p) oxycodone;

4 (q) pethidine;

5 (r) pethidine - intermediate - A, 4-cyano-
6 1-methyl-4-phenylpiperidine;

7 (s) pethidine - intermediate - B, ethyl-4-
8 phenyl-piperidine-4-carboxylate;

9 (t) pethidine - intermediate - C, 1-
10 methyl-4-phenylpiperidine-4-carboxylic acid;

11 (u) phenazocine;

12 (v) pimidine;

13 (w) racemorphan; and

14 (x) racemorphan; and

15 (3) unless listed in another schedule, any
16 material, compound, mixture or preparation which contains any
17 quantity of the following substances having a potential for
18 abuse associated with a stimulant effect on the central nervous
19 system:

20 (a) amphetamine, its salts, optical
21 isomers and salts of its optical isomers;

22 (b) phenmetrazine and its salts;

23 (c) methamphetamine, its salts, isomers
24 and salts of isomers; and

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1 (d) methylpheni date.

2 B. Where methadone is prescribed, administered or
3 dispensed by a practitioner of a drug abuse rehabilitation
4 program as defined [~~in Paragraph (3) of Subsection A of Section~~
5 ~~26-2-13 NMSA 1978~~] by the department of health while acting in
6 the course of his professional practice, or otherwise lawfully
7 obtained or possessed by a person, such person shall not
8 possess such methadone beyond the date stamped or typed on the
9 label of the container of the methadone, nor shall any person
10 possess methadone except in the container in which it was
11 originally administered or dispensed to such person, and such
12 container [~~must~~] shall include a label showing the name of the
13 prescribing physician or practitioner, the identity of
14 methadone, the name of the ultimate user, the date when the
15 methadone is to be administered to or used or consumed by the
16 named ultimate user shown on the label and a warning on the
17 label of the methadone container that the ultimate user ~~must~~
18 use, consume or administer to himself the methadone in such
19 container. Any person who violates this subsection is guilty
20 of a felony and shall be punished by imprisonment for not less
21 than one year nor more than five years, or by a fine of up to
22 five thousand dollars (\$5,000), or both. "

23 Section 12. REPEAL. -- Sections 26-2A-1 through 26-2A-7
24 NMSA 1978 (being Laws 1978, Chapter 22, Sections 1 through 7,

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1 as amended) are repealed.

2 Section 13. SEVERABILITY.--If any part of application of
3 the Compassionate Use Medical Marijuana Act is held invalid,
4 the remainder or its application to other situations or persons
5 shall not be affected.

6 Section 14. EFFECTIVE DATE.--The effective date of the
7 provisions of this act is July 1, 2001.

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