



House of Representatives

General Assembly

File No. 313

February Session, 2012

House Bill No. 5389

House of Representatives, April 10, 2012

The Committee on Judiciary reported through REP. FOX, G. of the 146th Dist., Chairperson of the Committee on the part of the House, that the bill ought to pass.

AN ACT CONCERNING THE PALLIATIVE USE OF MARIJUANA.

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

1 Section 1. (NEW) (*Effective October 1, 2012*) As used in sections 1 to
2 15, inclusive, of this act, unless the context otherwise requires:

3 (1) "Cultivation" includes planting, propagating, cultivating,
4 growing and harvesting;

5 (2) "Debilitating medical condition" means cancer, glaucoma,
6 positive status for human immunodeficiency virus or acquired
7 immune deficiency syndrome, Parkinson's disease, multiple sclerosis,
8 damage to the nervous tissue of the spinal cord with objective
9 neurological indication of intractable spasticity, epilepsy, cachexia,
10 wasting syndrome, Crohn's disease, Posttraumatic Stress Disorder, or
11 any other medical condition, medical treatment or disease approved
12 by the Department of Consumer Protection pursuant to regulations
13 adopted under section 14 of this act;

14 (3) "Licensed dispensary" or "dispensary" means a pharmacist
15 licensed pursuant to chapter 400j of the general statutes, who the
16 Department of Consumer Protection determines to be qualified to
17 acquire, possess, distribute and dispense marijuana pursuant to
18 sections 1 to 15, inclusive, of this act and who is licensed as a
19 dispensary by the Department of Consumer Protection pursuant to
20 section 9 of this act;

21 (4) "Licensed producer" or "producer" means a person (A) with
22 appropriate expertise in agriculture, organized for the purpose of
23 cultivating marijuana for palliative use in this state and selling,
24 delivering, transporting or distributing marijuana for palliative use
25 only to licensed dispensaries under sections 1 to 15, inclusive, of this
26 act, and (B) that is licensed as a producer by the Department of
27 Consumer Protection pursuant to section 10 of this act;

28 (5) "Marijuana" has the same meaning as provided in section 21a-
29 240 of the general statutes;

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

38 (7) "Paraphernalia" means drug paraphernalia, as defined in section
39 21a-240 of the general statutes;

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

43 (9) "Primary caregiver" means a person, other than the qualifying
44 patient and the qualifying patient's physician, who is eighteen years of

45 age or older and has agreed to undertake responsibility for managing
46 the well-being of the qualifying patient with respect to the palliative
47 use of marijuana, provided (A) in the case of a qualifying patient
48 lacking legal capacity, such person shall be a parent, guardian or
49 person having legal custody of such qualifying patient, and (B) the
50 need for such person shall be evaluated by the qualifying patient's
51 physician and such need shall be documented in the written
52 certification;

53 (10) "Qualifying patient" means a person who is eighteen years of
54 age or older, is a resident of Connecticut and has been diagnosed by a
55 physician as having a debilitating medical condition. "Qualifying
56 patient" does not include an inmate confined in a correctional facility
57 of the Department of Correction;

58 (11) "Usable marijuana" means the dried leaves and flowers of the
59 marijuana plant, and any mixtures or preparations thereof, that are
60 appropriate for the palliative use of marijuana, but does not include
61 the seeds, stalks and roots of the plant; and

62 (12) "Written certification" means a statement signed and dated by
63 the qualifying patient's physician stating that, in such physician's
64 professional opinion, the qualifying patient has a debilitating medical
65 condition and the potential benefits of the palliative use of marijuana
66 would likely outweigh the health risks of such use to the qualifying
67 patient.

68 Sec. 2. (NEW) (*Effective October 1, 2012*) (a) A qualifying patient shall
69 not be subject to arrest or prosecution, penalized in any manner,
70 including, but not limited to, being subject to any civil penalty, or
71 denied any right or privilege, including, but not limited to, being
72 subject to any disciplinary action by a professional licensing board, for
73 the palliative use of marijuana if:

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

76 (2) The qualifying patient's physician has issued a written
77 certification to the qualifying patient for the palliative use of marijuana
78 after the physician has prescribed, or determined it is not in the best
79 interest of the patient to prescribe, prescription drugs to address the
80 symptoms or effects for which the certification is being issued; and

81 (3) The combined amount of marijuana possessed by the qualifying
82 patient and the primary caregiver for palliative use does not exceed an
83 amount of usable marijuana reasonably necessary to ensure
84 uninterrupted availability for a period of one month, as determined by
85 the Department of Consumer Protection pursuant to regulations
86 adopted under section 14 of this act.

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

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

90 (2) The ingestion of marijuana (A) in a motor bus or a school bus, as
91 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 any public or private school, dormitory, college or university property,
94 (D) at any public beach, park, recreation center or youth center or any
95 other public place, or (E) in the presence of a person under the age of
96 eighteen. For the purposes of this subdivision, (i) "presence" means
97 within the direct line of sight of the palliative use of marijuana or
98 exposure to second-hand marijuana smoke, or both; (ii) "public place"
99 means any area that is used or held out for use by the public whether
100 owned or operated by public or private interests; and (iii) "vehicle"
101 means a vehicle, as defined in section 14-1 of the general statutes.

102 (c) A qualifying patient shall have not more than one primary
103 caregiver at any time. No person who has been convicted of a violation
104 of any law pertaining to the illegal manufacture, sale or distribution of
105 a controlled substance shall serve as a primary caregiver for a
106 qualifying patient. A primary caregiver may not be responsible for the
107 care of more than one qualifying patient at any time, except that a

108 primary caregiver may be responsible for the care of more than one
109 qualifying patient if the primary caregiver and each qualifying patient
110 have a parental, guardianship, conservatorship or sibling relationship.
111 A primary caregiver who is registered in accordance with subsection
112 (a) of section 3 of this act shall not be subject to arrest or prosecution,
113 penalized in any manner, including, but not limited to, being subject to
114 any civil penalty, or denied any right or privilege, including, but not
115 limited to, being subject to any disciplinary action by a professional
116 licensing board, for the acquisition, distribution, possession or
117 transportation of marijuana or paraphernalia related to marijuana on
118 behalf of a qualifying patient, provided (1) the amount of any
119 marijuana so acquired, distributed, possessed or transported, together
120 with the combined amount of usable marijuana possessed by the
121 qualifying patient and the primary caregiver, does not exceed an
122 amount reasonably necessary to ensure uninterrupted availability for a
123 period of one month, as determined by the Department of Consumer
124 Protection pursuant to regulations adopted under section 14 of this act,
125 and (2) such amount is obtained solely within this state from a licensed
126 dispensary. For the purposes of this subsection, "distribution" or
127 "distributed" means the transfer of marijuana and paraphernalia
128 related to marijuana from the primary caregiver to the qualifying
129 patient.

130 (d) Any written certification for the palliative use of marijuana
131 issued by a physician under subdivision (2) of subsection (a) of this
132 section shall be valid for a period not to exceed one year from the date
133 such written certification is signed and dated by the physician. Not
134 later than ten calendar days after the expiration of such period, or at
135 any time before the expiration of such period should the qualifying
136 patient no longer wish to possess marijuana for palliative use, the
137 qualifying patient or the primary caregiver shall destroy all usable
138 marijuana possessed by the qualifying patient and the primary
139 caregiver for palliative use.

