



The substitute bill exempts any property used in connection with the medical use of cannabis from civil forfeiture. The bill permits both civil and criminal prosecution of licensed producers under state law who sell, distribute, dispense or transfer cannabis to uncertified persons or who obtain or transport cannabis outside of New Mexico.

The substitute bill also amends provisions within 30-31-6 Schedule I and 30-31-7 Schedule II of the Controlled Substances Act by expanding on the exclusion criteria for qualified patients under the Lyn and Erin Compassionate Use Act.

### **FISCAL IMPLICATIONS**

There is no appropriation associated with this bill to assist DOH with implementing policies and procedures for the medical use of cannabis. DOH has estimated that costs to implement a program will be approximately \$115,000.

The courts report there will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced prosecutions. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

### **SIGNIFICANT ISSUES**

The growing, distribution and use of cannabis will still be subject to federal laws and code. The Office of the Attorney General has noted that until such time as the U. S. Attorney General or the Congress make possession of medical cannabis lawful under federal law, a contrary state law gambles with the personal liberty of those who use medical cannabis as authorized by state law but that still subjects them to criminal prosecution under federal law.

Since 1996, eleven states have legalized medical cannabis use: Alaska, Arizona, California, Colorado, Hawaii, Maine, Nevada, Oregon, Rhode Island, Vermont, and Washington. Eight of the eleven did so through the initiative process, Hawaii's law was enacted by the legislature and signed by the governor in 2000, Vermont's was enacted by the legislature and passed into law without the governor's signature in May 2004, and Rhode Island's was enacted overriding the governor's veto in January 2006.

The most frequently specified illnesses covered in other states under medical cannabis laws are: cancer (21 states), glaucoma (19 states), pain/chronic illness (8 states), and HIV/AIDS (7 states). Seven states enacted laws that apply to all conditions and four states enacted their laws after a 1999 Institute of Medicine report advocated the efficacy of medicinal cannabis to relieve some symptoms for some people. Four states do not specify any illnesses or symptoms to which their statutes apply. (RAND Drug Policy Center, 2003)

Despite state legalization of medical cannabis, on June 6, 2005, the US Supreme Court ruled 6 to 3 that the federal government can arrest patients who use medical cannabis legally under their state laws.

## **PERFORMANCE IMPLICATIONS**

The bill fails to address the issue of interstate transport of cannabis by certified patients or their primary caregivers.

The Board of Pharmacy will not be involved in the licensure of the producer or the distribution settings designated by DOH. Board of Pharmacy laws and rules are tied specifically to the federal requirements for licensure.

## **ADMINISTRATIVE IMPLICATIONS**

The bill does not limit the use of medical cannabis by qualified individuals except for public areas, work place of the patient or caregiver, school bus, public vehicle, and school grounds. The Act allows primary caregivers to care for qualified patients and possess the patient's adequate supply. Qualified patients may be residing in Licensed Nursing Homes, Boarding Homes, Residential Care Facilities, Hospice, Home Health Care Agencies, and even Correctional/Detention Facilities.

## **TECHNICAL ISSUES**

The substitute bill requires that DOH have rules in place by October 1, 2007 to administer the program; however the deadline may not be realistic for establishing regulations for a new program for which DOH lacks prior experience or expertise.

## **OTHER SUBSTANTIVE ISSUES**

Severe chronic pain, anorexia, and spasticity cause significant suffering among certain people living with cancer, HIV/AIDS, and neuromuscular diseases, including multiple sclerosis and spinal cord injury. There are approximately 6,553 New Mexicans diagnosed with cancer each year, approximately 2,775 cancer patients die each year, and approximately 4,550 New Mexicans are currently living with HIV/AIDS. In some instances, the suffering associated with symptoms cannot be adequately controlled by the use of available prescription medications or the side effects of the prescription medications are intolerable. Many patients have found that these symptoms are well controlled by the use of medical cannabis when relief is not provided by prescription medications, and scientific evidence provides reasonable support for the contention that cannabis can play a therapeutic role in the treatment of these serious medical conditions.

The American Association of Retired Persons (AARP) conducted a national medical cannabis poll in November 2004. The results of this poll indicate that nearly 75% of older Americans support providing access to medical cannabis.

A New Mexico Policy Reform Study conducted in 2001 found that 81% of New Mexico voters support making medical cannabis available to seriously or terminally ill patients in order to alleviate their pain and suffering from illnesses such as cancer, AIDS, and multiple sclerosis.

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

State laws that make possession, use or distribution of cannabis a crime will remain in effect, permitting state prosecution for such acts regardless of medical use.