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SENATE BILL 8

45TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2002

INTRODUCED BY

Roman M. Maes III

AN ACT

RELATING TO THE MEDICAL USE OF CANNABIS; AMENDING PROVISIONS OF THE CONTROLLED SUBSTANCES ACT; ENACTING THE COMPASSIONATE USE MEDICAL CANNABIS 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) New Mexico is a sovereign state imposed with the duty to maintain the health, safety and well-being of its citizens, including those who suffer from debilitating illnesses and injuries;

(2) recent medical research has shown that the use of cannabis is a medically valuable treatment for a variety of medical conditions;

(3) state law should make a distinction

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1 between medical and nonmedical use of cannabis, also known as
2 marijuana;

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

6 (5) 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. "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 department for participation;

18 B. "debilitating medical condition" means:

19 (1) cancer;

20 (2) human immunodeficiency virus or acquired
21 immune deficiency syndrome;

22 (3) glaucoma;

23 (4) neuromuscular conditions that include
24 spasticity or seizures; or

25 (5) another debilitating illness or condition
for which cannabis has a therapeutic benefit that is
designated by department rule as being a debilitating medical
condition;

C. "department" means the department of health;

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

4 E. "primary caregiver" means a person who has
5 reached his eighteenth birthday and who has agreed to take
6 responsibility for managing the well-being of a certified
7 patient with respect to the medical use of cannabis pursuant
8 to the Compassionate Use Medical Cannabis Act;

9 F. "program" means the medical use of cannabis
10 program established and administered by the department
11 pursuant to the Compassionate Use Medical Cannabis Act; and

12 G. "useable marijuana" means the dried leaves and
13 flowers of a plant of the genus Cannabis, and any mixture or
14 preparation thereof, but does not include the seeds, stalks
15 and roots of the plant.

16 Section 4. [NEW MATERIAL] RULEMAKING BY SECRETARY FOR
17 ESTABLISHING PROGRAM.--The secretary of health shall
18 promulgate rules establishing a program for medical use of
19 cannabis to treat certified patients. The rules shall provide
20 for:

21 A. requirements and procedures for patients to
22 qualify for participation in the program, including a
23 requirement that a patient must be certified by a practitioner
24 to have a debilitating medical condition;

25 B. a registration system for certified patients,
primary caregivers and practitioners who are participants in
the program; and

 C. identification cards, to be issued by the
department, for certified patients and primary caregivers

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1 approved by the department.

2 Section 5. [NEW MATERIAL] STATUTORY REQUIREMENTS FOR
3 PARTICIPATION IN PROGRAM.--Except as provided in Section 6 of
4 the Compassionate Use Medical Cannabis Act, a patient shall be
5 certified by the department to participate in the program if
6 the patient:

7 A. is a resident of the state at the time of
8 application and continues to be a resident during
9 participation;

10 B. has been certified by a practitioner as
11 suffering from a debilitating medical condition;

12 C. has received from his attending practitioner an
13 explanation of the potential risks and benefits of the
14 program; and

15 D. has satisfied the requirements and procedures,
16 established by rule of the department, for participation in
17 the program.

18 Section 6. [NEW MATERIAL] PARTICIPATION BY PERSON WHO
19 HAS NOT REACHED HIS EIGHTEENTH BIRTHDAY.--A person who has not
20 reached his eighteenth birthday may be certified as a patient
21 to participate in the program only if:

22 A. the patient satisfies the requirements of
23 Section 5 of the Compassionate Use Medical Cannabis Act;

24 B. the patient's attending practitioner has
25 explained the potential risks and benefits of the program to
the patient and the patient's parents, guardian or person
having legal custody of the patient;

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

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1 (1) the patient's participation in the
2 program;

3 (2) serve as the patient's primary caregiver;
4 and

5 (3) control the acquisition of the cannabis,
6 the dosage and the frequency of use of the cannabis by the
7 patient.