140 Sec. 3. (NEW) (*Effective October 1, 2012*) (a) Each qualifying patient
141 who is issued a written certification for the palliative use of marijuana

142 under subdivision (2) of subsection (a) of section 2 of this act, and the
143 primary caregiver of such qualifying patient, shall register with the
144 Department of Consumer Protection. Such registration shall be
145 effective from the date the Department of Consumer Protection issues
146 a certificate of registration until the expiration of the written
147 certification issued by the physician. The qualifying patient and the
148 primary caregiver shall provide sufficient identifying information, as
149 determined by the department, to establish the personal identity of the
150 qualifying patient and the primary caregiver. The qualifying patient or
151 the primary caregiver shall report any change in such information to
152 the department not later than five business days after such change. The
153 department shall issue a registration certificate to the qualifying
154 patient and to the primary caregiver and may charge a reasonable fee,
155 not to exceed twenty-five dollars, for each registration certificate
156 issued under this subsection. Any registration fees collected by the
157 department under this subsection shall be paid to the State Treasurer
158 and credited to the account established pursuant to section 18 of this
159 act.

160 (b) Information obtained under this section shall be confidential and
161 shall not be subject to disclosure under the Freedom of Information
162 Act, as defined in section 1-200 of the general statutes, except that
163 reasonable access to registry information obtained under this section
164 and temporary registration information obtained under section 15 of
165 this act shall be provided to: (1) State agencies, federal agencies and
166 local law enforcement agencies for the purpose of investigating or
167 prosecuting a violation of law; (2) physicians and pharmacists for the
168 purpose of providing patient care and drug therapy management and
169 monitoring controlled substances obtained by the patient; (3) public or
170 private entities for research or educational purposes, provided no
171 individually identifiable health information may be disclosed; (4) a
172 licensed dispensary for the purpose of complying with sections 1 to 15,
173 inclusive, of this act; or (5) a qualifying patient, but only with respect
174 to information related to such qualifying patient or such qualifying
175 patient's primary caregiver, or a primary caregiver, but only with
176 respect to information related to such primary caregiver's qualifying

177 patient.

178 Sec. 4. (NEW) (*Effective October 1, 2012*) Nothing in sections 1 to 16,
179 inclusive, of this act shall be construed to require health insurance
180 coverage for the palliative use of marijuana.

181 Sec. 5. (NEW) (*Effective October 1, 2012*) (a) A qualifying patient or a
182 primary caregiver may assert the palliative use of marijuana as an
183 affirmative defense to any prosecution involving marijuana, or
184 paraphernalia relating to marijuana, under chapter 420b of the general
185 statutes or any other provision of the general statutes, provided such
186 qualifying patient or such primary caregiver has strictly complied with
187 the requirements of sections 1 to 15, inclusive, of this act.

188 (b) No person shall be subject to arrest or prosecution solely for
189 being in the presence or vicinity of the palliative use of marijuana as
190 permitted under sections 1 to 15, inclusive, of this act.

191 Sec. 6. (NEW) (*Effective October 1, 2012*) A physician shall not be
192 subject to arrest or prosecution, penalized in any manner, including,
193 but not limited to, being subject to any civil penalty, or denied any
194 right or privilege, including, but not limited to, being subject to any
195 disciplinary action by the Connecticut Medical Examining Board or
196 other professional licensing board, for providing a written certification
197 for the palliative use of marijuana under subdivision (2) of subsection
198 (a) of section 2 of this act if:

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

201 (2) The physician has explained the potential risks and benefits of
202 the palliative use of marijuana to the qualifying patient and, if the
203 qualifying patient lacks legal capacity, to a parent, guardian or person
204 having legal custody of the qualifying patient;

205 (3) The written certification issued by the physician is based upon
206 the physician's professional opinion after having completed a
207 medically reasonable assessment of the qualifying patient's medical

208 history and current medical condition made in the course of a bona
209 fide physician-patient relationship; and

210 (4) The physician has no financial interest in a dispensary licensed
211 under section 9 of this act or a producer licensed under section 10 of
212 this act.

213 Sec. 7. (NEW) (*Effective October 1, 2012*) Any marijuana,
214 paraphernalia relating to marijuana, or other property seized by law
215 enforcement officials from a qualifying patient or a primary caregiver
216 in connection with a claimed palliative use of marijuana under sections
217 1 to 15, inclusive, of this act shall be returned to the qualifying patient
218 or the primary caregiver immediately upon the determination by a
219 court that the qualifying patient or the primary caregiver is entitled to
220 the palliative use of marijuana under sections 1 to 15, inclusive, of this
221 act, as evidenced by a decision not to prosecute, a dismissal of charges
222 or an acquittal. This section does not apply to any qualifying patient or
223 primary caregiver who fails to comply with the requirements for the
224 palliative use of marijuana under sections 1 to 15, inclusive, of this act.

225 Sec. 8. (NEW) (*Effective October 1, 2012*) (a) Any person who makes a
226 fraudulent representation to a law enforcement official of any fact or
227 circumstance relating to the palliative use of marijuana in order to
228 avoid arrest or prosecution under chapter 420b of the general statutes
229 or any other provision of the general statutes shall be guilty of a class
230 C misdemeanor.

231 (b) Any person who makes a fraudulent representation to a law
232 enforcement official of any fact or circumstance relating to the
233 issuance, contents or validity of a written certification for the palliative
234 use of marijuana, or a document purporting to be such a written
235 certification, shall be guilty of a class A misdemeanor.

236 Sec. 9. (NEW) (*Effective from passage*) (a) No person may act as a
237 dispensary or represent that such person is a licensed dispensary
238 unless such person has obtained a license from the Commissioner of
239 Consumer Protection pursuant to this section.

240 (b) The Commissioner of Consumer Protection shall determine the
241 number of dispensaries appropriate to meet the needs of qualifying
242 patients in this state and shall adopt regulations, in accordance with
243 chapter 54 of the general statutes, to provide for the licensure and
244 standards for dispensaries in this state and specify the maximum
245 number of dispensaries that may be licensed in this state. On and after
246 the effective date of such regulations, the commissioner may license
247 any person who applies for a license in accordance with such
248 regulations, provided (1) the commissioner deems such applicant
249 qualified to acquire, possess, distribute and dispense marijuana
250 pursuant to sections 1 to 15, inclusive, of this act, (2) the applicant is a
251 pharmacist licensed under chapter 400j of the general statutes, and (3)
252 the number of dispensary licenses issued does not exceed the number
253 appropriate to meet the needs of qualifying patients in this state, as
254 determined by the commissioner pursuant to this subsection. At a
255 minimum, such regulations shall:

256 (A) Indicate the maximum number of dispensaries that may be
257 licensed in this state;

258 (B) Indicate that only a pharmacist licensed under chapter 400j of
259 the general statutes may apply for or receive a dispensary license;

260 (C) Provide that no marijuana may be dispensed from, obtained
261 from or transferred to a location outside of this state;

262 (D) Establish a licensing fee and renewal fee for each licensed
263 dispensary, provided such fees shall not be less than the amount
264 necessary to cover the direct and indirect cost of licensing and
265 regulating dispensaries pursuant to sections 1 to 15, inclusive, of this
266 act;

267 (E) Provide for renewal of such dispensary licenses at least every
268 two years;

269 (F) Describe areas in this state where licensed dispensaries may not
270 be located, after considering the criteria for the location of retail liquor

271 permit premises set forth in subsection (a) of section 30-46 of the
272 general statutes;

273 (G) Establish health, safety and security requirements for licensed
274 dispensaries, which may include, but need not be limited to: (i) The
275 ability to maintain adequate control against the diversion, theft and
276 loss of marijuana acquired or possessed by the licensed dispensary,
277 and (ii) the ability to maintain the knowledge, understanding,
278 judgment, procedures, security controls and ethics to assure optimal
279 safety and accuracy in the distributing, dispensing and use of
280 palliative marijuana;

281 (H) Establish standards and procedures for revocation, suspension,
282 summary suspension and nonrenewal of dispensary licenses, provided
283 such standards and procedures are consistent with the provisions of
284 subsection (c) of section 4-182 of the general statutes; and

285 (I) Establish other licensing, renewal and operational standards
286 deemed necessary by the commissioner.

