

SENATE BILL 1944
By Cohen

AN ACT to amend Tennessee Code Annotated, Title 39;
Title 63 and Title 68, relative to the use of
marijuana for medical purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code annotated, Title 68, Chapter 1, is amended by adding Sections 2 through 9 of this act as a new part 23.

SECTION 2. This act shall be known and may be cited as the Tennessee Medical Marijuana Act.

(a) Modern medical research has discovered a beneficial use for marijuana in treating or alleviating the pain or other symptoms associated with certain debilitating medical conditions, as found by the National Academy of Sciences' Institute of Medicine in March 1999.

(b) According to the U.S. Sentencing Commission and the Federal Bureau of Investigation, 99 out of every 100 marijuana arrests in the U.S. are made under state law, rather than under federal law. Consequently, changing state law will have the practical effect of protecting from arrest the vast majority of seriously ill people who have a medical need to use marijuana.

(c) Although federal law currently prohibits the use of marijuana, the laws of Alaska, California, Colorado, Hawaii, Maine, Montana, Nevada, Oregon, Vermont, and Washington permit the medical use and cultivation of marijuana. Tennessee joins in this effort for the health and welfare of its citizens.

(d) States are not required to enforce federal law or prosecute people for engaging in activities prohibited by federal law. Therefore, compliance with this act does not put the state of Tennessee in violation of federal law.

(e) State law should make a distinction between the medical and non-medical use of marijuana. Hence, the purpose of this act is to protect patients with debilitating medical conditions, and their physicians and primary caregivers, from arrest and prosecution, criminal and other penalties, and property forfeiture if such patients engage in the medical use of marijuana.

SECTION 4. The following terms, as used in this act, shall have the meanings set forth in this section:

(1) "Debilitating medical condition" means:

(A) Cancer, glaucoma, positive status for human immunodeficiency virus, acquired immune deficiency syndrome, or the treatment of these conditions;

(B) A chronic or debilitating disease or medical condition or its treatment that produces one or more of the following: cachexia or wasting syndrome; severe or chronic pain; severe nausea; seizures, including but not limited to those characteristic of epilepsy; or severe and persistent muscle spasms, including but not limited to those characteristic of multiple sclerosis or Crohn's disease; or

(C) Any other medical condition or its treatment approved by the department, as provided for as follows: Not later than ninety (90) days after the effective date of this act, the department shall promulgate regulations governing the manner in which it will consider petitions from the public to add debilitating medical conditions to those included in this act. In considering such petitions, the department shall include public notice of, and an opportunity to comment in a

public hearing upon, such petitions. The department shall, after hearing, approve or deny such petitions within one hundred eighty (180) days of submission. The approval or denial of such a petition shall be considered a final department action, subject to judicial review in accordance with Tennessee Code Annotated, Section 4-5-322.

(2) "Department" means the department of health or its successor agency.

(3) "Marijuana" has the meaning given that term in Tennessee Code Annotated, Section 39-17-402.

(4) "Medical use" means the acquisition, possession, cultivation, manufacture, use, delivery, transfer, or transportation of marijuana or paraphernalia relating to the consumption of marijuana to alleviate the symptoms or effects of a qualifying patient's debilitating medical condition.

(5) "Physician" means a person who is licensed under Tennessee Code Annotated, title 63, Chapters 6 and 9, and is licensed with authority to prescribe drugs.

(6) "Primary caregiver" means a person who is at least eighteen years old, who has never been convicted of a felony drug offense, and who has agreed to assist with a person's medical use of marijuana. A person may have only one primary caregiver at any one time.

(7) "Qualifying patient" means a person who has been diagnosed by a physician as having a debilitating medical condition.

(8) "Registry identification card" means a document issued by the department that identifies a person as a qualifying patient or primary caregiver.

(9) "Usable marijuana" means the dried leaves and flowers of marijuana, and any mixture or preparation thereof, and does not include the seeds, stalks, and roots of the plant.

(10) "Written certification" means the qualifying patient's medical records, or a statement signed by a physician, stating that in the physician's professional opinion, after having completed a full assessment of the qualifying patient's medical history and current medical condition made in the course of a bona fide physician-patient relationship, the qualifying patient has a debilitating medical condition and the potential benefits of the medical use of marijuana would likely outweigh the health risks for the qualifying patient.

