

SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR
SENATE BILL 8

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

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;

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

4 (3) state law should make a distinction
5 between medical and nonmedical use of cannabis, also known as
6 marijuana;

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

10 (5) seriously ill patients who engage in
11 medical use of cannabis on their treating practitioner's
12 advice should not be arrested and incarcerated for violation
13 of drug laws.

14 B. The purpose of the Compassionate Use Medical
15 Cannabis Act is to allow the beneficial use of cannabis in
16 treating debilitating medical conditions and their symptoms.

17 Section 3. ~~[NEW MATERIAL]~~ DEFINITIONS. -- As used in the
18 Compassionate Use Medical Cannabis Act:

19 A. "certified patient" means a person who has been
20 determined to be qualified to participate in the program and
21 has been certified by the department for participation;

22 B. "debilitating medical condition" means:

23 (1) cancer;

24 (2) human immunodeficiency virus or acquired
25 immune deficiency syndrome;

1 (3) glaucoma;

2 (4) neuromuscular conditions that include
3 spasticity or seizures; or

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

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

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

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

17 F. "program" means the medical use of cannabis
18 program established and administered by the department
19 pursuant to the Compassionate Use Medical Cannabis Act.

20 Section 4. [NEW MATERIAL] RULEMAKING BY SECRETARY FOR
21 ESTABLISHING PROGRAM --

22 A. The secretary of health shall promulgate rules
23 establishing a program for medical use of cannabis to treat
24 certified patients. The rules shall be in accordance with
25 federal law and shall provide for:

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1 (1) requirements and procedures for patients
2 to qualify for participation in the program, including a
3 requirement that a patient must be certified by a practitioner
4 to have a debilitating medical condition;

5 (2) a registration system for certified
6 patients, primary caregivers, persons other than certified
7 patients and primary caregivers who produce, possess,
8 distribute, dispense or sell cannabis for use in the program,
9 and practitioners who are participants in the program;

10 (3) identification cards, to be issued by the
11 department, for certified patients, primary caregivers and any
12 other person approved by the department to produce, possess,
13 distribute, dispense or sell cannabis for the purposes of the
14 Compassionate Use Medical Cannabis Act;

15 (4) requirements to be met by persons other
16 than certified patients and primary caregivers who produce,
17 possess, distribute, dispense or sell cannabis for use in the
18 program; and

19 (5) the department to ensure that the
20 cannabis produced for the program is grown only in a secure
21 facility and that the producer of the cannabis provides an
22 inventory of the product at regular intervals.

23 B. The secretary shall establish an advisory board
24 to recommend requirements and procedures for patients to
25 qualify for participation in the program pursuant to Paragraph

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1 (1) of Subsection A of this section. The advisory board shall
2 consist of at least five practitioners, appointed by the
3 secretary from a list proposed by the New Mexico medical
4 society, who are knowledgeable about the medical use of
5 cannabis.

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

11 A. is a resident of the state at the time of
12 application and continues to be a resident during
13 participation;

14 B. has been certified by a practitioner as
15 suffering from a debilitating medical condition;

16 C. has received from his attending practitioner an
17 explanation of the potential risks and benefits of the
18 program; and

19 D. has satisfied the requirements and procedures,
20 established by rule of the department, for participation in
21 the program.

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

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1 A. the patient satisfies the requirements of
2 Section 5 of the Compassionate Use Medical Cannabis Act;

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

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

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

11 (2) serve as the patient's primary caregiver;
12 and

13 (3) control the acquisition of the cannabis,
14 the dosage and the frequency of use of the cannabis by the
15 patient.

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

17 A. Except as provided in Section 8 of the
18 Compassionate Use Medical Cannabis Act, a certified patient
19 and his primary caregiver are not subject to arrest,
20 prosecution, civil or criminal penalty or denial of any right
21 or privilege for possessing cannabis if the amount of cannabis
22 possessed collectively is not more than is reasonably
23 necessary to ensure the uninterrupted availability of cannabis
24 for the purpose of alleviating the symptoms or effects of the
25 patient's debilitating medical condition.

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1 B. A practitioner is not subject to arrest,
2 prosecution, civil or criminal penalty or denial of any right
3 or privilege for certification of a patient's condition for
4 the purpose of qualifying the patient for participation in the
5 program if the practitioner is registered with the department
6 as a participating practitioner in the program.

