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SENATE BILL 523

**48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007**

INTRODUCED BY

Shannon Robinson

AN ACT

RELATING TO CONTROLLED SUBSTANCES; ENACTING THE COMPASSIONATE  
USE MEDICAL MARIJUANA ACT; AMENDING PROVISIONS OF THE  
CONTROLLED SUBSTANCES 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 FINDINGS--  
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;

(2) state law should make a distinction

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1 between medical and nonmedical use of marijuana;

2 (3) a practitioner should not be penalized for  
3 discussing marijuana as a treatment option for a patient; and

4 (4) a seriously ill patient who engages in  
5 medical use of marijuana on a treating practitioner's advice  
6 should not be arrested and incarcerated for violation of drug  
7 laws.

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

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

14 A. "certified patient" means a person who is  
15 qualified to participate in the program and has been certified  
16 by the secretary for participation in the program based on a  
17 written statement by the patient's practitioner attesting that  
18 the patient has an eligible medical condition;

19 B. "department" means the department of health;

20 C. "eligible medical condition" means:

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

24 (a) severe pain; or

25 (b) severe muscle spasms, including

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1 those characteristic of multiple sclerosis or Crohn's disease;  
2 or

3 (2) a condition that the department designates  
4 by rule as an eligible medical condition;

5 D. "practitioner" means a licensed physician  
6 pursuant to Chapter 61, Article 6 NMSA 1978;

7 E. "primary caregiver" means a person at least  
8 eighteen years of age who has agreed to take responsibility for  
9 managing the well-being of a certified patient with respect to  
10 the medical use of marijuana pursuant to the Compassionate Use  
11 Medical Marijuana Act;

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

15 G. "qualified patient" means a person with an  
16 eligible medical condition;

17 H. "secretary" means the secretary of health; and

18 I. "topical use" means a drug delivery method that  
19 does not involve ingesting or inhaling and includes application  
20 by means of a topical patch, a lotion, a gel, alcohol or a  
21 bath.

22 Section 4. [NEW MATERIAL] REGISTRY IDENTIFICATION CARDS--  
23 RULES--MEDICAL MARIJUANA BOARD CREATED.--

24 A. A certified patient, primary caregiver or  
25 practitioner qualifies for the legal protections pursuant to  
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1 the Compassionate Use Medical Marijuana Act only if the  
2 certified patient, primary caregiver or practitioner is in  
3 possession of a registry identification card.

4 B. No later than October 1, 2007, after consulting  
5 with the medical marijuana board, the department shall adopt  
6 rules in accordance with the State Rules Act for the topical  
7 use of marijuana to treat certified patients and that govern  
8 the manner in which the department considers applications for  
9 registry identification cards and for renewing registry  
10 identification cards for certified patients, primary caregivers  
11 and practitioners.

12 C. The department shall issue a registry  
13 identification card to a qualified patient and also to the  
14 primary caregiver for that patient after submission of the  
15 following:

16 (1) written documentation from the patient's  
17 practitioner attesting that the person is a qualified patient;

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

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

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

24 D. The department shall verify the information  
25 contained in an application submitted pursuant to this section,

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1 and the medical marijuana board shall approve or deny an  
2 application within thirty days of receipt.

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

8 (1) the name, address and date of birth of the  
9 certified patient and primary caregiver;

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

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

14 F. A person who possesses a registry identification  
15 card shall notify the department within ten days of any change  
16 in the person's name or address; the certified patient's  
17 practitioner; the certified patient's primary caregiver; or the  
18 status of the certified patient's medical condition.

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

24 H. The department shall maintain a confidential  
25 file containing the names and addresses of the persons who have

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1 either applied for or received a registry identification card.  
2 Individual names in the file shall be confidential and not  
3 subject to disclosure, except:

4 (1) to authorized employees or agents of the  
5 department as necessary to perform the duties of the department  
6 pursuant to the provisions of the Compassionate Use Medical  
7 Marijuana Act;

8 (2) to authorized employees of state or local  
9 law enforcement agencies for the purpose of verifying that a  
10 person is lawfully in possession of a registry identification  
11 card; or

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

14 I. The "medical marijuana board" is created. The  
15 secretary shall appoint seven members to the medical marijuana  
16 board, including a medical oncologist, a gynecologist, a  
17 neurologist, a psychiatrist, an infectious disease specialist,  
18 a family practice physician and a pharmacist. Members of the  
19 board shall be practitioners who are knowledgeable about the  
20 medical use of marijuana and who are chosen from a list  
21 proposed by the New Mexico medical board. A quorum of the  
22 medical marijuana board shall consist of three members. The  
23 medical marijuana board shall:

24 (1) identify criteria and establish  
25 procedures, including a petition process, public comment and

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1 public hearings, for including additional medical conditions or  
2 diseases to the list of medical conditions provided in the  
3 Compassionate Use Medical Marijuana Act;

4 (2) convene at least monthly to evaluate  
5 petitions and applications, which shall be maintained as  
6 confidential personal health records;

7 (3) make recommendations concerning rules of  
8 the department for issuance of registry identification cards;  
9 and

10 (4) determine quantities of pharmaceutical-  
11 grade topical-use marijuana that are necessary to constitute an  
12 adequate supply for certified patients and primary caregivers.