SECTION 5.

(a) A qualifying patient who has in his or her possession a registry identification card shall not be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including but not limited to civil penalty or disciplinary action by a professional licensing board, for the medical use of marijuana; provided that the qualifying patient possesses an amount of marijuana which does not exceed six (6) marijuana plants and one (1) ounce of usable marijuana.

(b) Subsection (a) shall not apply to a qualifying patient under the age of eighteen (18) years, unless:

(1) The qualifying patient's physician has explained the potential risks and benefits of the medical use of marijuana to the qualifying patient and to a parent, guardian, or person having legal custody of the qualifying patient; and

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

(A) allow the qualifying patient's medical use of marijuana;

(B) serve as the qualifying patient's primary caregiver; and

(C) control the acquisition of the marijuana, the dosage, and the frequency of the medical use of marijuana by the qualifying patient.

(c) A primary caregiver who has in his or her possession a registry identification card shall not be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including but not limited to civil penalty or disciplinary action by a professional licensing board for assisting a qualifying patient to whom he or she is connected through the department's registration process with the medical use of marijuana, provided that:

(1) The primary caregiver possesses an amount of marijuana which does not exceed six (6) marijuana plants and one (1) ounce of usable marijuana for each qualifying patient to whom he or she is connected through the department's registration process; and

(2) The primary caregiver has agreed not to provide marijuana to any person other than qualifying patients.

(d) There shall exist a presumption that a qualifying patient or primary caregiver is engaged in the medical use of marijuana if the qualifying patient or primary caregiver:

(1) Is in possession of a registry identification card; and

(2) Is in possession of an amount of marijuana which does not exceed the amount permitted under this act. Such presumption may be rebutted by evidence that conduct related to marijuana was not for the purpose of alleviating the symptoms or effects of a qualifying patient's debilitating medical condition.

(e) A primary caregiver may receive reasonable compensation for services provided to assist with a qualifying patient's medical use of marijuana.

(f) A physician shall not be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including but not limited to civil penalty or disciplinary action by the board of medical examiners for providing written certification for the medical use of marijuana to qualifying patients.

(g) Any interest in or right to property that is possessed, owned, or used in connection with the medical use of marijuana, or acts incidental to such use, shall not be forfeited.

(h) No person shall be subject to arrest or prosecution for constructive possession, conspiracy, or any other offense for simply being in the presence or vicinity of the medical use of marijuana as permitted under this act.

(i) A registry identification card, or its equivalent, issued by another state government to permit the medical use of marijuana by a qualifying patient, or to permit a person to assist with a qualifying patient's medical use of marijuana, shall have the same force of effect as a registry identification card issued by the department.

SECTION 6.

(a) Not later than ninety (90) days after the effective date of this act, the department shall promulgate regulations governing the manner in which it will consider applications for and renewals of registry identification cards for qualifying patients and primary caregivers. The department's regulations shall establish application and renewal fees that generate revenues sufficient to offset all expenses of implementing and administering this act. The department may vary the application and renewal fees along a sliding scale that accounts for a qualifying patient's income. The department may accept donations from private sources in order to reduce the application and renewal fees.

(b) The department shall issue registry identification cards to qualifying patients who submit the following, in accordance with the department's regulations:

- (1) Written certification that the person is a qualifying patient;
- (2) Application or renewal fee;
- (3) Name, address, and date of birth of the qualifying patient;

(4) Name, address, and telephone number of the qualifying patient's physician; and

(5) Name, address, and date of birth of the qualifying patient's primary caregiver, if any.

(c) The department shall verify the information contained in an application or renewal submitted pursuant to this section, and shall approve or deny an application or renewal within fifteen (15) days of receipt of the application or renewal. The department may deny an application or renewal only if the applicant did not provide the information required pursuant to this section, or if the department determines that the information provided was falsified. Rejection of an application or renewal is considered a final department action, subject to judicial review in accordance with the provisions of Tennessee Code Annotated, section 4-5-322.

(d) The department shall issue a registry identification card to the primary caregiver who is named in a qualifying patient's approved application, so long as the primary caregiver signs a statement agreeing to provide marijuana only to qualifying patients who have named him or her as primary caregiver; provided, the department shall not issue a registry identification card to a proposed primary caregiver who has previously been convicted of a felony drug offense.

