SENATE BILL 891

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Steve Komadina

AN ACT

RELATING TO THE MEDICAL USE OF CANNABIS; ENACTING THE MEDICAL THERAPEUTIC USE OF PHARMACEUTICAL GRADE CANNABIS ACT; AMENDING PROVISIONS OF THE CONTROLLED SUBSTANCES ACT; PROVIDING PENALTIES.

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

Section 1. [NEW MATERIAL] SHORT TITLE.--Sections 1 through 6 of this act may be cited as the "Medical Therapeutic Use of Pharmaceutical Grade Cannabis Act".

Section 2. [NEW MATERIAL] PURPOSE OF ACT.--The purpose of the Medical Therapeutic Use of Pharmaceutical Grade Cannabis Act is to allow the beneficial use of medical cannabis in a regulated system for treating medical conditions.

Section 3. [NEW MATERIAL] DEFINITIONS.--As used in the Medical Therapeutic Use of Pharmaceutical Grade Cannabis Act:

A. "adequate supply" means an amount of pharmaceutical grade cannabis possessed by the qualified patient or the qualified patient's primary caregiver that is determined for the qualified patient by the department after consulting with the medical therapeutic board pursuant to Section 6 of the Medical Therapeutic Use of Pharmaceutical Grade Cannabis Act. The supply is to be derived solely from a contracted producer;

B. "contracted producer" means an entity that has been determined to be qualified to produce, possess and supply to the department cannabis of a pharmaceutical grade pursuant to the Medical Therapeutic Use of Pharmaceutical Grade Cannabis Act;

C. "department" means the department of health;

D. "medical condition" means:

(1) cancer;

(2) glaucoma;

(3) multiple sclerosis;

(4) damage to the nervous tissue of the spinal cord, with objective neurological indication of intractable spasticity;

(5) epilepsy;

(6) positive status for human immunodeficiency virus or acquired immune deficiency syndrome; or

(7) any other medical condition or disease as

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approved by the medical therapeutic board;

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

F. "primary caregiver" means a person who is at least eighteen years of age and who has been designated by the patient's practitioner as being necessary to take responsibility for managing the well-being of a qualified patient with respect to the medical use of cannabis pursuant to the provisions of the Medical Therapeutic Use of Pharmaceutical Grade Cannabis Act;

G. "qualified patient" means a resident of New Mexico who has been diagnosed by a practitioner as having a medical condition, and has received written certification from his practitioner and review by the medical therapeutic board to receive a registry identification card issued pursuant to the Medical Therapeutic Use of Pharmaceutical Grade Cannabis Act; and

H. "written certification" means a statement in the qualified patient's medical records or a statement signed by a qualified patient's practitioner that, in the practitioner's professional opinion, the qualified patient has a medical condition and that the practitioner believes that the potential health benefits of the medical use of cannabis would likely outweigh the health risks for the qualified patient. A written

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certification is not valid for more than three months from the date of issuance.

Section 4. [NEW MATERIAL] EXEMPTION FROM CRIMINAL AND CIVIL PENALTIES FOR THE MEDICAL USE OF CANNABIS.--

A. A qualified patient shall not be subject to arrest, prosecution or penalty in any manner for the possession of or the medical use of cannabis if the quantity of cannabis does not exceed an adequate supply.

B. A qualified patient's primary caregiver shall not be subject to arrest, prosecution or penalty in any manner for the possession of cannabis for medical use by the qualified patient if the quantity of cannabis does not exceed an adequate supply.

C. Subsection A of this section shall not apply to a qualified patient under the age of eighteen years, unless:

(1) the qualified patient's practitioner has explained the potential risks and benefits of the medical use of cannabis to the qualified patient and to a parent, guardian or person having legal custody of the qualified patient; and

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

(a) allow the qualified patient's medical use of cannabis;

(b) serve as the qualified patient's primary caregiver; and

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(c) control the dosage and the frequency of the medical use of cannabis by the qualified patient.

D. A practitioner shall not be subject to arrest or prosecution, penalized in any manner or denied any right or privilege for recommending the medical use of pharmaceutical grade cannabis or providing written certification for the medical use of pharmaceutical grade cannabis to qualified patients.

E. A contracted producer shall not be subject to arrest, prosecution or penalty, in any manner, for the intrastate noncommercial production, possession, distribution or dispensing of pharmaceutical grade cannabis pursuant to the Medical Therapeutic Use of Pharmaceutical Grade Cannabis Act.