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

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

19 B. suffers from an eligible medical condition; and

20 C. is a certified patient.

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

22 A. Except as provided in Section 8 of the  
23 Compassionate Use Medical Marijuana Act, a certified patient  
24 and the patient's primary caregiver are not subject to arrest,  
25 prosecution, civil or criminal penalty or denial of any right

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1 or privilege for manufacturing or possessing marijuana in a  
2 form approved by the department for topical use in the  
3 treatment of an eligible medical condition if the amount  
4 possessed collectively is not more than is reasonably necessary  
5 to ensure its uninterrupted availability for the purpose of  
6 alleviating the symptoms or effects of the patient's eligible  
7 medical condition.

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

15 C. A person is not subject to arrest, prosecution,  
16 civil or criminal penalty or denial of any right or privilege  
17 for manufacturing, possessing, distributing or selling  
18 marijuana in a form approved by the department for topical use  
19 in the treatment of an eligible medical condition if the person  
20 is registered with the department as a participant in the  
21 program, the terms of the registration include the specified  
22 activities and all conditions of the registration are met.

23 Section 7. [NEW MATERIAL] PARTICIPATION BY PERSON UNDER  
24 EIGHTEEN YEARS OF AGE.--A person under eighteen years of age  
25 may be certified as a patient to participate in the program

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1 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 or legal guardian or the  
5 person having legal custody of the patient; and

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

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

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

11 (3) control the acquisition of the marijuana;

12 and

13 (4) control the dosage and frequency of use of  
14 the marijuana by the 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 does not relieve the patient  
18 from:

19 A. liability for damages or criminal prosecution  
20 arising out of the operation of a vehicle while under the  
21 influence of marijuana; and

22 B. criminal prosecution or civil penalty for  
23 possession or use of marijuana other than for topical use:

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

25 (2) on school grounds or property;

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1 (3) in the workplace of the patient's  
2 employment; or

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

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

13 Section 10. [NEW MATERIAL] DEFENSE OF MEDICAL USE OF  
14 MARIJUANA IN PROSECUTIONS FOR MARIJUANA OFFENSES.--A certified  
15 patient or a primary caregiver of that patient may assert the  
16 medical use of marijuana as a defense to a prosecution for an  
17 offense involving marijuana and the defense is presumed valid  
18 if the evidence shows that the patient and the primary  
19 caregiver collectively were in possession of marijuana that is  
20 no more than is reasonably necessary to ensure uninterrupted  
21 availability of marijuana for the purpose of alleviating the  
22 symptoms or effects of the patient's eligible medical  
23 condition.

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

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1 "30-31-6. SCHEDULE I.--The following controlled  
2 substances are included in Schedule I:

3 A. any of the following opiates, including their  
4 isomers, esters, ethers, salts, and salts of isomers, esters  
5 and ethers, unless specifically exempted, whenever the  
6 existence of these isomers, esters, ethers and salts is  
7 possible within the specific chemical designation:

- 8 (1) acetylmethadol;
- 9 (2) allylprodine;
- 10 (3) alphacetylmethadol;
- 11 (4) alphameprodine;
- 12 (5) alphamethadol;
- 13 (6) benzethidine;
- 14 (7) betacetylmethadol;
- 15 (8) betameprodine;
- 16 (9) betamethadol;
- 17 (10) betaprodine;
- 18 (11) clonitazene;
- 19 (12) dextromoramide;
- 20 (13) dextrorphan;
- 21 (14) diampromide;
- 22 (15) diethylthiambutene;
- 23 (16) dimenoxadol;
- 24 (17) dimepheptanol;
- 25 (18) dimethylthiambutene;

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- 1 (19) dioxaphetyl butyrate;
- 2 (20) dipipanone;
- 3 (21) ethylmethylthiambutene;
- 4 (22) etonitazene;
- 5 (23) etoxeridine;
- 6 (24) furethidine;
- 7 (25) hydroxypethidine;
- 8 (26) ketobemidone;
- 9 (27) levomoramide;
- 10 (28) levophenacymorphan;
- 11 (29) morpheridine;
- 12 (30) noracymethadol;
- 13 (31) norlevorphanol;
- 14 (32) normethadone;
- 15 (33) norpipanone;
- 16 (34) phenadoxone;
- 17 (35) phenampromide;
- 18 (36) phenomorphan;
- 19 (37) phenoperidine;
- 20 (38) piritramide;
- 21 (39) proheptazine;
- 22 (40) properidine;
- 23 (41) racemoramide; and
- 24 (42) trimeperidine;