287 (c) Any fees collected by the Department of Consumer Protection
288 under this section shall be paid to the State Treasurer and credited to
289 the account established pursuant to section 18 of this act.

290 Sec. 10. (NEW) (*Effective from passage*) (a) No person may act as a
291 producer or represent that such person is a licensed producer unless
292 such person has obtained a license from the Commissioner of
293 Consumer Protection pursuant to this section.

294 (b) The Commissioner of Consumer Protection shall determine the
295 number of producers appropriate to meet the needs of qualifying
296 patients in this state and shall adopt regulations, in accordance with
297 chapter 54 of the general statutes, to provide for the licensure,
298 standards and locations for producers in this state and specify the
299 maximum number of producers that may be licensed in this state at
300 any time. On and after the effective date of such regulations, the
301 commissioner may license any person who applies for a license in

302 accordance with such regulations, provided (1) the commissioner
303 deems such applicant qualified to cultivate marijuana and sell, deliver,
304 transport or distribute marijuana solely within this state pursuant to
305 sections 1 to 15, inclusive, of this act, and (2) the number of producer
306 licenses issued does not exceed the number appropriate to meet the
307 needs of qualifying patients in this state, as determined by the
308 commissioner pursuant to this subsection. At a minimum, such
309 regulations shall:

310 (A) Indicate the maximum number of producers that may be
311 licensed in this state at any time, which number shall not be less than
312 three nor more than ten producers;

313 (B) Provide that no marijuana may be sold, delivered, transported or
314 distributed by a producer from or to a location outside of this state;

315 (C) Establish a nonrefundable application fee of not less than
316 twenty-five thousand dollars for each application submitted for a
317 producer license;

318 (D) Establish a license fee and renewal fee for each licensed
319 producer, provided the aggregate amount of such license and renewal
320 fees shall not be less than the amount necessary to cover the direct and
321 indirect cost of licensing and regulating producers pursuant to sections
322 1 to 15, inclusive, of this act;

323 (E) Provide for renewal of such producer licenses at least every five
324 years;

325 (F) Provide that no producer may cultivate marijuana for palliative
326 use outside of this state and designate permissible locations for
327 licensed producers in this state;

328 (G) Establish financial requirements for producers, under which (i)
329 each applicant demonstrates the financial capacity to build and operate
330 a marijuana production facility, and (ii) each licensed producer may be
331 required to maintain an escrow account in a financial institution in this
332 state in an amount of two million dollars;

333 (H) Establish health, safety and security requirements for licensed
334 producers, which shall include, but need not be limited to, a
335 requirement that the applicant or licensed producer demonstrate: (i)
336 The ability to maintain adequate control against the diversion, theft
337 and loss of marijuana cultivated by the producer, and (ii) the ability to
338 cultivate pharmaceutical grade marijuana for palliative use in a secure
339 indoor facility;

340 (I) Establish standards and procedures for revocation, suspension,
341 summary suspension and nonrenewal of producer licenses, provided
342 such standards and procedures are consistent with the provisions of
343 subsection (c) of section 4-182 of the general statutes; and

344 (J) Establish other licensing, renewal and operational standards
345 deemed necessary by the commissioner.

346 (c) Any fees collected by the Department of Consumer Protection
347 under this section shall be paid to the State Treasurer and credited to
348 the account established pursuant to section 18 of this act.

349 Sec. 11. (NEW) (*Effective October 1, 2012*) (a) A licensed dispensary
350 shall not be subject to arrest or prosecution, penalized in any manner,
351 including, but not limited to, being subject to any civil penalty, or
352 denied any right or privilege, including, but not limited to, being
353 subject to any disciplinary action by a professional licensing board, for
354 acquiring, possessing, distributing or dispensing marijuana pursuant
355 to sections 1 to 15, inclusive, of this act.

356 (b) Notwithstanding subsection (a) of this section, a licensed
357 dispensary shall be subject to arrest, prosecution or civil or criminal
358 penalties pursuant to the laws of this state if the licensed dispensary:
359 (1) Acquires marijuana from a person other than a licensed producer;
360 (2) distributes or dispenses marijuana to a person who is not (A) a
361 qualifying patient registered under section 3 or 15 of this act, or (B) a
362 primary caregiver of such qualifying patient; or (3) obtains or
363 transports marijuana outside of this state in violation of federal law.

364 Sec. 12. (NEW) (*Effective October 1, 2012*) (a) A licensed producer
365 shall not be subject to arrest or prosecution, penalized in any manner,
366 including, but not limited to, being subject to any civil penalty, or
367 denied any right or privilege, including, but not limited to, being
368 subject to any disciplinary action by a professional licensing board, for
369 cultivating marijuana or selling, delivering, transporting or
370 distributing marijuana to licensed dispensaries under sections 1 to 15,
371 inclusive, of this act.

372 (b) Notwithstanding subsection (a) of this section, a licensed
373 producer shall be subject to arrest, prosecution or civil or criminal
374 penalties pursuant to the laws of this state if the licensed producer: (1)
375 Sells, delivers, transports or distributes marijuana to a person who is
376 not a licensed dispensary, or (2) obtains or transports marijuana
377 outside of this state in violation of federal law.

378 Sec. 13. (NEW) (*Effective from passage*) (a) The Commissioner of
379 Consumer Protection shall establish a Board of Physicians consisting of
380 eight physicians or surgeons who are knowledgeable about the
381 palliative use of marijuana and certified by the appropriate American
382 board in one of the following specialties: Neurology, pain medicine,
383 pain management, medical oncology, psychiatry, infectious disease,
384 family medicine or gynecology. Four of the members of the board first
385 appointed shall serve for a term of three years and four of the members
386 of the board first appointed shall serve for a term of four years.
387 Thereafter, members of the board shall serve for a term of four years
388 and shall be eligible for reappointment. Any member of the board may
389 serve until a successor is appointed. The Commissioner of Consumer
390 Protection shall serve as an ex-officio member of the board, and shall
391 select a chairperson from among the members of the board.

392 (b) A quorum of the Board of Physicians shall consist of three
393 members.

394 (c) The Board of Physicians shall:

395 (1) Review and recommend to the Department of Consumer

396 Protection for approval the debilitating medical conditions, medical
397 treatments or diseases to be added to the list of debilitating medical
398 conditions that qualify for the palliative use of marijuana;

399 (2) Accept and review petitions to add medical conditions, medical
400 treatments or diseases to the list of debilitating medical conditions that
401 qualify for the palliative use of marijuana;

402 (3) Convene at least twice per year to conduct public hearings and
403 to evaluate petitions, which shall be maintained as confidential
404 pursuant to subsection (d) of this section, for the purpose of adding
405 medical conditions, medical treatments or diseases to the list of
406 debilitating medical conditions that qualify for the palliative use of
407 marijuana;

408 (4) Review and recommend to the Department of Consumer
409 Protection protocols for determining the amounts of marijuana that
410 may be reasonably necessary to ensure uninterrupted availability for a
411 period of one month for qualifying patients, including amounts for
412 topical treatments; and

413 (5) Perform other duties related to the palliative use of marijuana
414 upon the request of the Commissioner of Consumer Protection.

415 (d) Any individually identifiable health information contained in a
416 petition received under this section shall be confidential and shall not
417 be subject to disclosure under the Freedom of Information Act, as
418 defined in section 1-200 of the general statutes.

419 Sec. 14. (NEW) (*Effective from passage*) (a) The Commissioner of
420 Consumer Protection may adopt regulations, in accordance with
421 chapter 54 of the general statutes, to establish (1) a standard form for
422 written certifications for the palliative use of marijuana issued by
423 physicians under subdivision (2) of subsection (a) of section 2 of this
424 act, and (2) procedures for registrations under section 3 of this act.
425 Such regulations, if any, shall be adopted after consultation with the
426 Board of Physicians established in section 13 of this act.

