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**SENATE BILL 319**

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

**INTRODUCED BY**

**Roman M. Maes III**

**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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1 (d) seizures, including those  
2 characteristic of epilepsy; or

3 (e) severe muscle spasms, including  
4 those characteristic of multiple sclerosis or Crohn's disease;  
5 or

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

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

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

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

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

21 Section 4. [NEW MATERIAL] RULEMAKING BY SECRETARY FOR  
22 ESTABLISHING PROGRAM --The secretary of health shall  
23 promulgate rules establishing a program for medical use of  
24 marijuana to treat qualified patients. The rules shall  
25 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) etoni tazene;
- 11 (23) etoxeri di ne;
- 12 (24) furethi di ne;
- 13 (25) hydroxypethi di ne;
- 14 (26) ketobemi done;
- 15 (27) levomorami de;
- 16 (28) levophenacyl morphan;
- 17 (29) morpheri di ne;
- 18 (30) noracymethadol ;
- 19 (31) norlevorphanol ;
- 20 (32) normethadone;
- 21 (33) norpi panone;
- 22 (34) phenadoxone;
- 23 (35) phenampromi de;
- 24 (36) phenomorphan;
- 25 (37) phenoperi di ne;

- 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- methylenedi oxy amphetami ne;

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

16 (3) 3, 4, 5- tri methoxy 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 di methyl amino-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-phenyl piperidine;
- 13 (s) pethidine- - intermediate- - B, ethyl-
- 14 4-phenyl-piperidine-4-carboxylate;
- 15 (t) pethidine- - intermediate- - C, 1-
- 16 methyl-4-phenyl piperidine-4-carboxylic acid;
- 17 (u) phenazocine;
- 18 (v) pimidine;
- 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.