



House of Representatives

General Assembly

File No. 271

January Session, 2003

Substitute House Bill No. 5100

House of Representatives, April 9, 2003

The Committee on Judiciary reported through REP. LAWLOR of the 99th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING THE MEDICAL USE OF MARIJUANA.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2003*) As used in sections 1 to 9,
2 inclusive, of this act, unless the context otherwise requires:

3 (1) "Adequate supply" means an amount of marijuana jointly
4 possessed by a qualifying patient and the qualifying patient's primary
5 caregiver that is not more than is reasonably necessary to assure the
6 uninterrupted availability of marijuana for the purpose of alleviating
7 the symptoms or effects of the qualifying patient's debilitating medical
8 condition, but shall not exceed three mature marijuana plants, four
9 immature marijuana plants and one ounce of usable marijuana per
10 each mature plant;

11 (2) "Debilitating medical condition" means (A) cancer, glaucoma,
12 positive status for human immunodeficiency virus or acquired
13 immune deficiency syndrome, or the treatment of any such conditions,

14 including, but not limited to, chemotherapy, (B) a chronic or
15 debilitating disease or medical condition, or the treatment thereof, that
16 produces one or more of the following: (i) Cachexia or wasting
17 syndrome; (ii) severe pain; (iii) severe nausea; (iv) seizures, including,
18 but not limited to, those characteristic of epilepsy; or (v) severe and
19 persistent muscle spasms, including, but not limited to, those
20 characteristic of multiple sclerosis or Crohn's disease, or (C) any other
21 medical condition approved by the Department of Public Health,
22 pursuant to regulations that the Commissioner of Public Health may
23 adopt, in accordance with chapter 54 of the general statutes, in
24 response to a request from a physician or potentially qualifying
25 patient;

26 (3) "Marijuana" has the same meaning as provided in section 21a-
27 240 of the general statutes;

28 (4) "Medical use" means the acquisition and distribution, possession,
29 cultivation, use or transportation of marijuana or paraphernalia
30 relating to marijuana to alleviate the symptoms or effects of a
31 qualifying patient's symptoms, but does not include any such use of
32 marijuana by any person other than the qualifying patient. For the
33 purposes of this subdivision, "acquisition and distribution" means the
34 transfer of marijuana and paraphernalia relating to marijuana from the
35 primary caregiver to the qualifying patient;

36 (5) "Physician" means a person who is licensed under the provisions
37 of chapter 370 of the general statutes and authorized by subsection (a)
38 of section 21a-246 of the general statutes, as amended by this act, to
39 possess and supply marijuana for medical use, but does not include a
40 physician assistant, as defined in section 20-12a of the general statutes;

41 (6) "Primary caregiver" means a person, other than the qualifying
42 patient and the qualifying patient's physician, who is eighteen years of
43 age or older and has agreed to undertake responsibility for managing
44 the well-being of the qualifying patient with respect to the medical use
45 of marijuana, provided, in the case of a minor or an adult qualifying
46 patient lacking legal capacity, such person shall be a parent, guardian

47 or person having legal custody of such minor or adult qualifying
48 patient;

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

51 (8) "Usable marijuana" means the dried leaves and flowers of the
52 marijuana plant, and any mixtures or preparations thereof, that are
53 appropriate for the medical use of marijuana, but does not include the
54 seeds, stalks and roots of the plant; and

55 (9) "Written certification" means a statement signed by the
56 qualifying patient's physician stating that, in the physician's
57 professional opinion, the qualifying patient has a debilitating medical
58 condition and the potential benefits of the medical use of marijuana
59 would likely outweigh the health risks of such use to the qualifying
60 patient.

61 Sec. 2. (NEW) (*Effective October 1, 2003*) (a) The medical use of
62 marijuana by a qualifying patient who is eighteen years of age or older
63 is permitted if:

64 (1) The qualifying patient has been diagnosed by a physician as
65 having a debilitating medical condition;

66 (2) The qualifying patient's physician has issued a written
67 certification to the qualifying patient for the medical use of marijuana;

68 (3) The amount of marijuana possessed by the qualifying patient
69 and the primary caregiver for medical use does not exceed an adequate
70 supply; and

71 (4) The cultivation of such marijuana occurs in a secure indoor
72 facility.