8 Section 7. [NEW MATERIAL] LAWFUL ACTIVITIES.--

9 A. Except as provided in Section 8 of the
10 Compassionate Use Medical Cannabis Act, a certified patient
11 and his primary caregiver are not subject to arrest,
12 prosecution, civil or criminal penalty or denial of any right
13 or privilege for possessing cannabis if the amount of cannabis
14 possessed collectively is not more than is reasonably
15 necessary to ensure the uninterrupted availability of cannabis
16 for the purpose of alleviating the symptoms or effects of the
17 patient's debilitating medical condition; provided that the
18 amount of cannabis does not exceed one ounce of useable
19 marijuana; three mature cannabis plants; and four immature
20 cannabis plants.

21 B. A practitioner is not subject to arrest,
22 prosecution, civil or criminal penalty or denial of any right
23 or privilege for certification of a patient's condition for
24 the purpose of qualifying the patient for participation in the
25 program if the practitioner is registered with the department
as a participating practitioner in the program.

Section 8. [NEW MATERIAL] PROHIBITIONS, RESTRICTIONS AND
LIMITATIONS ON THE MEDICAL USE OF CANNABIS.--Participation in
the program by a certified patient or primary caregiver does

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1 not relieve the certified patient or primary caregiver from:

2 A. criminal prosecution or civil penalties for
3 activities not authorized in Subsection A of Section 7 of the
4 Compassionate Use Medical Cannabis Act;

5 B. liability for damages or criminal prosecution
6 arising out of the operation of a vehicle while under the
7 influence of cannabis; or

8 C. criminal prosecution or civil penalty for
9 possession or use of cannabis:

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

11 (2) on school grounds or property;

12 (3) in the workplace of the patient's or
13 caregiver's employment; or

14 (4) at a public park, recreation center,
15 youth center or other public place.

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

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

25 "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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1 existence of these isomers, esters, ethers and salts is
2 possible within the specific chemical designation:

- 3 (1) acetylmethadol;
- 4 (2) allylprodine;
- 5 (3) alphacetylmethadol;
- 6 (4) alphameprodine;
- 7 (5) alphamethadol;
- 8 (6) benzethidine;
- 9 (7) betacetylmethadol;
- 10 (8) betameprodine;
- 11 (9) betamethadol;
- 12 (10) betaprodine;
- 13 (11) clonitazene;
- 14 (12) dextromoramide;
- 15 (13) dextrorphan;
- 16 (14) diampromide;
- 17 (15) diethylthiambutene;
- 18 (16) dimenoxadol;
- 19 (17) dimepheptanol;
- 20 (18) dimethylthiambutene;
- 21 (19) dioxaphetyl butyrate;
- 22 (20) dipipanone;
- 23 (21) ethylmethylthiambutene;
- 24 (22) etonitazene;
- 25 (23) etoxeridine;
- (24) furethidine;
- (25) hydroxypethidine;
- (26) ketobemidone;
- (27) levomoramide;

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- 1 (28) levophenacymorphan;
- 2 (29) morpheridine;
- 3 (30) noracymethadol;
- 4 (31) norlevorphanol;
- 5 (32) normethadone;
- 6 (33) norpipanone;
- 7 (34) phenadoxone;
- 8 (35) phenampromide;
- 9 (36) phenomorphan;
- 10 (37) phenoperidine;
- 11 (38) piritramide;
- 12 (39) proheptazine;
- 13 (40) properidine;
- 14 (41) racemoramide; and

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 designation:

- 19 (1) acetorphine;
- 20 (2) acetyldihydrocodeine;
- 21 (3) benzylmorphine;
- 22 (4) codeine methylbromide;
- 23 (5) codeine-N-oxide;
- 24 (6) cyprenorphine;
- 25 (7) desomorphine;
- (8) dihydromorphine;
- (9) etorphine;
- (10) heroin;

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- 1 (11) hydromorphanol;
- 2 (12) methylmorphine;
- 3 (13) methyldihydromorphine;
- 4 (14) morphine methylbromide;
- 5 (15) morphine methylsulfonate;
- 6 (16) morphine-N-oxide;
- 7 (17) myrophine;
- 8 (18) nicocodeine;
- 9 (19) nicomorphine;
- 10 (20) normorphine;
- 11 (21) pholcodine; and
- 12 (22) thebacon;

