



Senate

General Assembly

File No. 403

January Session, 2005

Substitute Senate Bill No. 124

Senate, April 19, 2005

The Committee on Judiciary reported through SEN. MCDONALD of the 27th Dist., Chairperson of the Committee on the part of the Senate, 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, 2005*) As used in sections 1 to 9,
2 inclusive, of this act, unless the context otherwise requires:

3 (1) "Debilitating medical condition" means (A) cancer, glaucoma,
4 positive status for human immunodeficiency virus or acquired
5 immune deficiency syndrome, or the treatment of any such conditions,
6 including, but not limited to, chemotherapy, (B) a chronic or
7 debilitating disease or medical condition, or the treatment thereof, that
8 produces one or more of the following: (i) Cachexia or wasting
9 syndrome; (ii) severe pain; (iii) severe nausea; (iv) seizures; or (v)
10 severe and persistent muscle spasms, or (C) any other medical
11 condition approved by the Department of Public Health, pursuant to
12 regulations that the Commissioner of Public Health may adopt, in
13 accordance with chapter 54 of the general statutes, in response to a
14 request from a physician or potentially qualifying patient;

15 (2) "Marijuana" has the same meaning as provided in section 21a-
16 240 of the general statutes;

17 (3) "Medical use" means the acquisition and distribution, possession,
18 cultivation, use or transportation of marijuana or paraphernalia
19 relating to marijuana to alleviate the symptoms or effects of a
20 qualifying patient's symptoms, but does not include any such use of
21 marijuana by any person other than the qualifying patient. For the
22 purposes of this subdivision, "acquisition and distribution" means the
23 transfer of marijuana and paraphernalia relating to marijuana from the
24 primary caregiver to the qualifying patient;

25 (4) "Physician" means a person who is licensed under the provisions
26 of chapter 370 of the general statutes, but does not include a physician
27 assistant, as defined in section 20-12a of the general statutes;

28 (5) "Primary caregiver" means a person, other than the qualifying
29 patient and the qualifying patient's physician, who is eighteen years of
30 age or older and has agreed to undertake responsibility for managing
31 the well-being of the qualifying patient with respect to the medical use
32 of marijuana, provided, in the case of a qualifying patient lacking legal
33 capacity, such person shall be a parent, guardian or person having
34 legal custody of such qualifying patient;

35 (6) "Qualifying patient" means a person who is eighteen years of age
36 or older and has been diagnosed by a physician as having a
37 debilitating medical condition;

38 (7) "Usable marijuana" means the dried leaves and flowers of the
39 marijuana plant, and any mixtures or preparations thereof, that are
40 appropriate for the medical use of marijuana, but does not include the
41 seeds, stalks and roots of the plant; and

42 (8) "Written certification" means a statement signed by the
43 qualifying patient's physician stating that, in such physician's
44 professional opinion, the qualifying patient has a debilitating medical
45 condition and the potential benefits of the medical use of marijuana

46 would likely outweigh the health risks of such use to the qualifying
47 patient.

48 Sec. 2. (NEW) (*Effective October 1, 2005*) (a) A qualifying patient shall
49 not be subject to arrest or prosecution, penalized in any manner,
50 including, but not limited to, being subject to any civil penalty, or
51 denied any right or privilege, including, but not limited to, being
52 subject to any disciplinary action by a professional licensing board, for
53 the medical use of marijuana if:

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

56 (2) The qualifying patient's physician has issued a written
57 certification to the qualifying patient for the medical use of marijuana
58 after the physician has prescribed, or determined it is not in the best
59 interest of the patient to prescribe, prescription drugs to address the
60 symptoms for which the certification is being issued;

61 (3) The combined amount of marijuana possessed by the qualifying
62 patient and the primary caregiver for medical use does not exceed five
63 marijuana plants and one ounce of usable marijuana; and

64 (4) The cultivation of such marijuana occurs in a secure indoor
65 facility.

66 (b) Subsection (a) of this section does not apply to:

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

69 (2) The medical use of marijuana (A) in a motor bus or a school bus,
70 as defined respectively in section 14-1 of the general statutes, or in any
71 moving vehicle, (B) in the workplace, (C) on any school grounds, (D) at
72 any public beach, park, recreation center or youth center or any other
73 place open to the public, or (E) in the presence of a person under the
74 age of eighteen. For the purposes of this subdivision, "presence" means
75 within the direct line of sight of the medical use of marijuana or

76 exposure to second-hand marijuana smoke, or both.

