

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE CONSUMER AND PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR
HOUSE BILL 431

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

AN ACT

RELATING TO CANNABIS; ENACTING THE COMPASSIONATE USE MEDICAL
CANNABIS 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 Cannabis Act".

Section 2. [NEW MATERIAL] LEGISLATIVE FINDINGS--
PURPOSE. --

A. The legislature finds that:

(1) recent research has shown that the use of
cannabis 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 cannabis;

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

6 (4) seriously ill patients who engage in
7 medical use of cannabis 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 Cannabis Act is to allow the beneficial use of cannabis in
12 treating debilitating medical conditions and their symptoms.

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

15 A. "cannabis" means any derivative of the
16 marijuana plant;

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

21 C. "debilitating medical condition" means:

22 (1) cancer;

23 (2) human immunodeficiency virus or acquired
24 immune deficiency syndrome;

25 (3) glaucoma;

1 (4) neuromuscular conditions that include
2 spasticity or seizures; or

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

7 D. "department" means the department of health;

8 E. "practitioner" means a physician licensed in
9 New Mexico to prescribe and administer drugs that are subject
10 to the Controlled Substances Act;

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

16 G. "program" means the medical use of cannabis
17 program established and administered by the department
18 pursuant to the Compassionate Use Medical Cannabis Act.

19 Section 4. [NEW MATERIAL] RULEMAKING BY SECRETARY FOR
20 ESTABLISHING PROGRAM --The secretary of health shall
21 promulgate rules establishing a program for medical use of
22 cannabis to treat qualified patients. The rules shall be in
23 accordance with federal law and regulations and shall provide
24 for:

25 A. the establishment of an advisory board:

underscored material = new
[bracketed material] = delete

1 (1) consisting of nine practitioners whose
2 nominations shall be submitted by the New Mexico medical
3 society to the secretary of health and confirmed by the
4 senate; and

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

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

13 C. a registration system for persons meeting the
14 requirements established pursuant to Subsection B of this
15 section;

16 D. the department to ensure that the cannabis
17 produced for the program is grown only in a secure facility
18 and that the producer of the cannabis provide an inventory of
19 the product at regular intervals; and

20 E. the issuance by the department of an
21 identification card with a photograph of a certified patient,
22 primary caregiver or any other person approved by the
23 department to produce, possess, distribute, dispense or sell
24 cannabis for the purposes of the Compassionate Use Medical
25 Cannabis Act.

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

- 4 A. is a resident of the state at the time of
5 application and continues to be a resident during
6 participation;
- 7 B. suffers from a debilitating medical condition;
- 8 C. has been certified by the secretary of health
9 to participate in the program;
- 10 D. has failed to obtain relief from reasonably
11 applied standard therapy; and
- 12 E. has symptoms that can reasonably be expected to
13 be relieved by administration of cannabinol drugs.

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

15 A. Except as provided in Section 8 of the
16 Compassionate Use Medical Cannabis Act, a certified patient
17 and his primary caregiver are not subject to arrest,
18 prosecution, civil or criminal penalty or denial of any right
19 or privilege for possessing cannabis if the amount of cannabis
20 possessed collectively is not more than is reasonably
21 necessary to ensure the uninterrupted availability of cannabis
22 for the purpose of alleviating the symptoms or effects of the
23 person's debilitating medical condition.

24 B. A practitioner is not subject to arrest,
25 prosecution, civil or criminal penalty or denial of any right

1 or privilege for certification of a patient's condition for
2 the purpose of qualifying the patient for participation in the
3 program if the person is registered with the department as a
4 participating practitioner in the program

5 C. Persons who have been approved by the
6 department to produce, possess, distribute, dispense or sell
7 cannabis for purposes of the Compassionate Use Medical
8 Cannabis Act are not subject to arrest, prosecution, civil or
9 criminal penalty or denial of a right or privilege for
10 engaging in the approved activities.

11 D. If a certified patient, practitioner, primary
12 caregiver or any other person approved by the department to
13 produce, possess, distribute, dispense or sell cannabis for
14 the purposes of the Compassionate Use Medical Cannabis Act
15 sells, conveys or transfers cannabis to a person not approved
16 by the department pursuant to that act, the certified patient,
17 practitioner, primary caregiver or approved person shall be
18 removed by the department from participation in the program
19 and shall be subject to arrest, prosecution and civil or
20 criminal penalties pursuant to state law.