(e) The department shall issue registry identification cards within five (5) days of approving an application or renewal, which shall expire one year after the date of issuance. Registry identification cards shall contain:

(1) Name, address, and date of birth of the qualifying patient;

(2) Name, address, and date of birth of the qualifying patient's primary caregiver, if any;

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

(4) Other information that the department may specify in its regulations.

(f) A qualifying patient who has been issued a registry identification card shall notify the department of any change in the qualifying patient's name, address, physician, or primary caregiver, or change in status of the qualifying patient's debilitating medical condition, within ten (10) days of such change, or the registry identification card shall be deemed null and void.

(g) Possession of, or application for, a registry identification card shall not alone constitute probable cause to search the person or property of the person possessing or applying for the registry identification card, or otherwise subject the person or property of the person to inspection by any governmental agency.

(h) The department shall maintain a confidential list of the persons to whom the department has issued registry identification cards. Individual names and other identifying information on the list shall be confidential, exempt from the provisions of Tennessee Code Annotated, section 10-7-503, and not subject to disclosure, except to:

(1) Authorized employees of the department as necessary to perform official duties of the department; or

(2) Authorized employees of state or local law enforcement agencies, only as necessary to verify that a person who is engaged in the suspected or alleged medical use of marijuana is lawfully in possession of a registry identification card.

(i) The department shall report annually to the general assembly on the number of applications for registry identification cards, the number of qualifying patients and primary caregivers approved, the nature of the debilitating medical conditions of the

qualifying patients, the number of registry identification cards revoked, and the number of physicians providing written certification for qualifying patients. The department shall not provide any identifying information of qualifying patients, primary caregivers, or physicians.

(j) It shall be a crime, punishable by up to one hundred eighty (180) days in jail and a one thousand dollar (\$1,000) fine, for a person, including an employee or official of the department or another state agency or local government, to provide to a federal official or federal agency any identifying information of qualifying patients, primary caregivers, or physicians who have provided written certification.

SECTION 7.

(a) This act shall not permit:

(1) Any person to operate, navigate, or be in actual physical control of any motor vehicle, aircraft, or motorboat while under the influence of marijuana; and

(2) The smoking of marijuana:

(A) In a school bus or other form of public transportation;

(B) On any school grounds;

(C) In any correctional facility; or

(D) At any public park, public beach, public recreation center, or youth center.

(b) Nothing in this act shall be construed to require:

(1) A government medical assistance program or private health insurer to reimburse a person for costs associated with the medical use of marijuana; or

(2) An employer to accommodate the medical use of marijuana in any workplace.

(c) It shall be a crime, punishable as a Class B misdemeanor, for a person to fabricate or misrepresent a registry identification card to a law enforcement official.

SECTION 8. Except as provided in Section 7, a person and a person's primary caregiver, if any, may assert the medical use of marijuana as a defense to any prosecution involving marijuana, and such defense shall be presumed valid where the evidence shows that:

(1) The person's medical records indicate, or a physician has stated that, in the physician's professional opinion, after having completed a full assessment of the person's medical history and current medical condition made in the course of a bona fide physician-patient relationship, the potential benefits of the medical use of marijuana would likely outweigh the health risks for the person; and

(2) The person and the person's primary caregiver, if any, were collectively in possession of a quantity of marijuana that was not more than was reasonably necessary to ensure the uninterrupted availability of marijuana for the purpose of alleviating the symptoms or effects of the person's medical condition.

SECTION 9. In accordance with the provisions of this act, Tennessee Code Annotated, Sections 39-17-417 and 39-17-418, relating only to the possession of marijuana, and Tennessee Code Annotated, Section 39-17-425, relating only to the cultivation of marijuana, shall not apply to persons authorized to possess and cultivate marijuana pursuant to this act.

SECTION 10. Any section of this act being held invalid as to any person or circumstances shall not affect the application of any other section of this Act that can be given full effect without the invalid section or application.

SECTION 11. The commissioner of health is authorized to promulgate rules and regulations to effectuate the purposes of this act. All such rules and regulations shall be promulgated in accordance with the provisions of Tennessee Code Annotated, Title 4, Chapter 5.

SECTION 12. This act shall take effect upon becoming a law, the public welfare requiring it.