77 (c) A qualifying patient shall have not more than one primary
78 caregiver at any time. A primary caregiver may not be responsible for
79 the care of more than one qualifying patient at any time. A primary
80 caregiver who is registered in accordance with subsection (a) of section
81 3 of this act shall not be subject to arrest or prosecution, penalized in
82 any manner, including, but not limited to, being subject to any civil
83 penalty, or denied any right or privilege, including, but not limited to,
84 being subject to any disciplinary action by a professional licensing
85 board, for the acquisition, distribution, possession, cultivation or
86 transportation of marijuana or paraphernalia related to marijuana on
87 behalf of a qualifying patient, provided the amount of any marijuana
88 so acquired, distributed, possessed, cultivated or transported, together
89 with the combined amount of marijuana possessed by the qualifying
90 patient and the primary caregiver, shall not exceed five marijuana
91 plants and one ounce of usable marijuana. For the purposes of this
92 subsection, "distribution" or "distributed" means the transfer of
93 marijuana and paraphernalia related to marijuana from the primary
94 caregiver to the qualifying patient.

95 (d) Any written certification for the medical use of marijuana issued
96 by a physician under subdivision (2) of subsection (a) of this section
97 shall be valid for a period not to exceed one year from the date such
98 written certification is signed by the physician.

99 Sec. 3. (NEW) (*Effective October 1, 2005*) (a) Each qualifying patient
100 who is issued a written certification for the medical use of marijuana
101 under subdivision (2) of subsection (a) of section 2 of this act, and the
102 primary caregiver of such qualifying patient, shall register with the
103 Department of Consumer Protection not later than five business days
104 after the issuance of such written certification. Such registration shall
105 be effective until the expiration of the written certification issued by
106 the physician. The qualifying patient and the primary caregiver shall
107 provide sufficient identifying information, as determined by the
108 department, to establish the personal identity of the qualifying patient

109 and the primary caregiver. The qualifying patient or the primary
110 caregiver shall report any change in such information to the
111 department not later than five business days after such change. The
112 department shall issue a registration certificate to the qualifying
113 patient and to the primary caregiver and may charge a reasonable fee,
114 not to exceed twenty-five dollars, for a registration under this
115 subsection.

116 (b) Upon the request of a law enforcement agency, the Department
117 of Consumer Protection shall verify whether a qualifying patient or a
118 primary caregiver has registered with the department in accordance
119 with subsection (a) of this section and may provide reasonable access
120 to registry information obtained under this section for law
121 enforcement purposes. Except as provided in this subsection,
122 information obtained under this section shall be confidential and shall
123 not be subject to disclosure under the Freedom of Information Act, as
124 defined in section 1-200 of the general statutes.

125 Sec. 4. (NEW) (*Effective October 1, 2005*) (a) The Commissioner of
126 Consumer Protection may adopt regulations, in accordance with
127 chapter 54 of the general statutes, to establish (1) a standard form for
128 written certifications for the medical use of marijuana issued by
129 physicians under subdivision (2) of subsection (a) of section 2 of this
130 act, and (2) procedures for registrations under section 3 of this act.

131 (b) The Commissioner of Consumer Protection shall adopt
132 regulations, in accordance with chapter 54 of the general statutes, to
133 establish a reasonable fee to be collected from each qualifying patient
134 to whom a written certification for the medical use of marijuana is
135 issued under subdivision (2) of subsection (a) of section 2 of this act,
136 for the purpose of offsetting the direct and indirect costs of
137 administering the provisions of sections 1 to 9, inclusive, of this act.
138 The commissioner shall collect such fee at the time the qualifying
139 patient registers with the Department of Consumer Protection under
140 subsection (a) of section 3 of this act. Such fee shall be in addition to
141 any registration fee that may be charged under said subsection. The

142 fees required to be collected by the commissioner from qualifying
143 patients under this subsection shall be paid to the State Treasurer and
144 credited to the account established pursuant to section 10 of this act.

145 Sec. 5. (NEW) (*Effective October 1, 2005*) Nothing in sections 1 to 9,
146 inclusive, of this act shall be construed to require health insurance
147 coverage for the medical use of marijuana.