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

25 A. the patient's attending practitioner has

1 explained the potential risks and benefits of the program to
2 the patient and the patient's parents, guardian or person
3 having legal custody of the patient; and

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

6 (1) the patient's participation in the
7 program;

8 (2) serve as the patient's primary caregiver;
9 and

10 (3) control the acquisition of the cannabis,
11 the dosage and the frequency of use of the cannabis by the
12 patient.

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

17 A. criminal prosecution or civil penalties for
18 activities not authorized in Subsection A of Section 6 of the
19 Compassionate Use Medical Cannabis Act;

20 B. liability for damages or criminal prosecution
21 arising out of the operation of a vehicle while under the
22 influence of cannabis; and

23 C. criminal prosecution or civil penalty for
24 possession or use of cannabis:

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

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

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

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

16 "30-31-6. SCHEDULE I.--The following controlled
17 substances are included in Schedule I:

18 A. any of the following opiates, including their
19 isomers, esters, ethers, salts, and salts of isomers, esters
20 and ethers, unless specifically exempted, whenever the
21 existence of these isomers, esters, ethers and salts is
22 possible within the specific chemical designation:

- 23 (1) acetyl methadol;
- 24 (2) allylprodi ne;
- 25 (3) alphacetyl methadol;

- underscored material = new
[bracketed material] = delete
- 1 (4) al phameprodi ne;
 - 2 (5) al phamethadol ;
 - 3 (6) benzethi di ne;
 - 4 (7) betacetyl methadol ;
 - 5 (8) betameprodi ne;
 - 6 (9) betamethadol ;
 - 7 (10) betaprodi ne;
 - 8 (11) cl oni tazene;
 - 9 (12) dextromorami de;
 - 10 (13) dextrorphan;
 - 11 (14) di ampromi de;
 - 12 (15) di ethyl thiambutene;
 - 13 (16) di menoxadol ;
 - 14 (17) di mepheptanol ;
 - 15 (18) di methyl thiambutene;
 - 16 (19) di oxaphetyl butyrate;
 - 17 (20) di pi panone;
 - 18 (21) ethyl methyl thiambutene;
 - 19 (22) etoni tazene;
 - 20 (23) etoxeri di ne;
 - 21 (24) furethi di ne;
 - 22 (25) hydroxypethi di ne;
 - 23 (26) ketobemi done;
 - 24 (27) l evomorami de;
 - 25 (28) l evophenacyl morphan;

- 1 (29) morpheri di ne;
- 2 (30) noracymethadol ;
- 3 (31) norl evorphanol ;
- 4 (32) normethadone;
- 5 (33) norpi panone;
- 6 (34) phenadoxone;
- 7 (35) phenampromi de;
- 8 (36) phenomorphan;
- 9 (37) phenoperi di ne;
- 10 (38) pi ri trami de;
- 11 (39) proheptazi ne;
- 12 (40) properi di ne;
- 13 (41) racemorami de; and
- 14 (42) tri meperi di ne;

15 B. any of the following opium derivatives, their
16 salts, isomers and salts of isomers, unless specifically
17 exempted, whenever the existence of these salts, isomers and
18 salts of isomers is possible within the specific chemical
19 designati on:

- 20 (1) acetorphi ne;
- 21 (2) acetyl di hydrocodei ne;
- 22 (3) benzyl morphi ne;
- 23 (4) codei ne methyl bromi de;
- 24 (5) codei ne- N- oxi de;
- 25 (6) cyprenorphi ne;

- 1 (7) desomorphi ne;
- 2 (8) di hydromorphi ne;
- 3 (9) etorphi ne;
- 4 (10) heroi n;
- 5 (11) hydromorphi nol ;
- 6 (12) methyl desorphi ne;
- 7 (13) methyl di hydromorphi ne;
- 8 (14) morphi ne methyl bromi de;
- 9 (15) morphi ne methyl sul fonate;
- 10 (16) morphi ne- N- oxi de;
- 11 (17) myrophi ne;
- 12 (18) ni cocodei ne;
- 13 (19) ni comorphi ne;
- 14 (20) normorphi ne;
- 15 (21) phol codi ne; and
- 16 (22) thebacon;