F. Any property interest that is possessed, owned or used in connection with the medical use of cannabis, 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. Any such property interest shall not be forfeited under any state or local law providing for the forfeiture of property except as provided in the Forfeiture Act. Cannabis, paraphernalia or other property seized from a qualified patient or primary caregiver in connection with the claimed medical use of cannabis shall be returned immediately upon the determination by a court or prosecutor that the qualified patient or primary caregiver is entitled to the

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protections of the provisions of the Medical Therapeutic Use of Pharmaceutical Grade Cannabis Act, as may be evidenced by a failure to actively investigate the case, a decision not to prosecute, the dismissal of charges or acquittal.

G. A person shall not be subject to arrest or prosecution for a cannabis-related offense for simply being in the presence of the medical use of cannabis as permitted under the provisions of the Medical Therapeutic Use of Pharmaceutical Grade Cannabis Act.

Section 5. [NEW MATERIAL] PROHIBITIONS, RESTRICTIONS AND LIMITATIONS ON THE MEDICAL USE OF CANNABIS--CRIMINAL PENALTY FOR FRAUDULENT REPRESENTATION.--

A. Participation in a medical use of cannabis program by a qualified patient or primary caregiver does not relieve the qualified patient or primary caregiver from:

(1) criminal prosecution or civil penalties for activities not authorized in the Medical Therapeutic Use of Pharmaceutical Grade Cannabis Act;

(2) liability for damages or criminal prosecution arising out of the operation of a vehicle while under the influence of cannabis; or

(3) criminal prosecution or civil penalty for possession or use of cannabis:

(a) in a school bus or public vehicle;

(b) on school grounds or property;

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(c) in the workplace of the qualified patient's or primary caregiver's employment; or

(d) at a public park, recreation center, youth center or other public place.

B. A person who makes a fraudulent representation to a law enforcement officer about his participation in a medical use of cannabis program to avoid arrest or prosecution for a cannabis-related offense is guilty of a petty misdemeanor and shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978.

C. If a contracted producer, qualified patient or primary caregiver sells, distributes, dispenses or transfers cannabis to a person not approved by the department pursuant to the Medical Therapeutic Use of Pharmaceutical Grade Cannabis Act or obtains or transports cannabis outside New Mexico in violation of federal law, the person shall be subject to arrest, prosecution and civil or criminal penalties pursuant to state law.

Section 6. [NEW MATERIAL] REGISTRY IDENTIFICATION CARDS--RULES--MEDICAL THERAPEUTIC BOARD CREATED.--

A. A qualified patient or primary caregiver qualifies for the legal protections pursuant to Section 4 of the Medical Therapeutic Use of Pharmaceutical Grade Cannabis Act only if the qualified patient or primary caregiver is in possession of a registry identification card.

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B. No later than October 1, 2005, after consulting with the medical therapeutic board pursuant to Subsection I of this section, the department shall promulgate rules in accordance with the State Rules Act. The rules shall:

(1) govern the manner in which it will consider applications for registry identification cards and for renewing registry identification cards for qualified patients and primary caregivers;

(2) identify requirements for pharmaceutical grade cannabis production facilities and contract with those facilities identified to supply the amounts of pharmaceutical grade cannabis required;

(3) develop a distribution system for medical cannabis that provides for:

(a) free distribution of pharmaceutical grade cannabis to qualified patients in the amount determined by the medical therapeutic board;

(b) pharmaceutical grade cannabis production facilities within New Mexico housed on secured grounds and operated by contracted producers; and

(c) noncommercial intrastate distribution of medical pharmaceutical grade cannabis to qualified patients or their primary caregivers to take place at designated department locations; and

(4) determine additional duties and responsibilities of the medical therapeutic board.

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C. The department shall issue registry identification cards to a qualified patient and to the primary caregiver for that patient, if any, who submit the following, in accordance with the department's rules:

(1) written certification that the person is a qualified patient;

(2) the name, address and date of birth of the qualified patient;

(3) the name, address and telephone number of the qualified patient's practitioner; and

(4) the name, address and date of birth of the qualified patient's primary caregiver, if any.

D. The department shall verify the information contained in an application submitted pursuant to Subsection C of this section and the medical therapeutic board shall approve or deny an application within thirty days of receipt.

E. The department shall issue a registry identification card within five days of the medical therapeutic board approving an application, and a card shall expire three months after the date of issuance. A registry identification card shall contain:

(1) the name, address and date of birth of the qualified patient and primary caregiver, if any;

(2) the date of issuance and expiration date of the registry identification card; and

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(3) other information that the department may require by rule.