427 (b) The Commissioner of Consumer Protection shall adopt
428 regulations, in accordance with chapter 54 of the general statutes, to
429 establish a reasonable fee to be collected from each qualifying patient
430 to whom a written certification for the palliative use of marijuana is
431 issued under subdivision (2) of subsection (a) of section 2 of this act,
432 for the purpose of offsetting the direct and indirect costs of
433 administering the provisions of sections 1 to 15, inclusive, of this act.
434 The commissioner shall collect such fee at the time the qualifying
435 patient registers with the Department of Consumer Protection under
436 subsection (a) of section 3 of this act. Such fee shall be in addition to
437 any registration fee that may be charged under said subsection. The
438 fees required to be collected by the commissioner from qualifying
439 patients under this subsection shall be paid to the State Treasurer and
440 credited to the account established pursuant to section 18 of this act.

441 (c) The Commissioner of Consumer Protection shall adopt
442 regulations, in accordance with chapter 54 of the general statutes, to
443 implement the provisions of sections 1 to 15, inclusive, of this act. At a
444 minimum, such regulations shall:

445 (1) Govern the manner in which the department considers
446 applications for the issuance and renewal of registration certificates for
447 qualifying patients and primary caregivers, and establish any
448 additional information to be contained in such registration certificates;

449 (2) Define the protocols for determining the amount of usable
450 marijuana that is necessary to constitute an adequate supply to ensure
451 uninterrupted availability for a period of one month, including
452 amounts for topical treatments;

453 (3) Identify criteria and set forth procedures for adopting
454 regulations to add additional medical conditions, medical treatments
455 or diseases to the list of debilitating medical conditions that qualify for
456 the palliative use of marijuana, which procedures shall include a
457 petition process and shall allow for public comment and public
458 hearings before the board;

459 (4) Add additional medical conditions, medical treatments or
460 diseases to the list of debilitating medical conditions that qualify for
461 the palliative use of marijuana as recommended by the board; and

462 (5) Develop a distribution system for marijuana for palliative use
463 that provides for:

464 (A) Marijuana production facilities within this state housed on
465 secured grounds and operated by licensed producers; and

466 (B) Distribution of marijuana for palliative use to qualifying patients
467 or their primary caregivers by licensed dispensaries.

468 (d) The commissioner shall submit regulations pursuant to
469 subsections (b) and (c) of this section to the standing legislative
470 regulation review committee not later than July 1, 2013.

471 Sec. 15. (NEW) (*Effective October 1, 2012*) (a) During the period
472 beginning on October 1, 2012, and ending thirty calendar days after the
473 effective date of regulations adopted pursuant to section 14 of this act,
474 a qualifying patient who would be determined to be eligible for a
475 registration certificate pursuant to subsection (a) of section 3 of this act,
476 except for the lack of effective regulations concerning licensed
477 dispensaries, licensed producers, distribution systems and amounts of
478 marijuana, may obtain a written certification from a physician and
479 upon presenting the written certification to the Department of
480 Consumer Protection, the department shall issue a temporary
481 registration certificate for the palliative use of marijuana. The
482 department shall indicate on such temporary registration certificate the
483 amount of usable marijuana that constitutes a one month supply which
484 may be possessed pursuant to such temporary registration certificate.
485 The department shall maintain a list of all temporary registration
486 certificates issued pursuant to this section and the information on such
487 list shall be confidential and shall not be subject to disclosure under the
488 Freedom of Information Act, as defined in section 1-200 of the general
489 statutes, except that such information may be disclosed in the manner
490 set forth in subsection (b) of section 3 of this act.

491 (b) A qualifying patient possessing a temporary registration
492 certificate and the qualifying patient's primary caregiver shall not be
493 subject to arrest or prosecution, penalized in any manner, including,
494 but not limited to, being subject to any civil penalty, or denied any
495 right or privilege, including, but not limited to, being subject to any
496 disciplinary action by a professional licensing board, for possessing
497 marijuana if the amount of usable marijuana possessed by the
498 qualifying patient and the primary caregiver is not more than the
499 amount specified in the temporary registration certificate.

500 (c) A physician shall not be subject to arrest or prosecution,
501 penalized in any manner, including, but not limited to, being subject to
502 any civil penalty, or denied any right or privilege, including, but not
503 limited to, being subject to any disciplinary action by the Connecticut
504 Medical Examining Board or other professional licensing board, for
505 providing a written certification for the palliative use of marijuana
506 pursuant to this section.

507 Sec. 16. (NEW) (*Effective October 1, 2012*) (a) For the purposes of this
508 section:

509 (1) "Action" has the meaning provided in section 47a-1 of the
510 general statutes;

511 (2) "Dwelling unit" has the meaning provided in section 47a-1 of the
512 general statutes;

513 (3) "Employer" means a person engaged in business who has one or
514 more employees, including the state and any political subdivision of
515 the state;

516 (4) "Landlord" has the meaning provided in section 47a-1 of the
517 general statutes;

518 (5) "Palliative use" has the meaning provided in section 1 of this act;

519 (6) "Primary caregiver" has the meaning provided in section 1 of this
520 act;

521 (7) "Qualifying patient" has the meaning provided in section 1 of
522 this act;

523 (8) "School" means a public or private elementary or secondary
524 school in this state or a public or private institution of higher education
525 in this state; and

526 (9) "Tenant" has the meaning provided in section 47a-1 of the
527 general statutes.

528 (b) Unless required by federal law or required to obtain federal
529 funding:

530 (1) No school may refuse to enroll any person or discriminate
531 against any student solely on the basis of such person's or student's
532 status as a qualifying patient or primary caregiver under sections 1 to
533 15, inclusive, of this act;

534 (2) No landlord may refuse to rent a dwelling unit to a person or
535 take action against a tenant solely on the basis of such person's or
536 tenant's status as a qualifying patient or primary caregiver under
537 sections 1 to 15, inclusive, of this act; and

538 (3) No employer may refuse to hire a person or may discharge,
539 penalize or threaten an employee solely on the basis of such person's
540 or employee's status as a qualifying patient or primary caregiver under
541 sections 1 to 15, inclusive, of this act.

542 (c) Nothing in this section shall be construed to permit the palliative
543 use of marijuana in violation of subsection (b) of section 2 of this act.

544 Sec. 17. Section 21a-243 of the 2012 supplement to the general
545 statutes is repealed and the following is substituted in lieu thereof
546 (*Effective October 1, 2012*):

547 (a) The Commissioner of Consumer Protection shall adopt
548 regulations for the efficient enforcement and operation of sections 21a-
549 244 to 21a-282, inclusive.

550 (b) The Commissioner of Consumer Protection may, so far as may
551 be consistent with sections 21a-244 to 21a-282, inclusive, adopt the
552 regulations existing under the federal Controlled Substances Act and
553 pertinent regulations existing under the federal food and drug laws
554 and conform regulations adopted hereunder with those existing under
555 the federal Controlled Substances Act and federal food and drug laws.

556 (c) The Commissioner of Consumer Protection, acting upon the
557 advice of the Commission of Pharmacy, may by regulation designate,
558 after investigation, as a controlled substance, a substance or chemical
559 composition containing any quantity of a substance which has been
560 found to have a stimulant, depressant or hallucinogenic effect upon
561 the higher functions of the central nervous system and having a
562 tendency to promote abuse or physiological or psychological
563 dependence or both. Such substances are classifiable as amphetamine-
564 type, barbiturate-type, cannabis-type, cocaine-type, hallucinogenic,
565 morphine-type and other stimulant and depressant substances, and
566 specifically exclude alcohol, caffeine and nicotine. Substances which
567 are designated as controlled substances shall be classified in schedules
568 I to V by regulations adopted pursuant to subsection (a) of this section.