73 (b) The medical use of marijuana by a qualifying patient who is
74 under eighteen years of age is permitted if:

75 (1) The conditions set forth in subdivisions (1) to (4), inclusive, of

76 subsection (a) of this section are satisfied;

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

81 (3) A parent, guardian or person having legal custody of the
82 qualifying patient agrees in writing to (A) allow the medical use of
83 marijuana by the qualifying patient, (B) serve as the qualifying
84 patient's primary caregiver, and (C) control (i) the transfer of the
85 marijuana to the qualifying patient, and (ii) the dosage and the
86 frequency of the medical use of marijuana by the qualifying patient.

87 (c) Subsections (a) and (b) of this section do not apply to:

88 (1) Any medical use of marijuana that endangers the health or well-
89 being of another person; and

90 (2) The medical use of marijuana (A) in a motor bus or a school bus,
91 as defined respectively in section 14-1 of the general statutes, or in any
92 moving vehicle, (B) in the workplace, (C) on any school grounds, or
93 (D) at any public park, public beach, public recreation center or youth
94 center or any other place open to the public.

95 (d) A qualifying patient shall have one primary caregiver at any
96 time. A primary caregiver may not be responsible for the care of more
97 than one qualifying patient at any time. The medical use of marijuana
98 by a primary caregiver who is registered in accordance with subsection
99 (b) of section 3 of this act is permitted on behalf of a qualifying patient,
100 provided the amount of such marijuana shall not exceed an adequate
101 supply.

102 (e) Any written certification for the medical use of marijuana issued
103 by a physician under this section shall be valid for a period not to
104 exceed one year from the date such written certification is signed by
105 the physician.

106 Sec. 3. (NEW) (*Effective October 1, 2003*) (a) Any physician who
107 issues a written certification for the medical use of marijuana shall
108 register with the Department of Public Safety the name, address and
109 patient identification number, if any, of the qualifying patient who is
110 issued such written certification and shall provide such other
111 identifying information concerning the qualifying patient as may be
112 required by the department.

113 (b) Each qualifying patient who is issued a written certification for
114 the medical use of marijuana, and the primary caregiver of such
115 qualifying patient, shall register with the Department of Public Safety.
116 Such registration shall be effective until the expiration of the written
117 certification issued by the physician. The qualifying patient and the
118 primary caregiver shall provide sufficient identifying information, as
119 determined by the department, to establish the personal identity of the
120 qualifying patient and the primary caregiver. The qualifying patient or
121 the primary caregiver shall report any change in such information to
122 the department not later than five business days after such change. The
123 department shall issue a registration certificate to the qualifying
124 patient and may charge a reasonable fee, not to exceed twenty-five
125 dollars, for a registration under this subsection.

126 (c) Upon the request of a law enforcement agency, the Department
127 of Public Safety shall verify whether a qualifying patient or a primary
128 caregiver has registered with the department in accordance with
129 subsection (b) of this section and may provide reasonable access to
130 registry information obtained under this section for law enforcement
131 purposes. Except as provided in this subsection, information obtained
132 under this section shall be confidential and shall not be subject to
133 disclosure under the Freedom of Information Act, as defined in section
134 1-200 of the general statutes.

135 Sec. 4. (NEW) (*Effective October 1, 2003*) The Commissioner of Public
136 Safety may adopt regulations, in accordance with chapter 54 of the
137 general statutes, to establish (1) a required form for written
138 certifications for the medical use of marijuana issued by physicians

139 under section 2 of this act, and (2) requirements for registrations under
140 section 3 of this act.

141 Sec. 5. (NEW) (*Effective October 1, 2003*) Nothing in sections 1 to 9,
142 inclusive, of this act shall be construed to require health insurance
143 coverage for the medical use of marijuana.