F. A person who possesses a registry identification card shall notify the department of any change in the person's name, address, qualified patient's practitioner, qualified patient's primary caregiver or change in status of the qualified patient's medical condition within ten days of the change.

G. Possession of, or application for, a registry identification card shall not constitute probable cause or give rise to reasonable suspicion for a governmental agency to search the person or property of the person possessing, or applying for, the card.

H. The department shall maintain a confidential file containing the names and addresses of the persons who have either applied for or received a registry identification card. Individual names on the list shall be confidential and not subject to disclosure, except:

(1) to authorized employees or agents of the department as necessary to perform the duties of the department pursuant to the provisions of the Medical Therapeutic Use of Pharmaceutical Grade Cannabis Act;

(2) to authorized employees of state or local law enforcement agencies, for the purpose of verifying that a person is lawfully in possession of a registry identification

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card; or

(3) as provided by the federal Health Insurance Portability and Accountability Act of 1996.

I. The secretary of health shall establish a medical therapeutic board consisting of eight practitioners who are knowledgeable about the medical use of pharmaceutical grade cannabis and who shall be appointed by the secretary from a list proposed by the New Mexico medical society. A quorum of the medical therapeutic board shall consist of three members. The medical therapeutic board shall:

(1) identify criteria for including additional medical conditions or diseases to the list of medical conditions as provided in Section 3 of the Medical Therapeutic Use of Pharmaceutical Grade Cannabis Act;

(2) set forth procedures to add medical conditions or diseases to the list of medical conditions as provided in Section 3 of the Medical Therapeutic Use of Pharmaceutical Grade Cannabis Act. Such procedures shall include a petition process and shall allow for public comment and public hearings before the advisory board;

(3) review and recommend to the department for approval additional medical conditions for inclusion as medical conditions as provided in Section 3 of the Medical Therapeutic Use of Pharmaceutical Grade Cannabis Act;

(4) accept and review petitions to add medical

conditions or diseases to the list of medical conditions as provided in Section 3 of the Medical Therapeutic Use of Pharmaceutical Grade Cannabis Act;

(5) convene at least monthly to conduct public hearings and to evaluate petitions and applications, which shall be maintained as confidential personal health information, to add medical conditions or diseases to the list of medical conditions as provided in Section 3 of the Medical Therapeutic Use of Pharmaceutical Grade Cannabis Act;

(6) issue recommendations concerning rules to be promulgated for the issuance of the registry identification cards;

(7) define quantities of pharmaceutical grade cannabis that are necessary to constitute an adequate supply for qualified patients and primary caregivers; and

(8) include a medical oncologist, gynecologist, psychiatrist, infectious disease specialist, family practice physician and a pharmacist.

Section 7. Section 30-31-6 NMSA 1978 (being Laws 1972, Chapter 84, Section 6, as amended) is amended to read:

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

A. any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters and ethers, unless specifically exempted, whenever the

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existence of these isomers, esters, ethers and salts is possible within the specific chemical designation:

(1) acetylmethadol;

(2) allylprodine;

(3) alphacetylmethadol;

(4) alphameprodine;

(5) alphamethadol;

(6) benzethidine;

(7) betacetylmethadol;

(8) betameprodine;

(9) betamethadol;

(10) betaprodine;

(11) clonitazene;

(12) dextromoramide;

(13) dextrorphan;

(14) diampromide;

(15) diethylthiambutene;

(16) dimenoxadol;

(17) dimepheptanol;

(18) dimethylthiambutene;

(19) dioxaphetyl butyrate;

(20) dipipanone;

(21) ethylmethylthiambutene;

(22) etonitazene;

(23) etoxeridine;

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(24) furethidine;

(25) hydroxypethidine;

(26) ketobemidone;

(27) levomoramide;

(28) levophenacylmorphan;

(29) morpheridine;

(30) noracymethadol;

(31) norlevorphanol;

(32) normethadone;

(33) norpipanone;

(34) phenadoxone;

(35) phenampromide;

(36) phenomorphan;

(37) phenoperidine;

(38) piritramide;

(39) proheptazine;

(40) properidine;

(41) racemoramide; and

(42) trimeperidine;

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

(1) acetorphine;

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(2) acetyldihydrocodeine;

(3) benzylmorphine;

(4) codeine methylbromide;

(5) codeine-N-oxide;