148 Sec. 6. (NEW) (*Effective October 1, 2005*) (a) A qualifying patient or a
149 primary caregiver may assert the medical use of marijuana as an
150 affirmative defense to any prosecution involving marijuana, or
151 paraphernalia relating to marijuana, under chapter 420b of the general
152 statutes or any other provision of the general statutes, provided such
153 qualifying patient or such primary caregiver has strictly complied with
154 the requirements of sections 1 to 9, inclusive, of this act.

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

158 Sec. 7. (NEW) (*Effective October 1, 2005*) A physician shall not be
159 subject to arrest or prosecution, penalized in any manner, including,
160 but not limited to, being subject to any civil penalty, or denied any
161 right or privilege, including, but not limited to, being subject to any
162 disciplinary action by the Connecticut Medical Examining Board or
163 other professional licensing board, for providing a written certification
164 for the medical use of marijuana under subdivision (2) of subsection
165 (a) of section 2 of this act if:

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

168 (2) The physician has explained the potential risks and benefits of
169 the medical use of marijuana to the qualifying patient and, if the
170 qualifying patient lacks legal capacity, to a parent, guardian or person
171 having legal custody of the qualifying patient; and

172 (3) The written certification issued by the physician is based upon

173 the physician's professional opinion after having completed a full
174 assessment of the qualifying patient's medical history and current
175 medical condition made in the course of a bona fide physician-patient
176 relationship.

177 Sec. 8. (NEW) (*Effective October 1, 2005*) Any marijuana,
178 paraphernalia relating to marijuana, or other property seized by law
179 enforcement officials from a qualifying patient or a primary caregiver
180 in connection with a claimed medical use of marijuana under sections
181 1 to 9, inclusive, of this act shall be returned to the qualifying patient or
182 the primary caregiver immediately upon the determination by a court
183 that the qualifying patient or the primary caregiver is entitled to the
184 medical use of marijuana under sections 1 to 9, inclusive, of this act, as
185 evidenced by a decision not to prosecute, a dismissal of charges or an
186 acquittal. Law enforcement officials seizing live marijuana plants as
187 evidence shall not be responsible for the care and maintenance of such
188 plants. This section does not apply to any qualifying patient or
189 primary caregiver who fails to comply with the requirements for the
190 medical use of marijuana under sections 1 to 9, inclusive, of this act.

191 Sec. 9. (NEW) (*Effective October 1, 2005*) (a) Any person who makes a
192 fraudulent representation to a law enforcement official of any fact or
193 circumstance relating to the medical use of marijuana in order to avoid
194 arrest or prosecution under chapter 420b of the general statutes or any
195 other provision of the general statutes shall be guilty of a class C
196 misdemeanor.

197 (b) Any person who makes a fraudulent representation to a law
198 enforcement official of any fact or circumstance relating to the
199 issuance, contents or validity of a written certification for the medical
200 use of marijuana, or a document purporting to be such written
201 certification, shall be guilty of a class A misdemeanor.

202 Sec. 10. (NEW) (*Effective July 1, 2005*) There is established a medical
203 marijuana administration account which shall be a separate,
204 nonlapsing account within the General Fund. The account shall
205 contain the fees collected pursuant to subsection (b) of section 4 of this

206 act, and any other moneys required by law to be deposited in the
207 account, and shall be held in trust separate and apart from all other
208 moneys, funds and accounts. Any balance remaining in the account at
209 the end of any fiscal year shall be carried forward in the account for
210 the fiscal year next succeeding. Investment earnings credited to the
211 account shall become part of the account. Amounts in the account shall
212 be expended only pursuant to appropriation by the General Assembly
213 for the purpose of providing funds for administering the provisions of
214 sections 1 to 9, inclusive, of this act.