144 Sec. 6. (NEW) (*Effective October 1, 2003*) (a) A qualifying patient or a
145 primary caregiver may assert the medical use of marijuana as an
146 affirmative defense to any prosecution involving marijuana, or
147 paraphernalia relating to marijuana, under chapter 420b of the general
148 statutes, provided such qualifying patient or such primary caregiver
149 has strictly complied with the requirements of sections 1 to 9,
150 inclusive, of this act.

151 (b) No person shall be subject to arrest or prosecution solely for
152 being in the presence or vicinity of the medical use of marijuana as
153 permitted under sections 1 to 9, inclusive, of this act.

154 Sec. 7. (NEW) (*Effective October 1, 2003*) A physician shall not be
155 subject to arrest or prosecution, subject to any action under section 20-
156 13c of the general statutes, penalized in any manner or denied any
157 right or privilege for providing a written certification for the medical
158 use of marijuana if:

159 (1) The physician has diagnosed the qualifying patient as having a
160 debilitating medical condition;

161 (2) The physician has explained the potential risks and benefits of
162 the medical use of marijuana to the qualifying patient and, if the
163 qualifying patient is under eighteen years of age, to a parent, guardian
164 or person having legal custody of the qualifying patient;

165 (3) The written certification issued by the physician is based upon
166 the physician's professional opinion after having completed a full
167 assessment of the qualifying patient's medical history and current
168 medical condition made in the course of a bona fide physician-patient
169 relationship; and

170 (4) The physician has complied with the registration requirements
171 of subsection (a) of section 3 of this act.

172 Sec. 8. (NEW) (*Effective October 1, 2003*) Any marijuana,
173 paraphernalia relating to marijuana, or other property seized by law
174 enforcement officials from a qualifying patient or a primary caregiver
175 in connection with a claimed medical use of marijuana under sections
176 1 to 9, inclusive, of this act shall be returned to the qualifying patient or
177 the primary caregiver immediately upon the determination by a court
178 that the qualifying patient or the primary caregiver is entitled to the
179 medical use of marijuana under sections 1 to 9, inclusive, of this act, as
180 evidenced by a decision not to prosecute, a dismissal of charges or an
181 acquittal. Law enforcement officials seizing live marijuana plants as
182 evidence shall not be responsible for the care and maintenance of such
183 plants. This section does not apply to any qualifying patient or
184 primary caregiver who fails to comply with the requirements for the
185 medical use of marijuana under sections 1 to 9, inclusive, of this act.

186 Sec. 9. (NEW) (*Effective October 1, 2003*) (a) Any person who makes a
187 fraudulent representation to a law enforcement official of any fact or
188 circumstance relating to the medical use of marijuana in order to avoid
189 arrest or prosecution under chapter 420b of the general statutes shall
190 be guilty of a class C misdemeanor.

191 (b) Any person who makes a fraudulent representation to a law
192 enforcement official of any fact or circumstance relating to the issuance
193 of a written certification for the medical use of marijuana by a
194 physician to which section 7 of this act does not apply shall be guilty of
195 a class A misdemeanor.

196 Sec. 10. Subsection (a) of section 21a-246 of the general statutes is
197 repealed and the following is substituted in lieu thereof (*Effective*
198 *October 1, 2003*):

199 (a) No person within this state shall manufacture, wholesale,
200 repackage, supply, compound, mix, cultivate or grow, or by other
201 process produce or prepare, controlled substances without first