(6) cyprenorphine;

(7) desomorphine;

(8) dihydromorphine;

(9) etorphine;

(10) heroin;

(11) hydromorphinol;

(12) methyldesorphine;

(13) methyldihydromorphine;

(14) morphine methylbromide;

(15) morphine methylsulfonate;

(16) morphine-N-oxide;

(17) myrophine;

(18) nicocodeine;

(19) nicomorphine;

(20) normorphine;

(21) pholcodine; and

(22) thebacon;

C. any material, compound, mixture or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers and salts of isomers, unless specifically exempted, whenever the existence of these salts,

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isomers, and salts of isomers is possible within the specific chemical designation:

(1) 3,4-methylenedioxy amphetamine;

(2) 5-methoxy-3,4-methylenedioxy amphetamine;

(3) 3,4,5-trimethoxy amphetamine;

(4) bufotenine;

(5) diethyltryptamine;

(6) dimethyltryptamine;

(7) 4-methyl-2,5-dimethoxy amphetamine;

(8) ibogaine;

(9) lysergic acid diethylamide;

(10) marijuana;

(11) mescaline;

(12) peyote, except as otherwise provided in the Controlled Substances Act;

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

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

(15) psilocybin;

(16) psilocyn;

(17) tetrahydrocannabinols; and

(18) hashish;

D. the enumeration of peyote as a controlled substance does not apply to the use of peyote in bona fide religious ceremonies by a bona fide religious organization, and members of the organization so using peyote are exempt from

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registration. Any person who manufactures peyote for or distributes peyote to the organization or its members shall comply with the federal Comprehensive Drug Abuse Prevention and Control Act of 1970 and all other requirements of law; and

E. the enumeration of marijuana, tetrahydrocannabinols or chemical derivaties of tetrahydrocannabinol as Schedule I controlled substances does not apply to the use of marijuana, tetrahydrocannabinols or chemical derivatives of tetrahydrocannabinol by certified patients pursuant to the Controlled Substances Therapeutic Research Act or to qualified patients pursuant to the provisions of the Medical Therapeutic Use of Pharmaceutical Grade Cannabis Act."

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

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

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

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

(a) opium and opiate, and any salt,

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compound, derivative or preparation of opium or opiate;

(b) any salt, compound, isomer, derivative or preparation thereof which is chemically equivalent or identical with any of the substances referred to in Subparagraph (a) of this paragraph, but not including the isoquinoline alkaloids of opium;

(c) opium poppy and poppy straw;

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

(e) marijuana, but only for the use by certified patients pursuant to the Controlled Substances Therapeutic Research Act or qualified patients pursuant to the provisions of the Medical Therapeutic Use of Pharmaceutical Grade Cannabis Act; and

(f) tetrahydrocannabinols or chemical derivatives of tetrahydrocannabinol, but only for the use of certified patients pursuant to the Controlled Substances Therapeutic Research Act or qualified patients pursuant to the provisions of the Medical Therapeutic Use of Pharmaceutical Grade Cannabis Act.

Marijuana, tetrahydrocannabinols or chemical derivatives

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of tetrahydrocannabinol shall be considered Schedule II controlled substances only for the purposes enumerated in the Controlled Substances Therapeutic Research Act or the Medical Therapeutic Use of Pharmaceutical Grade Cannabis Act;

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

(a) alphaprodine;

(b) anileridine;

(c) bezitramide;

(d) dihydrocodeine;

(e) diphenoxylate;

(f) fentanyl;

(g) hydromorphone;

(h) isomethadone;

(i) levomethorphan;

(j) levorphanol;

(k) meperidine;

(l) metazocine;

(m) methadone;

(n) methadone--intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane;

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

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(p) oxycodone;

(q) pethidine;

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

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

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

(u) phenazocine;

(v) piminodine;

(w) racemethorphan; and

(x) racemorphan; and

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

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

(b) phenmetrazine and its salts;

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

(d) methylphenidate.

B. Where methadone is prescribed, administered or dispensed by a practitioner of a drug abuse rehabilitation

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

Section 9. SEVERABILITY.--If any part or application of the Medical Therapeutic Use of Pharmaceutical Grade Cannabis Act is held invalid, the remainder or its application to other situations or persons shall not be affected. Failure to promulgate rules or implement any provision of the Medical Therapeutic Use of Pharmaceutical Grade Cannabis Act shall not

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interfere with the remaining protections provided by that act.

Section 10. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2005.

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