215 Sec. 11. Subsection (a) of section 21a-246 of the general statutes is
216 repealed and the following is substituted in lieu thereof (*Effective*
217 *October 1, 2005*):

218 (a) No person within this state shall manufacture, wholesale,
219 repackage, supply, compound, mix, cultivate or grow, or by other
220 process produce or prepare, controlled substances without first
221 obtaining a license to do so from the Commissioner of Consumer
222 Protection and no person within this state shall operate a laboratory
223 for the purpose of research or analysis using controlled substances
224 without first obtaining a license to do so from the Commissioner of
225 Consumer Protection, except that such activities by pharmacists or
226 pharmacies in the filling and dispensing of prescriptions or activities
227 incident thereto, or the dispensing or administering of controlled
228 substances by dentists, podiatrists, physicians [,] or veterinarians, or
229 other persons acting under their supervision, in the treatment of
230 patients shall not be subject to the provisions of this section, and
231 provided laboratories for instruction in dentistry, medicine, nursing,
232 pharmacy, pharmacology and pharmacognosy in institutions duly
233 licensed for such purposes in this state shall not be subject to the
234 provisions of this section except with respect to narcotic drugs and
235 schedule I and II controlled substances. Upon application of any
236 physician licensed pursuant to chapter 370, the Commissioner of
237 Consumer Protection shall, without unnecessary delay, license such
238 physician to possess and supply marijuana for [the treatment of
239 glaucoma or the side effects of chemotherapy] medical use pursuant to

240 sections 1 to 9, inclusive, of this act. No person [without] outside this
 241 state shall sell or supply controlled substances within [the] this state
 242 without first obtaining a license to do so from the Commissioner of
 243 Consumer Protection, provided no such license shall be required of a
 244 manufacturer whose principal place of business is located outside [the]
 245 this state and who is registered with the federal Drug Enforcement
 246 [Agency] Administration or other federal agency, and who files a copy
 247 of such registration with the appropriate licensing authority under this
 248 chapter.

249 Sec. 12. Section 21a-253 of the general statutes is repealed and the
 250 following is substituted in lieu thereof (*Effective October 1, 2005*):

251 Any [person] qualifying patient or primary caregiver, as defined
 252 respectively in section 1 of this act, may possess or have under [his]
 253 such qualifying patient's or primary caregiver's control a quantity of
 254 marijuana less than or equal to that quantity supplied [to him]
 255 pursuant to a prescription made in accordance with the provisions of
 256 section 21a-249 by a physician licensed under the provisions of chapter
 257 370 and further authorized by subsection (a) of section 21a-246, as
 258 amended by this act, by the Commissioner of Consumer Protection to
 259 possess and supply marijuana for [the treatment of glaucoma or the
 260 side effects of chemotherapy] medical use pursuant to sections 1 to 9,
 261 inclusive, of this act. The provisions of this section do not apply to the
 262 possession or control of marijuana in a quantity that exceeds the
 263 amount permitted for medical use pursuant to sections 1 to 9,
 264 inclusive, of this act.

This act shall take effect as follows and shall amend the following sections:

Section 1	<i>October 1, 2005</i>	New section
Sec. 2	<i>October 1, 2005</i>	New section
Sec. 3	<i>October 1, 2005</i>	New section
Sec. 4	<i>October 1, 2005</i>	New section
Sec. 5	<i>October 1, 2005</i>	New section
Sec. 6	<i>October 1, 2005</i>	New section
Sec. 7	<i>October 1, 2005</i>	New section

Sec. 8	<i>October 1, 2005</i>	New section
Sec. 9	<i>October 1, 2005</i>	New section
Sec. 10	<i>July 1, 2005</i>	New section
Sec. 11	<i>October 1, 2005</i>	21a-246(a)
Sec. 12	<i>October 1, 2005</i>	21a-253

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-Effect	FY 06 \$	FY 07 \$
Consumer Protection, Dept.	GF - Cost	203,933	191,853
Consumer Protection, Dept.	GF - Revenue Gain	At least 204,000	At least 192,000
Comptroller Misc. Accounts (Fringe Benefits)	GF - Cost	44,300	90,100
Judicial Dept.	GF - Revenue Gain	Minimal	Minimal
Judicial Department (Probation); Correction, Dept.	GF - Cost	Potential	Potential

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill requires patients and their primary caregivers to register with the Department of Consumer Protection (DCP) regarding the medical use of marijuana. The maximum fee that DCP may charge for the registration is \$25. While it is uncertain the number of patients and caregivers that would register for the medical use of marijuana, this would result in a revenue gain.