202 obtaining a license to do so from the Commissioner of Consumer
203 Protection and no person within this state shall operate a laboratory
204 for the purpose of research or analysis using controlled substances
205 without first obtaining a license to do so from the Commissioner of
206 Consumer Protection, except that such activities by pharmacists or
207 pharmacies in the filling and dispensing of prescriptions, or activities
208 incident thereto, or the dispensing or administering of controlled
209 substances by dentists, podiatrists, physicians [,] or veterinarians, or
210 other persons acting under their supervision, in the treatment of
211 patients shall not be subject to the provisions of this section, and
212 provided laboratories for instruction in dentistry, medicine, nursing,
213 pharmacy, pharmacology and pharmacognosy in institutions duly
214 licensed for such purposes in this state shall not be subject to the
215 provisions of this section except with respect to narcotic drugs and
216 schedule I and II controlled substances. Upon application of any
217 physician licensed pursuant to chapter 370, the Commissioner of
218 Consumer Protection shall, without unnecessary delay, license such
219 physician to possess and supply marijuana for [the treatment of
220 glaucoma or the side effects of chemotherapy] medical use pursuant to
221 sections 1 to 9, inclusive, of this act. No person [without] outside this
222 state shall sell or supply controlled substances within [the] this state
223 without first obtaining a license to do so from the Commissioner of
224 Consumer Protection, provided no such license shall be required of a
225 manufacturer whose principal place of business is located outside [the]
226 this state and who is registered with the federal Drug Enforcement
227 Agency or other federal agency, and who files a copy of such
228 registration with the appropriate licensing authority under this
229 chapter.

230 Sec. 11. Section 21a-253 of the general statutes is repealed and the
231 following is substituted in lieu thereof (*Effective October 1, 2003*):

232 Any [person] qualifying patient or primary caregiver, as defined
233 respectively in section 1 of this act, may possess or have under [his]
234 such qualifying patient's or primary caregiver's control a quantity of
235 marijuana less than or equal to that quantity supplied [to him]

236 pursuant to a prescription made in accordance with the provisions of
237 section 21a-249 by a physician licensed under the provisions of chapter
238 370 and further authorized by subsection (a) of section 21a-246, as
239 amended by this act, by the Commissioner of Consumer Protection to
240 possess and supply marijuana for [the treatment of glaucoma or the
241 side effects of chemotherapy] medical use pursuant to sections 1 to 9,
242 inclusive, of this act. The provisions of this section do not apply to the
243 possession or control of marijuana in a quantity that exceeds an
244 adequate supply, as defined in section 1 of this act.

This act shall take effect as follows:	
Section 1	<i>October 1, 2003</i>
Sec. 2	<i>October 1, 2003</i>
Sec. 3	<i>October 1, 2003</i>
Sec. 4	<i>October 1, 2003</i>
Sec. 5	<i>October 1, 2003</i>
Sec. 6	<i>October 1, 2003</i>
Sec. 7	<i>October 1, 2003</i>
Sec. 8	<i>October 1, 2003</i>
Sec. 9	<i>October 1, 2003</i>
Sec. 10	<i>October 1, 2003</i>
Sec. 11	<i>October 1, 2003</i>

JUD *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Type	FY 04 \$	FY 05 \$
Judicial Dept.; Correction, Dept.	GF - Cost	Potential	Potential
Judicial Dept.	GF - Potential Revenue Gain	Less than 10,000	Less than 10,000
Public Safety, Dept.	GF - None	None	None
Consumer Protection, Dept.	GF - None	None	None

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill allows Connecticut residents to cultivate and use marijuana for medical purposes when a treating physician certifies that the patient's condition would benefit from the medical use of marijuana. A potential cost could result from the crime established in the bill. No fiscal impact is anticipated due to the registration and licensure requirements in the bill.

The bill makes it a crime (punishable by up to 3 months' imprisonment and/or a \$500 fine) to lie to a law enforcement officer about using marijuana for medical purposes or about being issued a doctor's certification to use marijuana for such purposes.¹ Violators would also be subject to more severe penalties that exist under current law for possession of marijuana. The extent to which violators would be prosecuted, convicted, and sentenced under both counts (thereby lengthening an offender's time in custody) is unknown. Any revenue gain from imposed fines would be minimal.

¹ The cost of 3 months imprisonment is about \$7,600 on average. Alternatively, the average cost of monitoring by the court for 3 months can range from \$11 to \$65,

The bill requires doctors and patients to register with the Department of Public Safety (DPS) regarding the medical use of marijuana. In addition, DPS must develop regulations to manage this registration process and verify registrants to requesting law enforcement agencies. As the number of registrants is not anticipated to be significant, these requirements are not expected to result in the need for additional resources.