7 C. Persons who have been approved by the
8 department to produce, possess, distribute, dispense or sell
9 cannabis for the purposes of the Compassionate Use Medical
10 Cannabis Act are not subject to arrest, prosecution, civil or
11 criminal penalty or denial of any right or privilege for
12 engaging in approved activities.

13 Section 8. [NEW MATERIAL] PROHIBITIONS, RESTRICTIONS AND
14 LIMITATIONS ON THE MEDICAL USE OF CANNABIS. --

15 A. Participation in the program by a certified
16 patient or primary caregiver does not relieve the certified
17 patient or primary caregiver from:

18 (1) criminal prosecution or civil penalties
19 for activities not authorized in Subsection A of Section 7 of
20 the Compassionate Use Medical Cannabis Act;

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

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

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- 1 (a) in a school bus or public vehicle;
- 2 (b) on school grounds or property;
- 3 (c) in the workplace of the certified
- 4 patient's or primary caregiver's employment; or
- 5 (d) at a public park, recreation
- 6 center, youth center or other public place.

7 B. If a certified patient, practitioner, primary
8 caregiver or any other person approved by the department to
9 produce, possess, distribute, dispense or sell cannabis for
10 the purposes of the Compassionate Use Medical Cannabis Act
11 sells, conveys or transfers cannabis to a person not approved
12 by the department pursuant to that act, the certified patient,
13 practitioner, primary caregiver or approved person shall be
14 removed by the department from participation in the program
15 and shall be subject to arrest, prosecution and civil or
16 criminal penalties pursuant to state law.

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

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

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) acetyl methadol ;
- 9 (2) allyl prodi ne;
- 10 (3) al phacetyl methadol ;
- 11 (4) al phameprodi ne;
- 12 (5) al phamethadol ;
- 13 (6) benzethi di ne;
- 14 (7) betacetyl methadol ;
- 15 (8) betameprodi ne;
- 16 (9) betamethadol ;
- 17 (10) betaprodi ne;
- 18 (11) cl oni tazene;
- 19 (12) dextromorami de;
- 20 (13) dextrorphan;
- 21 (14) di ampromi de;
- 22 (15) di ethyl thiambutene;
- 23 (16) di menoxadol ;
- 24 (17) di mepheptanol ;
- 25 (18) di methyl thiambutene;

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- 1 (19) di oxaphetyl butyrate;
- 2 (20) di pi panone;
- 3 (21) ethyl methyl thiambutene;
- 4 (22) etonitazene;
- 5 (23) etoxeridine;
- 6 (24) furethidine;
- 7 (25) hydroxypethidine;
- 8 (26) ketobemidone;
- 9 (27) levomoramide;
- 10 (28) levophenacetylmorphan;
- 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 B. any of the following opium derivatives, their
25 salts, isomers and salts of isomers, unless specifically

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

- 4 (1) acetorphi ne;
- 5 (2) acetyl di hydrocodei ne;
- 6 (3) benzyl morphi ne;
- 7 (4) codei ne methyl bromi de;
- 8 (5) codei ne- N- oxi de;
- 9 (6) cyprenorphi ne;
- 10 (7) desomorphi ne;
- 11 (8) di hydromorphi ne;
- 12 (9) etorphi ne;
- 13 (10) heroi n;
- 14 (11) hydromorphi nol ;
- 15 (12) methyl desorphi ne;
- 16 (13) methyl di hydromorphi ne;
- 17 (14) morphi ne methyl bromi de;
- 18 (15) morphi ne methyl sul fonate;
- 19 (16) morphi ne- N- oxi de;
- 20 (17) myrophi ne;
- 21 (18) ni cocodei ne;
- 22 (19) ni comorphi ne;
- 23 (20) normorphi ne;
- 24 (21) phol codi ne; and
- 25 (22) thebacon;

1 C. any material, compound, mixture or preparation
2 [~~which~~] that contains any quantity of the following
3 hallucinogenic substances, their salts, isomers and salts of
4 isomers, unless specifically exempted, whenever the existence
5 of these salts, isomers, and salts of isomers is possible
6 within the specific chemical designation:

- 7 (1) 3,4-methylenedioxy amphetamine;
- 8 (2) 5-methoxy-3,4-methylenedioxy amphetamine;
- 9 (3) 3,4,5-trimethoxy amphetamine;
- 10 (4) bufotenine;
- 11 (5) diethyltryptamine;
- 12 (6) dimethyltryptamine;
- 13 (7) 4-methyl-2,5-dimethoxy amphetamine;
- 14 (8) ibogaine;
- 15 (9) lysergic acid diethylamide;
- 16 (10) marijuana;
- 17 (11) mescaline;
- 18 (12) peyote, except as otherwise provided in
19 the Controlled Substances Act;
- 20 (13) N-ethyl-3-piperidyl benzilate;
- 21 (14) N-methyl-3-piperidyl benzilate;
- 22 (15) psilocybin;
- 23 (16) psilocyn;
- 24 (17) tetrahydrocannabinols; and
- 25 (18) hashish;

1 D. the enumeration of peyote as a controlled
 2 substance does not apply to the use of peyote in bona fide
 3 religious ceremonies by a bona fide religious organization,
 4 and members of the organization so using peyote are exempt
 5 from registration. Any person who manufactures peyote for or
 6 distributes peyote to the organization or its members shall
 7 comply with the federal Comprehensive Drug Abuse Prevention
 8 and Control Act of 1970 and all other requirements of law; and

9 E. the enumeration of marijuana,
 10 tetrahydrocannabinols or chemical derivatives of
 11 tetrahydrocannabinol as Schedule I controlled substances does
 12 not apply to the use of marijuana, tetrahydrocannabinols or
 13 chemical derivatives of tetrahydrocannabinol by certified
 14 patients pursuant to the Controlled Substances Therapeutic
 15 Research Act or the Compassionate Use Medical Cannabis Act. "

16 Section 11. Section 30-31-7 NMSA 1978 (being Laws 1972,
 17 Chapter 84, Section 7, as amended) is amended to read:

18 "30-31-7. SCHEDULE II.--

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

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

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1 synthesis:

2 (a) opium and opiate, and any salt,
3 compound, derivative or preparation of opium or opiate;

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

9 (c) opium poppy and poppy straw;

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

16 (e) marijuana, but only for the use by
17 certified patients pursuant to the Controlled Substances
18 Therapeutic Research Act or the Compassionate Use Medical
19 Cannabis Act; and

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

25 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;

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- 1 (p) oxycodone;
- 2 (q) pethidine;
- 3 (r) pethidine- - intermediate- - A, 4-
- 4 cyano- 1- methyl - 4- phenyl piperidine;
- 5 (s) pethidine- - intermediate- - B, ethyl -
- 6 4- phenyl - piperidine- 4- carboxylate;
- 7 (t) pethidine- - intermediate- - C, 1-
- 8 methyl - 4- phenyl piperidine- 4- carboxylic acid;
- 9 (u) phenazocine;
- 10 (v) piminodine;
- 11 (w) racemethorphan; and
- 12 (x) racemorphan; and

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

- 18 (a) amphetamine, its salts, optical
- 19 isomers and salts of its optical isomers;
- 20 (b) phenmetrazine and its salts;
- 21 (c) methamphetamine, its salts, isomers
- 22 and salts of isomers; and
- 23 (d) methylphenidate.

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

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

21 Section 12. TEMPORARY PROVISION. -- During the period
 22 between July 1, 2002 and the effective date of rules
 23 promulgated by the secretary of health pursuant to Section 4
 24 of the Compassionate Use Medical Cannabis Act, a person who
 25 would be eligible to participate in the medical use of

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1 cannabis program as a certified patient, but for the lack of
2 effective regulations establishing procedures for
3 certification and participation, may be certified as suffering
4 from a debilitating medical condition by a practitioner and
5 upon presentation of that certification to the secretary of
6 health, the secretary may issue a temporary certification for
7 participation in the program. The secretary shall maintain a
8 list of all temporary certificates issued pursuant to this
9 section. A person possessing a temporary certificate and the
10 person's primary caregiver are not subject to arrest,
11 prosecution, civil or criminal penalty or denial of any right
12 or privilege for possessing cannabis if the amount of cannabis
13 possessed collectively is not more than is reasonably
14 necessary to ensure the uninterrupted availability of cannabis
15 for the purpose of alleviating the symptoms or effects of the
16 person's debilitating medical condition.

17 Section 13. SEVERABILITY.--If any part or application of
18 the Compassionate Use Medical Cannabis Act is held invalid,
19 the remainder or its application to other situations or
20 persons shall not be affected.

21 Section 14. EFFECTIVE DATE.--The effective date of the
22 provisions of this act is July 1, 2002.