The bill also requires patients to pay an additional fee to offset the direct and indirect costs incurred as a result of the bill. Therefore, DCP would have to charge additional fees in the aggregate of approximately \$248,236 in FY 06 and \$281,946 in FY 07 in order to offset the costs associated with the bill as described below. (Since it is uncertain how many patients will register for the medical use of marijuana, the dollar amount of the required assessment is unknown.) The bill establishes the "Medical Marijuana Administration Account" within the General Fund for this purpose.

The increased accessibility of marijuana would require additional

safeguards for marijuana handling, storage, and maintenance within the state. As a result, two Drug Control Agents, with an annual salary of \$66,695 each, would be needed in the Department of Consumer Protection to advise manufacturers, wholesalers, laboratory licensees and health care professionals regarding safeguards and standards required by state law and regulations for controlled substances.¹ One Secretary, with an annual salary of \$33,727, would also be needed to facilitate the licensing of physicians and the registration of patients and primary caregivers. Additionally, DCP would incur costs of \$36,816 in FY 06 and \$24,736 in FY 07 in Other Expenses and Equipment in order to implement the provisions of the bill.

The bill makes it a crime 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. To the extent that this new crime increase the likelihood that offenders would be prosecuted or receive harsher penalties, a potential revenue gain from criminal fines and potential cost for incarceration and/or probation supervision in the community exist. It is anticipated that relatively few fines would be imposed on an annual basis, and, consequently, any revenue gain under the bill is expected to be minimal. On average, it costs the state \$2,150 to supervise an offender on probation in the community as compared to \$35,040 to incarcerate the offender (note that both figures include fringe benefits).

¹ The fringe benefit costs for state employees are budgeted centrally in the Miscellaneous Accounts administered by the Comptroller. The estimated fringe benefit reimbursement rate as a percentage of payroll is 53.91%, effective July 1, 2004. However, first year fringe benefit costs for new positions do not include pension costs lowering the rate to 22.65%. The state's pension contribution is based upon the prior year's certification by the actuary for the State Employees Retirement System.

OLR Bill Analysis

sSB 124

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

This bill allows the Department of Consumer Protection (DCP) to license physicians to prescribe, possess, and supply marijuana for the treatment of various debilitating conditions, rather than just glaucoma and the effects of chemotherapy.

It allows a physician to certify a patient's use of marijuana after determining that an adult patient has a debilitating condition and could potentially benefit from the use of medical marijuana.

It allows people suffering from these conditions and their primary caregivers to possess the prescribed quantity of marijuana to treat the conditions.

EFFECTIVE DATE: October 1, 2005, except for the provision establishing the Medical Marijuana Administration Account, which is effective July 1, 2005.

USE OF MARIJUANA FOR MEDICAL PURPOSES

By law, the DCP 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.

The bill extends the conditions of licensure to include the treatment of adults suffering from (1) cancer, HIV, AIDS, or the side effects of treatment for such conditions; (2) a chronic or debilitating disease or medical condition, or the effects of treatment for such conditions, that causes wasting syndrome, severe pain, severe nausea, seizures, or severe and persistent muscles spasms; or (3) any other medical condition that a physician or patient with a debilitating condition requests and the DPH approves through regulations. And just as with

people with glaucoma or receiving chemotherapy, the bill allows people with the debilitating conditions listed above to possess marijuana, up to the amount permitted for medical use.

The bill allows a patient's primary caregiver to possess the same amount. The caregiver must be at least age 18 and someone other than the patient's doctor who assists the patient in his use of marijuana for medical purposes. If the patient lacks legal capacity, the caregiver must be his parent, guardian, or legal custodian. The bill limits patients to one caregiver at a time and caregivers to only one patient.

CERTIFICATION OF MARIJUANA USE

Under the bill, a physician may certify a patient's use of marijuana only after he has determined that the patient is over 18 and has a debilitating condition (i.e., the patient is a qualifying patient) and the potential benefits of medical marijuana would likely outweigh its health risks. The bill makes the certification valid for one year from the date it is signed.

The bill permits DCP to establish in regulations a form physicians must use to certify a patient's medical use of marijuana. "Medical use" means the acquisition and distribution, possession, growth, use, or transportation of marijuana or marijuana paraphernalia to treat the symptoms or effects of a qualifying patient's symptoms. "Acquisition and distribution" means the transfer of marijuana and marijuana paraphernalia from the primary caregiver to the qualifying patient.