The bill is not expected to create a fiscal impact for the Department of Consumer Protection to license physicians.

depending upon the type of community supervision needed for offenders under the bill.

OLR Bill Analysis

sHB 5100

AN ACT CONCERNING THE MEDICAL USE OF MARIJUANA**SUMMARY:**

This bill:

1. allows patients and their primary caregivers to acquire and grow, and the patient to use, marijuana for treatment if the patient's doctor certifies that he has a debilitating condition that would be helped more than harmed by its use;
2. requires patients who use marijuana for medical purposes and their primary caregiver to register with the Department of Public Safety (DPS);
3. allows patients or caregivers who strictly comply with the bill to use medical marijuana as an affirmative defense to the state's drug-related criminal laws;
4. prohibits anyone from being arrested or prosecuted solely for being present or in the vicinity as marijuana or marijuana paraphernalia is acquired, possessed, cultivated, used, distributed, or transported for medical use;
5. requires law enforcement officers to return seized marijuana or marijuana paraphernalia intended for medical use, but does not make them responsible for the care or maintenance of seized marijuana plants;
6. makes it a misdemeanor for anyone to lie to a law enforcement officer about using marijuana for medical purposes or about being issued a doctor's certification to use marijuana for such purposes;
7. prohibits physicians from being punished for writing certifications; and
8. allows the Department of Consumer Protection (DCP) to license

physicians to prescribe, possess, and supply marijuana for the treatment of the debilitating conditions the bill covers and correspondingly allows patients and their primary caregivers to possess the prescribed quantity.

EFFECTIVE DATE: October 1, 2003

USE OF MARIJUANA FOR MEDICAL PURPOSES

The bill establishes pre-requisites for using marijuana to treat medical conditions different based on the patient's age. If age 18 or older, the patient may use marijuana if he (1) gets a signed statement (certification) from his physician that in the physician's professional opinion the patient has a debilitating medical condition that would likely be helped more than harmed by the use of marijuana, (2) and his primary caregiver together possess no more than three mature and four immature marijuana plants and one ounce of usable marijuana per mature plant, and (3) grows the marijuana in a secure indoor facility.

In addition to the above-stated conditions, for patients under age 18, the physician must explain the risks and benefits of marijuana's use to the patient and a parent, guardian, or legal custodian. The parent, guardian, or custodian must agree to allow the patient to use marijuana, serve as his primary caregiver, and control the drug's acquisition and the patient's dosage and frequency of use.

The bill does not require health insurers to cover the medical use of marijuana.

"Debilitating medical condition" means (1) cancer, glaucoma, HIV, AIDS, or treatment of such conditions; (2) a chronic or debilitating disease or medical condition, or the treatment of such conditions that causes wasting syndrome, severe pain, severe nausea, seizures, or severe and persistent muscles spasms; or (3) any other medical condition the Department of Public Health approves by regulations requested by a physician or patient with a debilitating medical condition.

Primary Caregiver

Under the bill, a patient can have only one primary caregiver at a time and the caregiver can be responsible for only one patient. A “primary caregiver” is someone age 18 or older, other than the patient’s physician, who assists the patient in his use of marijuana for medical purposes. If the patient is a minor or lacks legal capacity, the bill requires his parent, guardian, or legal custodian to act as the primary caregiver.

Prohibition on the Use of Medical Marijuana

The bill prohibits marijuana from being used medically (1) if it endangers another person’s health or well being and (2) on a motor or school bus, in any moving vehicle, at work, on school grounds, or at a public park, beach, recreation or youth center, or any other public place.