569 (d) The Commissioner of Consumer Protection may by regulation
570 change the schedule in which a substance classified as a controlled
571 substance in schedules I to V of the controlled substance scheduling
572 regulations is placed. On or before December 15, 1986, and annually
573 thereafter, the commissioner shall submit a list of all such schedule
574 changes to the chairmen and ranking members of the joint standing
575 committee of the General Assembly having cognizance of matters
576 relating to public health.

577 (e) Notwithstanding the provisions of subsections (a) to (d),
578 inclusive, of this section, not later than January 1, 2013, the
579 Commissioner of Consumer Protection shall submit amendments to
580 sections 21a-243-7 and 21a-243-8 of the regulations of Connecticut state
581 agencies to the standing legislative regulation review committee to
582 reclassify marijuana as a controlled substance in schedule II under the

583 Connecticut controlled substance scheduling regulations.

584 [(e)] (f) A new or amended regulation under this chapter shall be
585 adopted in accordance with the provisions of chapter 54.

586 [(f)] (g) In the event of any inconsistency between the contents of
587 schedules I, II, III, IV and V of the controlled substance scheduling
588 regulations and schedules I, II, III, IV and V of the federal Controlled
589 Substances Act, as amended, the provisions of the federal act shall
590 prevail, except (1) when the provisions of the Connecticut controlled
591 substance scheduling regulations place a controlled substance in a
592 schedule with a higher numerical designation, schedule I being the
593 highest designation, or (2) as provided in subsection (e) of this section.

594 [(g)] (h) When a drug that is not a controlled substance in schedule
595 I, II, III, IV or V, as designated in the Connecticut controlled substance
596 scheduling regulations, is designated to be a controlled substance
597 under the federal Controlled Substances Act, such drug shall be
598 considered to be controlled at the state level in the same numerical
599 schedule for a period of two hundred forty days from the effective date
600 of the federal classification.

601 [(h)] (i) The Commissioner of Consumer Protection shall, by
602 regulation adopted pursuant to this section, designate the following
603 substances, by whatever official, common, usual, chemical or trade
604 name designation, as controlled substances and classify each such
605 substance in the appropriate schedule:

606 (1) 1-pentyl-3-(1-naphthoyl)indole (JWH-018);

607 (2) 1-butyl-3-(1-naphthoyl)indole (JWH-073);

608 (3) 1-[2-(4-morpholinyl)ethyl]-3-(1-naphthoyl)indole (JWH-200);

609 (4) 5-(1,1-dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol
610 (CP-47,497);

611 (5) 5-(1,1-dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol

612 (cannabicyclohexanol; CP-47,497 C8 homologue);

613 (6) Salvia divinorum; and

614 (7) Salvinorum A.

615 [(i)] (j) Notwithstanding the provisions of subsection (c) of this
 616 section, the Commissioner of Consumer Protection shall designate the
 617 following substances, by whatever official, common, usual, chemical or
 618 trade name designation, as controlled substances in schedule I of the
 619 controlled substances scheduling regulations:

620 (1) Mephedrone (4-methylmethcathinone); and

621 (2) MDPV (3,4-methylenedioxypropylone).

622 Sec. 18. (NEW) (*Effective from passage*) There is established a
 623 palliative marijuana administration account which shall be a separate,
 624 nonlapsing account within the General Fund. The account shall
 625 contain any fees collected pursuant to subsection (a) of section 3 of this
 626 act, any fees collected pursuant to subsection (b) of section 14 of this
 627 act, any fees collected pursuant to sections 9 and 10 of this act, and any
 628 other moneys required by law to be deposited in the account, and shall
 629 be held in trust separate and apart from all other moneys, funds and
 630 accounts. Any balance remaining in the account at the end of any fiscal
 631 year shall be carried forward in the account for the fiscal year next
 632 succeeding. Investment earnings credited to the account shall become
 633 part of the account. Amounts in the account shall be expended only for
 634 the purpose of providing funds to the Department of Consumer
 635 Protection for administering the provisions of sections 1 to 15,
 636 inclusive, of this act.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2012	New section
Sec. 2	October 1, 2012	New section
Sec. 3	October 1, 2012	New section

Sec. 4	<i>October 1, 2012</i>	New section
Sec. 5	<i>October 1, 2012</i>	New section
Sec. 6	<i>October 1, 2012</i>	New section
Sec. 7	<i>October 1, 2012</i>	New section
Sec. 8	<i>October 1, 2012</i>	New section
Sec. 9	<i>from passage</i>	New section
Sec. 10	<i>from passage</i>	New section
Sec. 11	<i>October 1, 2012</i>	New section
Sec. 12	<i>October 1, 2012</i>	New section
Sec. 13	<i>from passage</i>	New section
Sec. 14	<i>from passage</i>	New section
Sec. 15	<i>October 1, 2012</i>	New section
Sec. 16	<i>October 1, 2012</i>	New section
Sec. 17	<i>October 1, 2012</i>	21a-243
Sec. 18	<i>from passage</i>	New section

JUD *Joint Favorable*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 13 \$	FY 14 \$
Consumer Protection, Dept.	GF - Cost	162,820	195,500
Comptroller Misc. Accounts (Fringe Benefits) ¹	GF - Cost	46,023	55,227
Consumer Protection, Dept.	Palliative Marijuana Administration account (non-appropriated account - Revenue Gain	267,500	195,066
Judicial Dept.	GF - Revenue Gain	less than 25,000	less than 25,000

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill results in a cost to the state of \$208,843 in FY 13 and \$250,727 in FY 14. Additionally the bill results in a revenue gain to the state of \$267,500 in FY 13 and approximately \$195,066 in FY 14. The bill requires sufficient revenue in each year to cover the costs of administering the program.

The costs in FY 13, which represents ten month funding where appropriate, include two Drug Control Agents (\$113,333), one License Application Analyst (\$41,167), vehicle, oil and gas (\$5,417) and one-time computer and other equipment (\$2,900) at the Department of Consumer Protection (DCP), plus fringe benefit costs of \$46,023. The

¹ The fringe benefit costs for most state employees are budgeted centrally in accounts administered by the Comptroller. The estimated non-pension fringe benefit cost associated with most personnel changes is 29.22% of payroll in FY 13 and FY 14.

costs in FY 14 are annualized to include two Drug Control Agents (\$136,000), one License and Application Analyst (\$53,000), vehicle, oil and gas (\$6,500) at DCP plus fringe benefit cost of \$55,227.

The revenue in FY 13 assumes ten producer applicants (the maximum set forth in the bill) at a fee of \$25,000, which generates \$250,000 and 700 initial user registrants at a fee of \$25, which generates \$17,500. User registration is anticipated to grow to 1,400 in subsequent years. The estimate of user registration is based on the experience in Vermont and Rhode Island. The DCP will set dispensing and producer renewal fees at a level sufficient to cover administrative costs. All fees are to be deposited in the Palliative Marijuana Administration account established in the bill.

The bill makes it a class C misdemeanor to lie to a law enforcement official about acquiring, distributing, possessing, using, or transporting marijuana or related paraphernalia for palliative use for purpose of avoiding arrest or prosecution. The bill also makes it a class A misdemeanor to lie to a law enforcement officer about the issuance, contents, or validity of a: 1) written certification for palliative use or 2) document purporting to be a written certification. This will result in an estimated revenue gain of less than \$25,000 to the General Fund. The estimate assumes that the establishment of a crime for this offense will result in less than 50 offenders annually.

It is anticipated that the number of additional low-risk offenders placed on probation would be less than 50, and would not result in additional resources being required by the Judicial Department. An additional 50 offenders placed on probation would represent a 0.1% increase to the total probation caseload.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

Sources: Various state registration databases.