17 C. any material, compound, mixture or preparation
 18 which contains any quantity of the following hallucinogenic
 19 substances, their salts, isomers and salts of isomers, unless
 20 specifically exempted, whenever the existence of these salts,
 21 isomers, and salts of isomers is possible within the specific
 22 chemical designation:

- 23 (1) 3, 4- methylenedi oxy amphetami ne;
- 24 (2) 5- methoxy- 3, 4- methylenedi oxy amphetami ne;
- 25 (3) 3, 4, 5- tri methoxy amphetami ne;

- 1 (4) bufoteni ne;
- 2 (5) di ethyl tryptami ne;
- 3 (6) di methyl tryptami ne;
- 4 (7) 4- methyl - 2, 5- di methoxy amphetami ne;
- 5 (8) i bogai ne;
- 6 (9) lysergi c aci d di ethyl ami de;
- 7 (10) marij uana;
- 8 (11) mescal i ne;
- 9 (12) peyote, except as otherwise provided in
- 10 the Controlled Substances Act;
- 11 (13) N- ethyl - 3- pi peri dyl benzi late;
- 12 (14) N- methyl - 3- pi peri dyl benzi late;
- 13 (15) psi locybi n;
- 14 (16) psi locyn;
- 15 (17) tetrahydrocannabi nols; and
- 16 (18) hashi sh;

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

25 E. the enumeration of marijuana,

1 tetrahydrocannabinols or chemical derivatives of
2 tetrahydrocannabinol as Schedule I controlled substances does
3 not apply to the use of marijuana, tetrahydrocannabinols or
4 chemical derivatives of tetrahydrocannabinol by certified
5 patients pursuant to the [~~Controlled Substances Therapeutic~~
6 ~~Research Act~~] Compassionate Use Medical Cannabis Act. "

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

9 "30-31-7. SCHEDULE II. --

10 A. The following controlled substances are
11 included in Schedule II:

12 (1) any of the following substances, except
13 those narcotic drugs listed in other schedules, whether
14 produced directly or indirectly by extraction from substances
15 of vegetable origin, or independently by means of chemical
16 synthesis, or by combination of extraction and chemical
17 synthesis:

18 (a) opium and opiate, and any salt,
19 compound, derivative or preparation of opium or opiate;

20 (b) any salt, compound, isomer,
21 derivative or preparation thereof which is chemically
22 equivalent or identical with any of the substances referred to
23 in Subparagraph (a) of Paragraph (1) of Subsection A of this
24 section, but not including the isoquinoline alkaloids of
25 opium;

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1 (c) opium poppy and poppy straw;
2 (d) coca leaves and any salt, compound,
3 derivative or preparation of coca leaves, and any salt,
4 compound, derivative or preparation thereof which is
5 chemically equivalent or identical with any of these
6 substances, but not including decocainized coca leaves or
7 extractions which do not contain cocaine or ecgonine;

8 (e) marijuana, but only for the use by
9 certified patients pursuant to the [~~Controlled Substances~~
10 ~~Therapeutic Research Act~~] Compassionate Use Medical Cannabis
11 Act; and

12 (f) tetrahydrocannabinols or chemical
13 derivatives of tetrahydrocannabinol, but only for the use of
14 certified patients pursuant to the [~~Controlled Substances~~
15 ~~Therapeutic Research Act~~] Compassionate Use Medical Cannabis
16 Act.

17 Marijuana, tetrahydrocannabinols or chemical derivatives
18 of tetrahydrocannabinol shall be considered Schedule II
19 controlled substances only for the purposes enumerated in the
20 [~~Controlled Substances Therapeutic Research Act~~] Compassionate
21 Use Medical Cannabis Act;

22 (2) any of the following opiates, including
23 their isomers, esters, ethers, salts and salts of isomers,
24 whenever the existence of these isomers, esters, ethers and
25 salts is possible within the specific chemical designation;