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

REGISTRATION

The bill requires patient-recipients of the certification and their primary caregiver to register with DCP within five business days after they receive the certification. They must give the department information that sufficiently and personally identifies them and report any change in the information within five business days after it occurs.

The bill requires DCP to issue the patient and the primary caregiver a registration certificate that is valid for the same period as the written certification from the physician, up to one year. DCP 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 DCP can verify for any law enforcement agency that asks whether a patient or primary caregiver is registered and provide the agency with reasonable access to registry information for law enforcement purposes.

The bill permits DCP to establish registration procedures in regulations. It requires the department to establish in regulations a reasonable fee that helps it offset direct and indirect costs associated with administering the medical use of marijuana. Patients must pay the fee, which is in addition to any registration fee, when they register. The fees must be paid to the state treasurer and credited to the Medical Marijuana Administration Account.

MEDICAL MARIJUANA ADMINISTRATION ACCOUNT

The bill establishes a separate, nonlapsing Medical Marijuana Administration Account within the General Fund. The account consists of the fees DCP collects for medical marijuana registration and administration, investment earnings, and any other moneys the law requires to be deposited in it. The legislature can only appropriate money in the account for medical marijuana administration. Any money remaining in the account at the end of any fiscal year must be carried forward to the next year.

PUNISHMENT FOR MARIJUANA CERTIFICATION, USE, AND POSSESSION

Physician

The bill prohibits any physician from being arrested, prosecuted, or otherwise punished, including being denied any right or privilege, or being disciplined by the Connecticut Medical Examining Board or any other professional licensing board, for writing a certification for marijuana if he:

1. diagnosed a qualifying patient with a debilitating condition;
2. explained the risks and benefits of using marijuana for medicinal purposes to any such patient or the parent, guardian, or legal custodian of any such patient who lacks legal capacity; and

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.

Qualifying Patients

The bill prohibits qualifying patients from being arrested, prosecuted, denied any right or privilege, or otherwise punished for using marijuana if:

1. they are diagnosed with a debilitating condition;
2. their physician has issued a written certification for the patient's medical use of marijuana after prescribing, or determining it is against the patients' best interest to prescribe, prescription drugs to address the symptoms the marijuana is supposed to treat;
3. the combined amount possessed by the patient and his primary caregiver does not exceed five marijuana plants and one ounce of usable marijuana (see definition under *Primary Caregiver*); and
4. the marijuana is cultivated in a secure indoor facility.

The protection against punishment does not apply if a patient uses marijuana:

1. in a way that 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; or
3. within the direct line of sight of anyone under age 18 or in any way that exposes that person to second-hand marijuana smoke, or both.

Primary Caregiver

The bill prohibits registered, primary caregivers from being arrested,

prosecuted, denied any right or privilege, or otherwise punished for acquiring, distributing, possessing, growing, or transporting a small amount of marijuana or marijuana paraphernalia for a qualifying patient. The amount of marijuana cannot exceed five plants and one ounce of usable marijuana (i.e., dried marijuana leaves and flowers or preparation or mixture of flowers and leaves, minus the seeds, stalks, and roots).

The protection against punishment for distribution applies only when the drug or paraphernalia is transferred from the caregiver to the patient.

MEDICAL USE OF MARIJUANA AND CRIMINAL PROCEDURE

The bill permits patients and primary caregivers who comply with its requirements to assert that fact as an affirmative defense to (i.e., a way to avoid) any state prosecution involving marijuana or marijuana paraphernalia. The bill 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, contents, or validity of a (1) written certification for the medical use of marijuana or (2) document purporting to be a written certification guilty of a class A misdemeanor, punishable by up to one year in prison, a \$2,000 fine, or both.

BACKGROUND***Marijuana is a Controlled Substance***

Federal law classifies marijuana as a Schedule I controlled substance. With one exception, the law prohibits anyone from knowingly or intentionally manufacturing, distributing, dispensing, or possessing with intent to manufacture, distribute, or dispense Schedule I drugs. Licensed practitioners, including pharmacies, can use Schedule I substances in government-approved research projects. The penalty for violations varies depending on the amount of drugs involved (21 USCA §§ 812, 823, and 841 (a)(1)).

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 26 Nay 13