OLR Bill Analysis**HB 5389*****AN ACT CONCERNING THE PALLIATIVE USE OF MARIJUANA.*****SUMMARY:**

This bill allows a licensed physician to certify an adult patient's use of marijuana after determining that the patient has a debilitating condition and could potentially benefit from the palliative use of marijuana, among other requirements. The bill lists certain medical conditions that qualify as debilitating (e.g., cancer, AIDS or HIV, Parkinson's disease) and also allows the Department of Consumer Protection (DCP) commissioner to approve additional conditions.

Among other requirements, patients seeking to use marijuana for palliative purposes under the bill must have a written certification by a physician and register with DCP. The bill provides for temporary registrations until 30 days after certain required regulations take effect. The bill allows qualifying patients and their primary caregivers to possess a combined one-month marijuana supply.

The bill sets conditions on who can be primary caregivers and requires them to register with DCP. The bill authorizes DCP to impose a \$25 registration fee for patients and caregivers, and other fees. Registry information is generally confidential and not subject to disclosure under the Freedom of Information Act (FOIA), but may be disclosed for specified purposes (e.g., to law enforcement officials for investigating and prosecuting crime).

The bill creates licensing requirements for pharmacists (termed "dispensaries") to supply the marijuana and for producers to grow it. DCP must adopt regulations setting the maximum number of dispensaries and producers (the number of producers must be at least 3 but no more than 10), providing for their licensure, and setting

standards. The commissioner must set dispensary and producer fees, including a producer licensing application fee of at least \$25,000.

The bill prohibits patients, their caregivers or doctors, dispensaries, or producers from being subject to criminal or civil penalties, or being denied any right or privilege, for specified actions relating to palliative marijuana use. Caregivers are only protected from such punishments if, among other things, they obtained marijuana from a licensed dispensary. The same restriction does not apply to patients.

The bill prohibits schools, landlords, or employers from taking certain actions against patients or caregivers if the actions are solely based on the person's status as a palliative marijuana patient or caregiver, unless the actions are required by federal law or to obtain federal funding.

The bill specifies settings where its protections for patients do not apply. These include ingesting marijuana at work, at school, in public places, in moving vehicles, or in front of children.

The bill requires the DCP commissioner to establish a board of physicians who are knowledgeable about palliative marijuana use. Among other things, the board must (1) recommend to DCP additions to the list of debilitating conditions and (2) convene public hearings to evaluate petitions by those seeking to add conditions to the list. It requires and allows the DCP commissioner to adopt regulations on various matters, including requiring him to submit regulations reclassifying marijuana as a Schedule II controlled substance (it is currently a Schedule I controlled substance, subject to the most stringent regulation).

Among other things, the bill also (1) requires law enforcement agencies to return marijuana or other property seized from a patient or caregiver who complies with its provisions; (2) creates misdemeanor penalties for certain lies made to law enforcement officials related to palliative marijuana use; (3) specifies that it does not require health insurers to cover the palliative use of marijuana; and (4) requires that

all fees DCP collects under the bill be deposited in a separate, nonlapsing palliative marijuana administration account the bill establishes.

EFFECTIVE DATE: October 1, 2012, except for the provisions (1) providing for dispensary and producer licensing (§§ 9-10), (2) creating a Board of Physicians (§ 13), (3) requiring or allowing certain regulations (§ 14), and (4) establishing the palliative marijuana administration account (§ 18), which are effective upon passage.

§ 2 – USE OF MARIJUANA FOR PALLIATIVE PURPOSES

Under the bill, “palliative use” means the acquisition and distribution, possession, use, or transportation of marijuana or related paraphernalia to alleviate the qualifying patient’s symptoms or their effects. Palliative use does not include any marijuana use by someone other than a qualifying patient. “Acquisition and distribution” means the transfer of marijuana and marijuana paraphernalia from the primary caregiver to the qualifying patient.

Subject to various requirements and conditions, the bill allows the palliative use of marijuana by adult patients to treat “debilitating medical conditions.” Under the bill, debilitating conditions include cancer; glaucoma; HIV; AIDS; Parkinson’s disease; multiple sclerosis; damage to the nervous tissue of the spinal cord with objective neurological indication of intractable spasticity; epilepsy; cachexia (emaciation often caused by cancer or cardiac diseases); wasting syndrome; Crohn’s disease; posttraumatic stress disorder; and other conditions, treatments, or diseases that DCP approves through regulations, as explained below.

The bill does not allow palliative marijuana use by (1) minors, (2) people who are not state residents, or (3) inmates confined in Department of Correction correctional facilities.

Primary Caregivers

Under the bill, a patient’s primary caregiver is someone at least age 18, and someone other than the patient’s doctor, who agrees to take

responsibility for managing the patient's well-being with respect to his or her palliative use of marijuana. For purposes of the bill, someone cannot be a primary caregiver for himself or herself.

If the patient lacks legal capacity, the caregiver must be the patient's parent, guardian, or legal custodian. Someone convicted for illegally making, selling, or distributing controlled substances cannot serve as a primary caregiver. The qualifying patient's physician must evaluate the patient's need for a primary caregiver and document the need in the certification of palliative use.

The bill limits patients to one primary caregiver at a time. It also limits caregivers to only one patient at a time, unless the caregiver and each patient have a parental, guardianship, conservatorship, or sibling relationship.

§§ 2, 4 – CERTIFICATION OF MARIJUANA USE

Under the bill, a physician may certify a patient's use of marijuana only after determining, in the physician's professional opinion, that the patient has a debilitating condition and the potential benefits of the palliative use of marijuana would likely outweigh its health risks. The certification must be in writing, signed, and dated by the physician.

The bill makes the certification valid for one year from the date it is signed. It requires the patient or the primary caregiver to destroy all usable marijuana that the patient and caregiver possess for palliative use (1) within 10 days after the certification expires or (2) at any time before that if the patient no longer wishes to possess marijuana for palliative use. The bill defines "usable marijuana" as the dried leaves and flowers of the marijuana plant, and any mixtures or preparations of it, that are appropriate for the palliative use of marijuana, but not including the plant's seeds, stalks, and roots.

§§ 3, 15 – PATIENT AND CAREGIVER REGISTRATION

Registration Requirement

The bill requires certified patients and their primary caregivers to register with DCP. DCP must issue the patient and the primary

caregiver a registration certificate that, once issued, is valid for the same period as the written certification from the physician, up to one year. When registering, the patient and caregiver must give DCP information that sufficiently and personally identifies them (as DCP determines). They must also report any change in the information within five business days after it occurs.

DCP may charge a reasonable fee for each registration certificate, up to \$25. It must turn over any registration fees it collects to the state treasurer for deposit in the palliative marijuana administration account the bill creates.

Disclosure of Registration Information

Under the bill, registration information obtained by DCP is generally confidential and not subject to disclosure under the Freedom of Information Act. But the bill requires DCP to give the following reasonable access to this information:

1. state and federal agencies and local law enforcement agencies to investigate or prosecute a violation of law;
2. physicians and pharmacists, to provide patient care and drug therapy management and monitor controlled substances the patient obtains;
3. public or private entities for research or educational purposes, as long as no individually identifiable health information is disclosed;
4. licensed dispensaries, for the purpose of complying with the bill;
5. qualifying patients, but only with respect to information related to them or their primary caregiver; and
6. primary caregivers, but only with respect to information related to their qualifying patients.

Temporary Registration

The bill allows qualifying patients to apply to DCP for temporary registration if they would otherwise be eligible for a registration certificate, except that regulations on licensed dispensaries, licensed producers, distribution systems, and specific amounts of marijuana have not yet taken effect (see below). They may do so from October 1, 2012 until 30 days after the regulations take effect. To apply, they must present a physician's written certification to DCP, who must grant the temporary certificate to patients who qualify. The bill requires DCP to indicate on a temporary registration certificate how much usable marijuana constitutes a one-month supply, which the patient may possess.