- 1 (a) al phaprodi ne;
- 2 (b) ani l eri di ne;
- 3 (c) bezi trami de;
- 4 (d) di hydrocodei ne;
- 5 (e) di phenoxy l ate;
- 6 (f) fent anyl ;
- 7 (g) hydromorphone;
- 8 (h) i somethadone;
- 9 (i) l evomethorphan;
- 10 (j) l evorphanol ;
- 11 (k) meperi di ne;
- 12 (l) metazoci ne;
- 13 (m) methadone;
- 14 (n) methadone- - i ntermedi ate, 4- cyano- 2-
- 15 di methyl ami no- 4, 4- di phenyl butane;
- 16 (o) morami de- - i ntermedi ate, 2- methyl - 3-
- 17 morphol i no- 1, 1- di phenyl - propane- carboxyl i c aci d;
- 18 (p) oxycodone;
- 19 (q) pethi di ne;
- 20 (r) pethi di ne- - i ntermedi ate- - A, 4-
- 21 cyano- 1- methyl - 4- phenyl pi peri di ne;
- 22 (s) pethi di ne- - i ntermedi ate- - B, ethyl -
- 23 4- phenyl - pi peri di ne- 4- carboxyl ate;
- 24 (t) pethi di ne- - i ntermedi ate- - C, 1-
- 25 methyl - 4- phenyl pi peri di ne- 4- carboxyl i c aci d;

- 1 (u) phenazocine;
- 2 (v) piminodine;
- 3 (w) racemethorphan; and
- 4 (x) racemorphan; and

5 (3) unless listed in another schedule, any
6 material, compound, mixture or preparation which contains any
7 quantity of the following substances having a potential for
8 abuse associated with a stimulant effect on the central
9 nervous system:

- 10 (a) amphetamine, its salts, optical
11 isomers and salts of its optical isomers;
- 12 (b) phenmetrazine and its salts;
- 13 (c) methamphetamine, its salts, isomers
14 and salts of isomers; and
- 15 (d) methylphenidate.

16 B. Where methadone is prescribed, administered or
17 dispensed by a practitioner of a drug abuse rehabilitation
18 program as defined [~~in Paragraph (3) of Subsection A of~~
19 ~~Section 26-2-13 NMSA 1978~~] by the department of health while
20 acting in the course of his professional practice, or
21 otherwise lawfully obtained or possessed by a person, such
22 person shall not possess such methadone beyond the date
23 stamped or typed on the label of the container of the
24 methadone, nor shall any person possess methadone except in
25 the container in which it was originally administered or

1 dispensed to such person, and such container [~~must~~] shall
 2 include a label showing the name of the prescribing physician
 3 or practitioner, the identity of methadone, the name of the
 4 ultimate user, the date when the methadone is to be
 5 administered to or used or consumed by the named ultimate user
 6 shown on the label and a warning on the label of the methadone
 7 container that the ultimate user must use, consume or
 8 administer to himself the methadone in such container. Any
 9 person who violates this subsection is guilty of a felony and
 10 shall be punished by imprisonment for not less than one year
 11 nor more than five years, or by a fine of up to five thousand
 12 dollars (\$5,000), or both. "

13 Section 12. TEMPORARY PROVISION. --

14 A. During the period from July 1, 2001 and the
 15 effective date of rules promulgated by the secretary of health
 16 pursuant to Section 4 of this act, a person who would be
 17 eligible to participate in the medical use of cannabis program
 18 as a certified patient, but for the lack of effective
 19 regulations establishing procedures for certification and
 20 participation, may be certified as suffering from a
 21 debilitating medical condition by a practitioner and upon
 22 presentation of that certification to the secretary of health,
 23 the secretary may issue a temporary certification for
 24 participation in the program. The secretary shall maintain a
 25 list of all temporary certificates issued pursuant to this

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1 section. A person possessing a temporary certificate and his
2 primary caregiver are not subject to arrest, prosecution,
3 civil or criminal penalty or denial of any right or privilege
4 for possessing cannabis if the amount of cannabis possessed
5 collectively is not more than is reasonably necessary to
6 ensure the uninterrupted availability of cannabis for the
7 purpose of alleviating the symptoms or effects of the person's
8 debilitating medical condition.

9 B. Thirty days after the effective date of the
10 secretary of health's rules promulgated pursuant to Section 4
11 of this act, this section is repealed.

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

15 Section 14. DELAYED REPEAL.--The Compassionate Use
16 Medical Cannabis Act is repealed effective July 1, 2005.

17 Section 15. SEVERABILITY.--If any part or application of
18 the Compassionate Use Medical Cannabis Act is held invalid,
19 the remainder or its application to other situations or
20 persons shall not be affected.

21 Section 16. EFFECTIVE DATE.--The effective date of the
22 provisions of this act is July 1, 2001.