CERTIFICATION OF MARIJUANA USE

The bill makes any certification by a physician of a patient’s use of marijuana valid for one year from the date it is signed. It prohibits any physician from being punished for certifying the patient. Specifically, the physician cannot be arrested, prosecuted, or otherwise penalized, and his license to practice medicine cannot be restricted, suspended or revoked if he:

1. diagnosed the patient with a debilitating condition;
2. explained the risks and benefits of using marijuana for medicinal purposes to any such patient over age 18 or the parent, guardian, or legal custodian of any such patient under age 18;
3. based his written certification on his professional opinion after fully assessing the patient’s medical history and current medical condition in the course of a physician-patient relationship; and
4. registered the patient with DPS.

REGISTRATION

The bill establishes dual registration requirements with DPS. It requires physicians who issue written certifications to register the name and address of the patient who received the certification and any identification number or other information DPS requires. It requires

patient-recipients of the certification and their primary caregiver to register with DPS, providing it with information that sufficiently and personally identifies them. The patient or caregiver must report any change to the information they provide not later than five business days after it occurs.

The bill requires DPS to issue the patient a registration certificate that is valid for the same period as the written certification from the physician, up to one year. DPS may charge any reasonable registration fee, up to \$25.

The bill makes registration information confidential and not subject to disclosure under the Freedom of Information Act. But DPS can verify whether a patient or primary caregiver is registered for any law enforcement agency that asks and provide the agency with reasonable access to registry information for law enforcement purposes. The bill permits DPS to establish in regulations (1) a form physicians must use to certify their patients debilitating condition and the medicinal benefits of marijuana, and (2) registration requirements.

MEDICAL USE OF MARIJUANA AND CRIMINAL LAW

The bill permits patients and primary caregivers who comply with its requirements to assert that fact as an affirmative defense to any state prosecution involving marijuana or marijuana paraphernalia (see BACKGROUND).

It prohibits anyone from being arrested or prosecuted solely for being present or in the vicinity as marijuana or marijuana paraphernalia is acquired, possessed, cultivated, used, distributed, or transported for medical use.

The bill requires law enforcement agencies to return marijuana, marijuana paraphernalia, or other property seized from a patient or primary caregiver who complies with its provisions immediately after a court determines that they were entitled to have it. Under the bill, entitlement is evidenced by a prosecutor's decision to dismiss the charges or not to prosecute, or the patient or caregiver's acquittal.

The law absolves law enforcement officials of any responsibility for the care and maintenance of live marijuana plants seized as evidence.

The bill makes anyone who lies to a law enforcement officer about acquiring, possessing, cultivating, using, distributing, or transporting marijuana for medical use in order to avoid arrest or prosecution for a drug-related offense guilty of a class C misdemeanor, punishable by up to three months' imprisonment, a \$500 fine, or both. It makes anyone who lies to the officer about the issuance of a written certification for the medical use of marijuana guilty of a class A misdemeanor, punishable by up to one year in prison, a \$2,000 fine, or both.

PHYSICIANS LICENSED TO PRESCRIBE AND SUPPLY MARIJUANA

By law, the consumer protection commissioner can license physicians to possess and supply marijuana for the treatment of glaucoma or the side effects of chemotherapy. The law explicitly allows people suffering from these conditions to possess the marijuana these physicians prescribe. Although the law has been in effect for over 20 years, no physician has apparently ever applied for a license to use marijuana to treat patients.

The bill extends the conditions of licensure to include the treatment of the debilitating conditions the bill covers. And just as people with glaucoma or receiving chemotherapy, the bill allows people with the conditions it specifies to possess marijuana, up to the amount prescribed. The bill allows a prescription recipient's primary caregiver to possess the same amount.

BACKGROUND

Marijuana is a Controlled Substance

Federal law classifies marijuana as a Schedule I controlled substance. With two exceptions, the law prohibits anyone from knowingly or intentionally manufacturing, distributing, dispensing, or possessing with intent to manufacture, distribute, or dispense Schedule I drugs. The U.S. Attorney General can register manufacturers and distributors, using statutorily specified criteria. And licensed practitioners, including pharmacies, can use Schedule I substances in government-approved research projects. The penalty for violations varies depending on the amount of drug involved (21 USCA 812, 823, and 841 (a)(1)).

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 21 Nay 18