DCP must maintain a list of temporary registration certificates it issues. Information in the list is subject to the same confidentiality and disclosure provisions as other registration information, specified above.

§ 9 – DISPENSARY LICENSING

The bill establishes licensing requirements for pharmacists seeking to dispense marijuana for palliative use. It prohibits anyone who is not licensed by DCP as a dispensary from acting as one or representing that he or she is a licensed dispensary.

Under the bill, the DCP commissioner must determine how many dispensaries are appropriate to meet the needs of the state's qualifying patients. He must adopt regulations setting the maximum number of dispensaries and providing for their licensure and standards (see below). Once the regulations take effect, the commissioner can issue dispensary licenses to licensed pharmacists who apply for a dispensary license in accordance with those regulations and who the commissioner deems qualified to acquire, possess, distribute, and dispense marijuana pursuant to the bill. The number of dispensary licenses issued cannot exceed the maximum number set by regulation.

The dispensary regulations must at least:

1. indicate the maximum number of dispensary licenses;
2. indicate that only a licensed pharmacist may apply for or receive a dispensary license;
3. provide that no marijuana may be dispensed from, obtained from, or transferred out-of-state;
4. set licensing and renewal fees that at least cover the direct and indirect cost of licensing and regulating dispensaries under the bill;
5. require license renewal at least every two years; and
6. describe areas in the state where licensed dispensaries may not be located, after considering the law's criteria for the location of retail liquor permit premises.

The regulations must also establish:

1. health, safety, and security requirements for licensed dispensaries, which may include, among other things, (a) maintaining adequate control against the diversion, theft, and loss of marijuana acquired or possessed by the dispensary and (b) maintaining the knowledge, understanding, judgment, procedures, security controls, and ethics to assure optimal safety and accuracy in the distributing, dispensing, and use of palliative marijuana;
2. standards and procedures for license revocation, suspension, summary suspension, and nonrenewal, as long as the standards and procedures comply with the Uniform Administrative Procedure Act's (UAPA) requirements for taking such actions; and
3. other licensing, renewal, and operational standards the commissioner deems necessary.

Under the bill, DCP must give the state treasurer any fees it collects

related to dispensary licensing. The fees must be credited to the palliative marijuana administration account the bill creates.

§ 10 – PRODUCER LICENSING

The bill also provides for DCP’s licensing of producers – people with appropriate expertise in agriculture, organized to cultivate (plant, propagate, cultivate, grow, and harvest) marijuana for palliative use in the state and to sell, deliver, transport, or distribute marijuana for palliative use only to licensed dispensaries under the bill. The bill prohibits anyone who is not licensed by DCP as a producer from acting as one or representing that he or she is a licensed producer.

The bill’s provisions for producers are in many ways similar to its provisions for dispensaries, although there are some notable differences. The DCP commissioner must determine how many producers are appropriate to meet the needs of the state’s qualifying patients. He must adopt regulations (1) providing for producer licensure, standards, and locations and (2) specifying the maximum number of licenses, which must be at least three but no more than 10. After the regulations are effective, the commissioner can issue producer licenses (up to 10) to applicants who apply in accordance with the regulations and who he deems qualified to cultivate marijuana and sell, deliver, transport, or distribute marijuana solely within the state pursuant to the bill.

The required producer regulations also must at least:

1. provide that a producer may not sell, deliver, transport, or distribute marijuana from or to an out-of-state location;
2. establish a nonrefundable license application fee of at least \$25,000;
3. establish licensing and renewal fees that in the aggregate at least cover the direct and indirect cost of licensing and regulating producers under the bill;

4. provide for licenses to be renewed at least every five years;
5. designate permissible locations for licensed producers, and prohibit these producers from cultivating marijuana for palliative use outside of the state;
6. establish financial requirements for producers, under which (a) applicants demonstrate the financial capacity to build and operate a marijuana production facility and (b) licensees may be required to maintain a \$2 million escrow account at an in-state financial institution;
7. establish health, safety, and security requirements which must at least include a requirement that an applicant or licensed producer demonstrate the ability to (a) maintain adequate control against the diversion, theft, and loss of marijuana the producer cultivates and (b) cultivate pharmaceutical grade marijuana for palliative use in a secure indoor facility;
8. establish standards and procedures for license revocation, suspension, summary suspension, and nonrenewal, that comply with the UAPA's standards for such actions; and
9. establish other licensing, renewal, and operational standards the commissioner deems necessary.

The bill requires DCP to give the state treasurer any producer licensing fees that it collects. The fees must be credited to the palliative marijuana administration account.

§§ 2,-6, 11-12, 15 – PROTECTIONS FROM PUNISHMENT RELATED TO PALLIATIVE MARIJUANA USE

The bill prohibits qualifying patients, their caregivers or doctors, or marijuana dispensaries or producers from being arrested, prosecuted, otherwise penalized, including being subject to civil penalties, or denied any right or privilege, including being disciplined by a professional licensing board, for taking specified actions related to the palliative use of marijuana. The particular requirements for each group

are explained below.

§§ 2, 15 – Qualifying Patients

Under the bill, qualifying patients cannot be subjected to the actions or penalties specified above for palliative marijuana use if:

1. a physician diagnoses the patient with a debilitating condition;
2. the patient's physician has issued a written certification for the patient's palliative use of marijuana after prescribing, or determining it is against the patient's best interest to prescribe, prescription drugs to address the symptoms or effects the marijuana is supposed to treat; and
3. the combined amount of marijuana possessed by the patient and his or her primary caregiver for palliative use does not exceed a usable amount reasonably necessary to ensure a one-month supply, as DCP determines through regulation.

The protection against such punishments or actions does not apply if a patient's palliative use of marijuana endangers someone else's health or well-being. The protection also does not apply if the patient ingests marijuana:

1. on a motor bus or school bus, or in any moving vehicle;
2. at work;
3. on school grounds or any public or private school, dormitory, college, or university property;
4. at a public beach, park, recreation or youth center, or any other area that is used or held out for use by the public whether owned or operated for public or private interests; or
5. within the direct line of sight of anyone under age 18, in a way that exposes someone under age 18 to second-hand marijuana smoke, or both.

If a patient has a temporary registration certificate from DCP, he or she is not subject to such penalties for possessing marijuana as long as the usable amount possessed by the patient and primary caregiver does not exceed the amount allowed by the temporary registration.

§§ 6, 15 – Physicians

The bill prohibits a physician from being subject to such actions or penalties for writing a certification for palliative marijuana use as long as he or she:

1. diagnosed a qualifying patient with a debilitating condition;
2. explained the potential risks and benefits of using marijuana for palliative purposes to the patient and the parent, guardian, or legal custodian of such a patient who lacks legal capacity;
3. based the written certification on his or her professional opinion after completing a medically reasonable assessment of the patient's medical history and current medical condition in the course of a bona fide physician-patient relationship; and
4. has no financial interest in a licensed dispensary or producer.

The bill also provides that physicians are not subject to such actions or penalties for writing a certification that a patient uses for a temporary registration.

The bill specifies that these protections do not apply to physician assistants.

§§ 2, 15 – Primary Caregivers

The bill protects registered primary caregivers from the punishments or penalties specified above for acquiring, distributing, possessing, or transporting marijuana or related paraphernalia for a qualifying patient. For this protection to apply, the amount of marijuana, along with the combined usable amount the patient and caregiver possess, cannot exceed a reasonably necessary one-month supply in accordance with DCP regulations adopted under the bill.

The protection also does not apply if the marijuana was obtained from a source other than a state-licensed dispensary. The protection against punishment for distribution applies only when the drug or paraphernalia is transferred from the caregiver to the patient.

If a patient has a temporary registration certificate from DCP, the primary caregiver cannot be penalized for possessing marijuana as long as the usable amount possessed by the patient and caregiver does not exceed the amount allowed by the patient's temporary registration.