13 C. any material, compound, mixture or preparation
14 [~~which~~] that contains any quantity of the following
15 hallucinogenic substances, their salts, isomers and salts of
16 isomers, unless specifically exempted, whenever the existence
17 of these salts, isomers, and salts of isomers is possible
18 within the specific chemical designation:

- 18 (1) 3,4-methylenedioxy amphetamine;
- 19 (2) 5-methoxy-3,4-methylenedioxy amphetamine;
- 20 (3) 3,4,5-trimethoxy amphetamine;
- 21 (4) bufotenine;
- 22 (5) diethyltryptamine;
- 23 (6) dimethyltryptamine;
- 24 (7) 4-methyl-2,5-dimethoxy amphetamine;
- 25 (8) ibogaine;
- (9) lysergic acid diethylamide;
- (10) marijuana;
- (11) mescaline;

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

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

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

5 (15) psilocybin;

6 (16) psilocyn;

7 (17) tetrahydrocannabinols; and

8 (18) hashish;

9 D. the enumeration of peyote as a controlled
10 substance does not apply to the use of peyote in bona fide
11 religious ceremonies by a bona fide religious organization,
12 and members of the organization so using peyote are exempt
13 from registration. Any person who manufactures peyote for or
14 distributes peyote to the organization or its members shall
15 comply with the federal Comprehensive Drug Abuse Prevention
16 and Control Act of 1970 and all other requirements of law; and

17 E. the enumeration of marijuana,
18 tetrahydrocannabinols or chemical derivatives of
19 tetrahydrocannabinol as Schedule I controlled substances does
20 not apply to the use of marijuana, tetrahydrocannabinols or
21 chemical derivatives of tetrahydrocannabinol by certified
22 patients pursuant to the Controlled Substances Therapeutic
23 Research Act or the Compassionate Use Medical Cannabis Act."

24 Section 11. Section 30-31-7 NMSA 1978 (being Laws 1972,
25 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

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

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

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

13 (c) opium poppy and poppy straw;

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

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

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

Marijuana, tetrahydrocannabinols or chemical derivatives

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1 of tetrahydrocannabinol shall be considered Schedule II
2 controlled substances only for the purposes enumerated in the
3 Controlled Substances Therapeutic Research Act or the
4 Compassionate Use Medical Cannabis Act;

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

- 9 (a) alphaprodine;
- 10 (b) anileridine;
- 11 (c) bezitramide;
- 12 (d) dihydrocodeine;
- 13 (e) diphenoxylate;
- 14 (f) fentanyl;
- 15 (g) hydromorphone;
- 16 (h) isomethadone;
- 17 (i) levomethorphan;
- 18 (j) levorphanol;
- 19 (k) meperidine;
- 20 (l) metazocine;
- 21 (m) methadone;
- 22 (n) methadone--intermediate, 4-cyano-2-
23 dimethylamino-4, 4-diphenyl butane;
- 24 (o) moramide--intermediate, 2-methyl-3-
25 morpholino-1, 1-diphenyl-propane-carboxylic acid;
- (p) oxycodone;
- (q) pethidine;
- (r) pethidine--intermediate--A, 4-
cyano-1-methyl-4-phenylpiperidine;

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1 (s) pethidine--intermediate--B, ethyl-
2 4-phenyl-piperidine-4-carboxylate;

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

5 (u) phenazocine;

6 (v) piminodine;

7 (w) racemethorphan; and

8 (x) racemorphan; and

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

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

16 (b) phenmetrazine and its salts;

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

19 (d) methylphenidate.

20 B. Where methadone is prescribed, administered or
21 dispensed by a practitioner of a drug abuse rehabilitation
22 program as defined [~~in Paragraph (3) of Subsection A of~~
23 ~~Section 26-2-13 NMSA 1978~~] by the department of health while
24 acting in the course of his professional practice, or
25 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

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

17 Section 13. EFFECTIVE DATE.--The effective date of the
18 provisions of this act is July 1, 2002.