25 B. any of the following opium derivatives, their

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1 salts, isomers and salts of isomers, unless specifically  
2 exempted, whenever the existence of these salts, isomers and  
3 salts of isomers is possible within the specific chemical  
4 designation:

- 5 (1) acetorphine;
- 6 (2) acetyldihydrocodeine;
- 7 (3) benzylmorphine;
- 8 (4) codeine methylbromide;
- 9 (5) codeine-N-oxide;
- 10 (6) cyprenorphine;
- 11 (7) desomorphine;
- 12 (8) dihydromorphine;
- 13 (9) etorphine;
- 14 (10) heroin;
- 15 (11) hydromorphinol;
- 16 (12) methyldesorphine;
- 17 (13) methyldihydromorphine;
- 18 (14) morphine methylbromide;
- 19 (15) morphine methylsulfonate;
- 20 (16) morphine-N-oxide;
- 21 (17) myrophine;
- 22 (18) nicocodeine;
- 23 (19) nicomorphine;
- 24 (20) normorphine;
- 25 (21) pholcodine; and

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(22) thebacon;

C. any material, compound, mixture or preparation  
[which] that contains any quantity of the following  
hallucinogenic substances, 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) 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

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(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 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;

E. the enumeration of marijuana, tetrahydrocannabinols or chemical derivatives 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 and the Compassionate Use Medical Marijuana Act; and

F. controlled substances added to Schedule I by rule adopted by the board pursuant to Section 30-31-3 NMSA 1978."

Section 12. 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:

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

7 (a) opium and opiate, and any salt,  
8 compound, derivative or preparation of opium or opiate;

9 (b) any salt, compound, isomer,  
10 derivative or preparation thereof [~~which~~] that is chemically  
11 equivalent or identical with any of the substances referred to  
12 in Subparagraph (a) of this paragraph, but not including the  
13 isoquinoline alkaloids of opium;

14 (c) opium poppy and poppy straw;

15 (d) coca leaves and any salt, compound,  
16 derivative or preparation of coca leaves, and any salt,  
17 compound, derivative or preparation thereof [~~which~~] that is  
18 chemically equivalent or identical with any of these  
19 substances, but not including decocainized coca leaves or  
20 extractions [~~which~~] that do not contain cocaine or ecgonine;

21 (e) marijuana, but only for the use by  
22 certified patients pursuant to the Controlled Substances  
23 Therapeutic Research Act and the Compassionate Use Medical  
24 Marijuana Act; and

25 (f) tetrahydrocannabinols or chemical

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1 derivatives of tetrahydrocannabinol, but only for the use of  
2 certified patients pursuant to the Controlled Substances  
3 Therapeutic Research Act and the Compassionate Use Medical  
4 Marijuana Act.

5 Marijuana, tetrahydrocannabinols or chemical derivatives  
6 of tetrahydrocannabinol shall be considered Schedule II  
7 controlled substances only for the purposes enumerated in the  
8 Controlled Substances Therapeutic Research Act and the  
9 Compassionate Use Medical Marijuana Act;

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

- 14 (a) alphaprodine;
- 15 (b) anileridine;
- 16 (c) bezitramide;
- 17 (d) dihydrocodeine;
- 18 (e) diphenoxylate;
- 19 (f) fentanyl;
- 20 (g) hydromorphone;
- 21 (h) isomethadone;
- 22 (i) levomethorphan;
- 23 (j) levorphanol;
- 24 (k) meperidine;
- 25 (l) metazocine;

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- 1 (m) methadone;
- 2 (n) methadone--intermediate, 4-cyano-2-  
3 dimethylamino-4, 4-diphenyl butane;
- 4 (o) moramide--intermediate, 2-methyl-3-  
5 morpholino-1, 1-diphenyl-propane-carboxylic acid;
- 6 (p) oxycodone;
- 7 (q) pethidine;
- 8 (r) pethidine--intermediate--A, 4-cyano-  
9 1-methyl-4-phenylpiperidine;
- 10 (s) pethidine--intermediate--B, ethyl-4-  
11 phenyl-piperidine-4-carboxylate;
- 12 (t) pethidine--intermediate--C, 1-  
13 methyl-4-phenylpiperidine-4-carboxylic acid;
- 14 (u) phenazocine;
- 15 (v) piminodine;
- 16 (w) racemethorphan; and
- 17 (x) racemorphan;
- 18 (3) unless listed in another schedule, any  
19 material, compound, mixture or preparation [~~which~~] that  
20 contains any quantity of the following substances having a  
21 potential for abuse associated with a stimulant effect on the  
22 central nervous system:
- 23 (a) amphetamine, its salts, optical  
24 isomers and salts of its optical isomers;
- 25 (b) phenmetrazine and its salts;

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

3 (d) methylphenidate; and

4 (4) controlled substances added to Schedule II  
5 by rule adopted by the board pursuant to Section 30-31-3 NMSA  
6 1978.

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

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1 (\$5,000), or both."

2 Section 13. SEVERABILITY.--If any part or 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.

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