§ 11 – Dispensaries

The bill protects licensed dispensaries from the actions or penalties specified above for acquiring, possessing, distributing, or dispensing marijuana pursuant to the bill. But they are subject to arrest, prosecution, or civil or criminal penalties under state law for:

1. acquiring marijuana from someone other than a licensed producer;
2. distributing or dispensing marijuana to someone who is not a qualifying patient registered with DCP or primary caregiver of such a patient; or
3. obtaining or transporting marijuana outside of the state in violation of federal law.

§ 12 – Producers

The bill protects licensed producers from the actions or penalties specified above for cultivating marijuana or selling, delivering, transporting, or distributing it to licensed dispensaries. They are subject to arrest, prosecution, or civil or criminal penalties under state law for (1) selling, delivering, transporting, or distributing marijuana to someone who is not a licensed dispensary or (2) obtaining or transporting marijuana outside of the state in violation of federal law.

§§ 5, 7 – CRIMINAL PROCEDURE

The bill permits qualifying patients and primary caregivers who

comply with its requirements to assert that compliance as an affirmative defense to any state prosecution involving marijuana or related paraphernalia. It prohibits anyone from being arrested or prosecuted solely for being present or in the vicinity of the palliative use of marijuana permitted by the bill.

The bill requires law enforcement agencies to return marijuana, related paraphernalia, or other property seized from qualifying patients or primary caregivers who comply with its provisions, immediately after a court determines that they were entitled to it. Under the bill, such an entitlement can be shown by a prosecutor's decision not to prosecute, the dismissal of the charges, or the patient's or caregiver's acquittal.

§ 8 – FRAUDULENT REPRESENTATION TO LAW ENFORCEMENT

The bill makes it a class C misdemeanor to lie to a law enforcement official about acquiring, distributing, possessing, using, or transporting marijuana or related paraphernalia for palliative use for the purpose of avoiding arrest or prosecution for any crime. It makes it a class A misdemeanor for someone to lie to a law enforcement official about the issuance, contents, or validity of a (1) written certification for palliative use or (2) document purporting to be a written certification.

Class C misdemeanors are punishable by up to three months' imprisonment, up to a \$500 fine, or both. Class A misdemeanors are punishable by up to one year's imprisonment, up to a \$2,000 fine, or both.

§ 13 – PHYSICIAN BOARD

Membership and Appointment

The bill requires the DCP commissioner to establish a Board of Physicians, consisting of eight physicians or surgeons who are (1) knowledgeable about the palliative use of marijuana and (2) certified by the appropriate American board in neurology, pain medicine, pain management, medical oncology, psychiatry, infectious disease, family medicine, or gynecology. It appears that the commissioner selects the

board members. The commissioner also serves as an ex-officio board member. He must select a chairperson from among the members.

Under the bill, half of the initial appointees serve three-year terms, and the other half serve four-year terms. All members appointed subsequently serve four-year terms. Members are eligible for reappointment, and each member may serve until a successor is appointed. Three board members constitute a quorum.

Board Duties

The bill requires the board of physicians to:

1. review and recommend to DCP for approval any debilitating medical conditions, treatments, or diseases to be added to the list of conditions that qualify for the palliative use of marijuana;
2. accept and review petitions for additions to the list of debilitating conditions (any individually identifiable health information contained in such a petition the board receives is confidential and not subject to disclosure under FOIA);
3. meet at least twice a year to conduct public hearings and to evaluate such petitions;
4. review and recommend to DCP protocols for determining how much marijuana may be reasonably necessary to ensure uninterrupted availability for one month for qualifying patients, including amounts for topical treatments; and
5. perform other duties related to the palliative use of marijuana at the DCP commissioner's request.

§ 14 – REGULATIONS

In addition to the other required regulations specified above, the bill requires the DCP commissioner to adopt regulations to implement the bill's provisions permitting the palliative use of marijuana. The regulations must at least:

1. govern how DCP considers applications for issuing and renewing qualifying patients' and their caregivers' registration certificates, and establish any additional information to be contained in the certificates;
2. define protocols for determining how much useable marijuana constitutes an adequate supply to ensure uninterrupted availability for one month, including amounts for topical treatments;
3. identify criteria and set procedures for adopting regulations to add additional medical conditions, treatments, or diseases to the list of debilitating conditions that qualify for the palliative use of marijuana; the procedures must include a petition process and allow for public comment and public hearings before the physician board;
4. add medical conditions, treatments, or diseases to the list of debilitating conditions, as the physician board recommends; and
5. develop a system for distributing marijuana for palliative use that provides for (a) marijuana production facilities on secured grounds in the state and operated by licensed producers and (b) distribution to qualifying patients or their primary caregivers by licensed dispensaries.

The commissioner must also adopt regulations establishing a reasonable fee to charge qualifying patients with written certifications to offset the direct and indirect costs of administering the bill. This fee is in addition to any registration fee. The commissioner must collect this fee when qualifying patients register with DCP, and must remit the fees to the state treasurer, to be credited to the account established by the bill.

The commissioner must submit these regulations to the general assembly's Regulation Review committee by July 1, 2013.

The bill also permits, but does not require, the commissioner to adopt regulations on the following matters, in consultation with the board of physicians:

1. establishing a standard form for physicians' written certifications for the palliative use of marijuana and
2. establishing procedures for registrations with DCP by patients and caregivers.

§ 16 – PROHIBITION ON DISCRIMINATION OR DISCIPLINARY ACTIONS BY SCHOOLS, LANDLORDS, OR EMPLOYERS

Unless required by federal law or required to obtain federal funding, the bill prohibits the following actions if they are based solely on a person's status as a qualifying patient or primary caregiver under the bill:

1. a K-12 school or higher education institution, whether public or private, (a) refusing to enroll someone or (b) discriminating against a student;
2. a landlord (a) refusing to rent a dwelling unit to someone or (b) taking action against a tenant (including actions for possession, recoupment, counterclaim, set-off, cause of action, and any other proceeding determining the parties' rights); and
3. an employer with at least one employee, including the state or its political subdivisions, (a) refusing to hire someone or (b) firing, penalizing, or threatening an employee.

The bill specifies that these provisions must not be construed to permit the palliative use of marijuana in a way that violates other provisions providing that a patient's protection from punishment or other penalties does not apply if he or she ingests marijuana at work, school, or other specified settings (see above).

§ 17 – RECLASSIFICATION OF MARIJUANA AS SCHEDULE II CONTROLLED SUBSTANCE

The bill requires the DCP commissioner to submit to the Regulation Review committee amendments to DCP regulations, reclassifying marijuana as a Schedule II controlled substance (it is currently classified as Schedule I). He must do so by January 1, 2013. This requirement applies despite the general procedures authorizing the commissioner to change a controlled substance's schedule classification.

Under existing law, if there is an inconsistency between the state controlled substance schedule and the federal schedule, the federal schedule prevails, unless Connecticut places the substance in a higher schedule (schedule I is the highest, V the lowest). The bill creates an exception for the reclassification of marijuana, which is a Schedule I controlled substance under federal law (see BACKGROUND).

§ 18 – PALLIATIVE MARIJUANA ADMINISTRATION ACCOUNT

The bill establishes a separate, nonlapsing palliative marijuana administration account in the General Fund. The account consists of the various fees DCP collects under the bill, as specified above; investment earnings; and any other moneys the law requires to be deposited in it. The account can only be used to provide funds to DCP for palliative marijuana administration. Any money remaining in the account at the end of a fiscal year must be carried forward to the next fiscal year.

BACKGROUND

Controlled Substance Classification

Federal law classifies marijuana as a Schedule I controlled substance. The law generally 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 U.S.C. §§ 812, 823, and 841(a)(1)).

COMMITTEE ACTION

Judiciary Committee

Joint Favorable

Yea 35 Nay 8 (03/21/2012)